Recommendations

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

14

Chapter 14

1. In this Chapter, the Independent Review Panel (the "Panel") evaluates the adequacy of the current system, as operated by the TIU and the International Governing Bodies[1], to deal with the nature and extent of the problem now faced by tennis, and sets out the Panel's proposed recommendations to address any inadequacies in the current system[2].

2. The International Governing Bodies' commitment to implement and fund the Panel's recommendations presents a unique and important opportunity for tennis to address the betting-related and other integrity issues it now faces.

3. In the present view of the Panel, the current system as operated is inadequate to deal with the nature and extent of the problem now faced, particularly in light of its recent growth in scale as described in Chapter 13. The Panel does not consider that there is any single or simple panacea. Rather, what is required is a package of improvements across four areas:

   3.1 The Panel considers that the current system involves insufficient control over the opportunities and incentives for breaches of integrity that give rise to the problem faced. The Panel makes recommendations (a) for restrictions and conditions on the sale of live scoring data, which creates opportunities for breaches of integrity; and (b) for modifications to aspects of the organisation of professional tennis that appear to incentivise breaches of integrity[3]. The Panel's recommendations are designed, in part, to promote a more equitable sharing among the International Governing Bodies of the costs of developing professional tennis players.

   3.2 The Panel considers that the current system does not afford the TIU sufficient independence or supervision, and does not provide it with sufficient resources or a sufficiently wide reach, to address the problem faced. The Panel makes recommendations for changes to (a) the supervision of the TIU; and (b) the structure and funding of the TIU[4].

   3.3 The Panel considers that further steps could and should be taken to prevent breaches of integrity from occurring. The Panel makes recommendations to improve (a) integrity education; (b) control of access to players through registration and accreditation systems, as well as safeguarding and exclusionary measures; and (c) the use of disruption techniques[5].

   3.4 The Panel considers that the system for the detection, investigation and punishment of breaches of integrity, once they have occurred, is inadequate to deal with the problem faced. The Panel makes recommendations for changes to (a) the prohibitions and obligations under the TACP; (b) the TIU's investigative processes; (c) the disciplinary procedures; (d) the TIU's transparency; and (e) the TIU's relationships and interactions with third parties[6].

4. The Panel also addresses the current international and national legislative and regulatory regime for addressing breaches of integrity in sport, identifying apparent shortcomings, particularly in light of the recent growth in the scale of the problem, and various areas for improvement. This discussion includes legislation and the application of criminal law by law enforcement agencies as well as national gambling regulators' rules and enforcement by those national gambling regulators. Unlike the other matters set out in this chapter, however, the Panel's suggestions in this area cannot be implemented directly by the International Governing Bodies. Accordingly, the Panel identifies areas in which the International Governing Bodies, as well as national tennis federations, can exercise leadership in lobbying for legislative and regulatory change, and urges governments and regulators to implement the suggested changes.

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

2 Pending the consultation process between Interim and Final Reports.

3 Section A below.

4 Section B below.

5 Section C below.

6 Section D below.

5. The Panel recognises that some consequences of some recommendations may be unwelcome to some stakeholders, and that some changes can only be developed and implemented through the expertise and experience of those stakeholders. Accordingly, all of the recommendations in this chapter are preliminary. Following a two-month period for comment by all interested persons, the Panel will issue a Final Report with its final recommendations. Pursuant to the Terms of Reference, the Panel will fully consider all of the timely comments that are submitted.

Q 14.1 Are there other matters of evaluation in relation to the adequacy of the current system, measured against the nature and extent of the problem faced, that are relevant to the Independent Review of Integrity in Tennis, and that should be addressed in the body of the Final Report? If so, which, and why?

Q 14.2 Are there any aspects of the Panel's provisional conclusions in relation to the adequacy of the current system, measured against the nature and extent of the problem faced, that are incorrect? If so, which, and why?

Q 14.3 Are there other possible improvements to the current system to deal with the nature and extent of the problem faced that are relevant to the Review, and that should be addressed in the body of the Final Report? If so, which, and why?

Q 14.4 Are there any aspects of the Panel's provisional conclusions in relation to the improvements that should be made to the current system to deal with the nature and extent of the problem faced that are incorrect? If so, which, and why?

A REMOVING OPPORTUNITIES AND INCENTIVES FOR BREACHES OF INTEGRITY

6. The behaviour of professional tennis players is naturally influenced by the circumstances and rules of the system in which they operate. If the tennis environment incentivises breaches of integrity and creates ample opportunities for their commission, more such improper activity should be expected. In contrast, if the environment limits the incentives and opportunities, such activity should be reduced.

7. Unfortunately, in the view of the Panel, the current tennis environment provides a fertile breeding ground for breaches of integrity[7]. The availability of live scoring data in respect of many more matches at lower levels and so many more players has dramatically expanded the opportunities to bet on tennis, and so the opportunities to cheat at betting on the sport. Robust betting markets are now offered in respect of large numbers of matches between players at the lower levels, where previously that was not the case. At the same time, many structural elements of professional tennis, particularly at those lower levels, create unintended incentives for players to exploit those opportunities through conduct that threatens the integrity of the sport. To tackle this problem, tennis needs a bold response. It is clear to the Panel that an approach of protecting integrity that is confined to the detection and punishment of breaches[8] and the prevention of contemplated breaches[9] is not by itself adequate to deal with the nature and extent of the problem now faced by tennis. That problem must also be addressed through measures designed to reduce significantly the opportunities and incentives to breach integrity.

8. Subsection (1) below sets out recommendations to reduce the opportunities for integrity breaches by controlling and limiting the betting markets on tennis. Although there will always be some level of betting on tennis, these recommendations aim to reduce the opportunities for betting, through restrictions and conditions on the sale of live scoring data in respect of levels of event, and particular events or matches, that are particularly susceptible to betting-related breaches of integrity.

9. Subsection (2) below sets out an overarching recommendation that the International Governing Bodies implement a new player pathway to address the fundamental problem that parts of nominally *"professional"* tennis, as currently structured, do not provide an adequate system of movement up and down the rankings or sufficient prize money properly to incentivise players. Subsection (2) then sets out, for further consultation, a series of possible changes that may better align player incentives and, thereby, discourage improper conduct.

(1) REDUCING OPPORTUNITIES FOR BREACHES OF INTEGRITY

10. The past few years have seen a dramatic increase in the volume of betting on tennis, and in the number and range of events and matches, and so players, on whom bets can be placed[10]. This rapid expansion of opportunities to bet on tennis has, in the view of the Panel, greatly exacerbated the integrity challenge facing the sport. At its simplest, more betting opportunities create more opportunities to fix matches for financial gain and to commit other related breaches of integrity. The effect has been intensified because of the proliferation of in-play betting and the penetration of betting into the lower levels of the sport, where the players who have the greatest incentive to breach integrity play and where the evidence strongly suggests that tennis is highly susceptible to breaches of integrity.

11. Despite the effect of the sale of live scoring data on integrity, the International Governing Bodies have not maintained sufficient control over the betting markets that are created based on the live scoring data they sell to betting operators. As the system stands, the data is sold to data supply companies and can then be used by the betting operators that acquire the data from the supply companies to create any forms of betting markets on any events and players, anywhere in the world. The sport has no control over those markets, even though it owns, collects and supplies the data.

12. To address this, the sport of tennis must maintain greater control over, and have the ability to limit, the sale and supply of live scoring data in respect of events and matches that are particularly susceptible to betting-related breaches of

7 Chapter 4, Section B.

8 Section D below.

9 Section C below.

10 Chapter 3, Section B.

integrity. Through the TIU, the International Governing Bodies can and should fulfil the role of regulating the nature and extent of betting markets on their sport, to safeguard the integrity of tennis. The Panel has identified, on the basis of the evidence it has seen, areas where restrictions and conditions should be imposed, and what form they should take, in order to address the problem faced.

13. The Panel recognises that the International Governing Bodies' data contracts generate significant revenue. This benefit must, however, be balanced against the need to address the significant integrity threat facing the sport as a whole, and mechanisms to offset disproportionate revenue impacts to one or more International Governing Bodies can be introduced.

14. The Panel therefore sets out below several related preliminary recommendations, for consultation, concerning the sale and supply of live scoring data by the International Governing Bodies to data supply companies, and on by those companies to betting operators. Until the Panel publishes its final recommendations, the International Governing Bodies should take no action to renew existing contracts or otherwise commit to future data sales.

Discontinue the sale of live scoring data for events at the lowest levels of the sport

15. The simplest way to reduce the number of betting markets, and so reduce opportunities to breach integrity, would appear to involve ceasing the supply of any data to data supply companies for onward supply to betting operators. If betting operators did not have access to live scoring data, they would not be as readily able or inclined to offer such a wide range of in-play betting markets on nearly as many tennis matches or players.

16. In the Panel's view, however, such a sweeping approach would be inappropriate and counterproductive. While live scoring data make it easier for betting operators to offer markets, it is unlikely that prohibiting data sales would have a significant impact on the number of betting markets at the higher levels of the sport. Because of greater public interest in betting at the higher levels, driven by the profile of the events and the recognition of the players, betting operators would likely incur the cost and effort to create betting markets through unofficial data, such as by scraping data from websites or live video feeds or, if necessary, through increased use of scouts to transmit live data from the courts to betting operators. Moreover, because high-level ATP and WTA events are typically broadcast on television and live streamed on the internet, and because that data are available in real time on various websites, it would not be difficult for betting operators to create markets using these unofficial sources of data. As a result, prohibiting data sales at the higher levels could actually compromise integrity in the sport because, if there is no way to stop a betting market from emerging, it is generally preferable for the markets that exist to be based on official, reliable data supplied by the International Governing Bodies to data supply companies, and on by those to companies betting operators, under agreements that require information sharing and other assistance in relation to potential integrity concerns.

17. There is also much less need for intervention at the Tour Level[11] and Grand Slam level. The available evidence, including the TIU's database, interviews with the TIU, player interviews, the Panel's player survey, and prior disciplinary proceedings, demonstrates that the scope of the integrity problem is much more acute and pervasive at the lower levels of the sport. Indeed, since 2012, betting on lower-level matches has accounted for most of the increases in betting alerts, integrity investigations, and disciplinary proceedings. At the same time, the evidence also demonstrates why this is the case, as the incentives to breach integrity are greater, and the brakes to doing so are fewer, at those lower levels. In contrast, higher-ranked players have less powerful incentives to engage in corrupt activity because they can earn substantial prize money and progress by performing well and winning matches. There are also greater safeguards against betting-related corruption at Tour Level and Grand Slam level, including better security, more stringent accreditation requirements, and more extensive integrity education.

11 The "Tour Level" is made up the ATP and WTA Tours.

18. The incentives to breach integrity are greatest at the Lowest Level because of the costs and available prize money. No player who regularly competes in ITF Futures events, for example, can expect even to recoup his or her costs from tournament winnings, much less to earn a living wage[12]. Nor do the vast majority of players competing at these levels have any prospect of advancing through the rankings. Moreover, the facilities that host events at these levels often lack basic safeguards to discourage, and to allow the detection of, breaches of integrity. At the same time, competitive events at these levels are critical for aspiring tennis players to develop their skills so that they may ascend to higher levels of professional competition. Indeed, $15k and $25k events serve an important role as developmental competition. Players at these levels, and particularly young players, should be protected from the pressures that accompany betting, including corrupt approaches, temptations for short-term financial gain, and online abuse from disappointed bettors.

19. The Panel consequently recommends that the relevant International Governing Body, the ITF, discontinues all data sales at the lowest levels of presently nominally *"professional"* tennis - -that is, for all of the $15k and $25k events. The Panel presently considers that eliminating the sale of the data at these lowest levels of tennis is a necessary, pragmatic, and effective approach to containing betting-related breaches of integrity.

20. The Panel appreciates that removal of official live scoring data does not prevent pre-match betting on outcome or margin, and does not prevent use of unofficial data to create an in-play market. The Panel has seen some evidence that in the past unofficial data were used to an extent even at the lowest levels. However, in the Panel's view, betting is predominantly an in-play and online phenomenon at the lowest levels, where there is much less interest in pre-match betting on outcome or margin. As to unofficial data, the Panel is not convinced that the degree of interest in betting on matches at the lowest level would warrant the cost of creating widespread markets absent official data. Generally, the interest in betting on these matches is not tied to the players, but rather to the fact that in-play markets exist online. Further, the Panel considers that there is a realistic prospect of combatting any parallel in-play betting markets that may arise from these matches based on unofficial data. In contrast to ATP and WTA Tour events, the vast majority of ITF events are not broadcast on television or streamed live. To the extent that live data in relation to some ITF events are made available through live data feeds on the ITF's website, that can be stopped. The Panel therefore also recommends that as well as ceasing to sell live scoring data, the ITF should discontinue providing live data feeds on its website so that betting operators will no longer have a readily available source of unofficial live scoring data for such low-level matches. Although betting operators could still attempt to use scouts to gather and transmit unofficial information in order to create markets, the Panel is sceptical of claims that discontinuing the sale of live scoring data would result in widespread scouting across matches at these lowest levels. Moreover, as explained below, if a match were the subject of scouting, it would quickly become obvious because a market would appear where there should not be one. That market could then be addressed because at the lowest levels there are very few (if any) spectators, and the scout could quickly be identified and removed, or failing that, the match could be stopped.

21. In addition to reducing betting-related breaches of integrity at the levels in question, eliminating betting markets on matches at the lowest levels would permit the TIU to channel its resources to focus on, and so more effectively combat, issues that arise elsewhere in tennis. In 2017, the TIU was responsible for policing approximately 756 men's events and 670 women's events. Even if the TIU significantly expands its staff, it would not have enough investigators to effectively monitor or deal with breaches of integrity at a significant proportion of these events.

12 Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), ("2005 Ings Report"), page 36, paragraph 207, available at: http://www.tennisirp.com/ [accessed 9 April 2018] : "Lower ranked tennis players and their support personnel are unable to earn a living wage from the game. Gambling using inside information is used as a means to supplement low-income levels".

22. This is not to say that the TIU would no longer have responsibility for policing lower-level matches. On the contrary, it is critical that the developmental stages of the game are guarded against breaches of integrity, so that younger and up-and-coming players are not compromised early in their careers. In the view of the Panel, however, the TIU should make a renewed effort to leverage the manpower of the national federations to police these events[13]. If properly trained, these federations have many officials who can serve as the TIU's delegates at lower-level events around the world.

23. Confining the Panel's data-sale recommendation to ITF $15k events, while continuing to allow the sale of data for ITF $25k and higher-level tournaments, would arguably fit with the new player pathway that the ITF plans to implement in 2019, which will separate the ITF $25k and $15k tournaments into professional and developmental levels, respectively. It would also allow some money to continue to come into the ITF in return for its data, for redistribution into the sport. However, it would ignore the fact that the integrity problem currently applies broadly across both ITF levels, and making the proposed changes to the pathway would not eliminate the very real incentives for breaches of integrity at the $25k level. The Panel considers that discontinuing live scoring data sales will effectively discourage betting markets from arising on ITF events, and that the resolution of significant integrity concerns cannot be driven by the question of the financial return, even when much of it is redistributed to the sport by the ITF.

24. Just as serious arguments exist to limit the proposed discontinuance to the $15k tournaments, so too serious arguments exist to extend the proposed discontinuance of live scoring data sales to higher levels of professional tennis, in particular to men's ATP Challenger events. While imperfect as a measure, evidence such as the TIU database figures[14] suggests that the incidents of integrity concerns at ATP Challenger events may be as high, if not higher, as a proportion of matches played and Bettable Matches, than the incidents of concerns at the ITF level. For example, between 2013-2016 in the men's game, 31.8% of all Match Specific Alerts were generated by Challenger matches, while only 17.9% of all Bettable Matches were played at this level. In men's tennis in 2017, 29.8% of all Match Specific Alerts were generated by Challenger matches, while only 12.3% of all Bettable Matches were played at this level.

25. Moreover, there are a number of relevant considerations that militate against further extending the recommended discontinuance of data sales. Players at the ATP Challenger level – which offers regular access to events for players ranked down to about 350 in the world[15] – are much closer to the top of the sport, where there are greater financial incentives to perform. The number of individuals who might breach integrity at this level is thus significantly smaller than at the ITF level. Removal of other incentives for, and reinforcement of brakes on, breaches of integrity at this higher level of tennis[16], combined with narrower targeted limitations on the supply of live scoring data in respect of specific events or matches, as addressed in this section below, are likely to be more effective at the ATP Challenger level. In addition, higher up in the sport, there are fewer events at which fewer players are competing: there are approximately 60,000 ITF Bettable Macthes each year, compared to approximately 15,000 ATP Challenger matches. While the TIU cannot presently cope with the number of ITF events, it has better prospects of policing the ATP Challengers and upwards. Furthermore, the Panel understands that all Challenger matches already are, or will soon, be live-streamed on the internet, or broadcast, thereby providing a source of high quality unofficial data. There may also be greater public interest in betting driven by who the individuals are, as they are relatively closer to the top of the sport. The Panel is not convinced that the same degree of betting demand exists in respect of ITF matches and considers that it would be less cost-effective to create parallel markets at ITF events than at ATP Challenger events.

13 Section B below.

14 Chapter 13, Section B.

15 Chapter 2, Section G.

16 Sections C and D below.

26. All of these factors indicate that, on balance, discontinuing the sale of live scoring data at the ATP Challenger level would likely result in the creation of parallel markets based on unofficial data, if not scraped from live feeds or other online material then created by scouts. That would not only mean lost revenue, but, far more importantly from an integrity standpoint, would risk placing those betting markets beyond the authorities' reach. The Panel accepts that, if there is no way to stop a betting market from emerging in a context where it presents a threat to integrity, it is generally preferable for the markets that exist to be based on official, reliable data supplied by the International Governing Bodies to betting operators under agreements that require information sharing and other assistance in relation to potential integrity concerns. Also, whereas the TIU would have better chances of coping with the integrity concerns raised at the relatively fewer Challengers matches, especially in light of the other data sale recommendations and other steps identified in this chapter, requiring the policing of widespread betting on the ITF's tens of thousands of matches around the world presents the TIU with an insuperable task. Notwithstanding the above analysis, the Panel emphasises that its recommendations regarding data sales are provisional, and the Panel encourages input on consultation regarding other measures that could be adopted, including with respect to limiting or regulating the supply of betting data at the ATP Challenger level (where, as noted above, the incidence of integrity-related concerns appears to be high).

27. These distinctions apply all the more to the Tour Level and the Grand Slams, where integrity concerns are different and less significant.

28. As noted above, the Panel recognises that discontinuing any data sales, even at the lower levels of tennis, risks the potentially unintended consequence of causing markets to develop based on unofficial data. In fact, a number of outcomes are possible:

    28.1 Betting operators, for instance, could attempt to create parallel markets with unofficial data through increased scouting. It is also possible that the widespread availability of betting markets on ITF events over the past five years has generated a sufficient demand for these markets that will persist after the ITF stops selling live scoring data. However, there is little evidence why that would be the case, when the players are unknown and the prime motivators for betting appears to be the widely available and readily accessible markets, the contingency and the odds rather than the identity of the players or even the sport.

    28.2 On the other hand, in light of the additional safeguards recommended below, it is far from clear that betting operators would incur the substantial risks, and associated costs, of attempting to create parallel betting markets on the Lowest Level events. Even without official live scoring data, betting operators could create markets without significant in-play betting, such as by establishing markets for betting on the outcome of sets and matches, but such betting is not what is most attractive to customers.

    28.3 Or the recommended discontinuance of data sales and accompanying recommended safeguards could result in limited or no betting markets being created at the lowest levels of tennis, as betting operators decide to focus on more attractive markets, in tennis or other sports, where official data and in-play betting are readily available.

29. While it is not possible to know with certainty the outcome of the proposed discontinuance of data sales, the Panel concludes that swift and firm action is needed to attempt to stem the tide of betting-related integrity issues in tennis. The only way to determine whether limiting the sale of data will reduce betting opportunities and so breaches of integrity is to limit the sale of data. This will also require corollary prohibitions against: (a) the ITF and its member national federations live streaming or otherwise publishing live scoring data and (b) lower-level tournaments doing the same or entering into data sales agreements with betting operators.

30. The Panel does not recommend these measures lightly in view of the loss of revenue involved, but rather does so in recognition of the fact that the maintenance of the status quo would be inimical to the integrity of tennis, and doing nothing about the sale of data presents the continued risk that the TIU will continue to be overwhelmed by the ongoing level of integrity-related alerts. To monitor this situation after the Panel's data-sale recommendations take effect, the Panel also recommends that within an appropriate time, an audit or review be conducted to assess the impact of this proposed course and whether the evidence justifies any course-corrections[17].

31. The Panel also invites input on consultation regarding how the ITF can be compensated for the loss of revenue[18].

Empower the TIU to monitor the betting markets and to disrupt betting based on unofficial data at the lowest levels of the sport

32. In order to protect and enhance the effectiveness of a discontinuance of the sale of official live scoring data as set out above, measures should also be put in place to counteract the potential emergence of parallel markets based on unofficial data. One significant strategy to counteract such markets should be a proactive and diligent effort to monitor the online betting markets for the emergence of any parallel markets. Any market so identified in respect of ITF matches could only be based on unofficial data.

33. The TIU should be empowered and staffed to conduct such monitoring, which would allow it to identify matches on which betting markets are being created based on unofficial data and to disrupt such markets, including by notifying tournament supervisors that courtsiders or scouts are suspected of being present at an event so that they can be removed (if possible under local laws), and, if necessary, discontinuing a match until the betting market has been effectively disrupted. Since there are very few if any spectators at such events, identifying the individual responsible should be rapid.

34. To monitor and disrupt parallel betting markets effectively, strong accreditation controls for all tournaments, regardless of whether official data is sold, should also be required[19]. Moreover, all developmental and professional tournaments endorsed by the International Governing Bodies should have the on-the-ground capability to disrupt scouting and courtsiding when it is detected.

35. Further, the TIU will need additional staff to monitor and disrupt betting markets, including a betting expert[20]. Although this will increase the operating expenses of the TIU, the Panel anticipates that the reduction in corrupt activity and the resulting reduction in the TIU's required work will justify the additional up-front costs.

17 Section B.

18 Paragraphs 56-57 below.

19 Section C.

20 Section B.

Empower the TIU to impose targeted restrictions on the sale of live scoring data in particular circumstances at other levels of the sport

36. In addition to discontinuing all sales of live scoring data and live data streaming at the lowest levels of the sport, in the present view of the Panel, the TIU should be empowered to, and should, employ targeted strategies for safeguarding the levels of the sport in respect of which online betting is permitted to continue on the basis of official data sales.

Make data supply conditional on an event satisfying minimum requirements

37. First, the TIU should be able to impose, and should consider whether to impose, minimum requirements in respect of events for which live scoring data may be sold, including requirements concerning accreditation, facilities, officiating, and live streaming. In the Panel's present view:

    37.1 For events outside the Tour Level and the Grand Slam events, the accreditation systems, facilities, and security are all too often insufficient to protect players from would-be corruptors and to prevent the unintended release of inside information[21]. Many of these events, for instance, lack an accreditation system or any segregation between players and spectators. Moreover, the absence of security and spectators at low-level events reduces opportunities to deter and detect improper activities. These types of conditions can facilitate corrupt approaches and allow bettors to obtain inside information about players.

    37.2 Due to the fact that these events are more susceptible to corruption offences, data should not be sold for any such events unless steps have been taken to ensure that minimum requirements are met to prevent potential corruptors, courtsiders, scouts, and others from approaching players or otherwise obtaining inside information. Any events for which official data is to be sold should restrict access to player areas through an appropriate accreditation system and should restrict access to the tournament grounds with appropriate perimeter controls and security. In addition, there should be sufficient facilities and security on the ground at these events to limit secure areas to appropriately accredited individuals.

    37.3 Moreover, to deter misconduct and preserve evidence of a breach of integrity when it occurs, any match for which official data is sold should be (a) live streamed; (b) video recorded with the electronic scoreboard in the camera frame, so that such videos can be made available to the TIU upon request; (c) presided over by an international standard chair umpire who has received integrity training; and (d) overseen by a tournament supervisor who has gold badge certification and can act as a delegate for the TIU.

38. With the proposed discontinuance of data sales for lower-level matches, these requirements should already be satisfied, or readily capable of being satisfied, at the types of events at which data sales will be permitted to continue. To the extent that any event fails to meet these requirements, however, the TIU should have the power to require the discontinuance of the supply of official data in respect of the event. This would be achieved by the TIU directing the relevant International Governing Body to cease to supply that data, the International Governing Body complying, and the International Governing Body having ensured that its data sale agreement allowed it to do this.

21 Chapter 3, Section E.

Limitation of data supply in respect of types of match identified by the TIU

39. Second, the Panel's review suggests that certain types of matches have greater susceptibility to betting-related breaches of integrity than others:

    39.1 For example, players and others have informed the Panel that doubles matches, especially in the first round, are particularly susceptible to breaches of integrity[22]. Where players competing in these matches are not specialist doubles players, and have already been eliminated from the singles competition, they may regard remaining at the event as likely to cost them more than they can earn there, or they may want to move on for other reasons, such as to prepare for another upcoming singles tournament. As a result, they may decide to tank, creating an opportunity for betting on a known outcome, and inside information. This appears to be confirmed, at least at the lowest level of the sport, by FTI's data analysis. While not conclusive, including because it is not possible to control for the skill of the players, the data show that the win rate of doubles teams in the first round of low-level events was only 42% when both players had been knocked out of singles while the win rate of double teams in the first round of these events was 81.4% when both players remained in the singles draw.

    39.2 In some countries, regulators have already restricted betting markets for certain types of matches because of integrity concerns[23]. France, for instance, does not allow betting on juniors' matches, qualifying matches, or first-round doubles matches.

40. The TIU should, in the present view of the Panel, have the power to impose, and should consider whether to impose, similar limitations on the types of matches for which official live scoring data may be sold. The TIU would identify the relevant types of matches in respect of which to limit data supply by reference to its expertise and experience of the types of matches most likely to give rise to issues. Again, this would be achieved by a direction to the relevant International Governing Body not to supply the relevant data, the International Governing Body complying, and the International Governing Body having ensured that its data sale agreement allowed it to do this.

Limitation of data supply for matches involving juniors

41. Third, the TIU should, in the present view of the Panel, have the power to impose, and should consider whether to impose, additional limitations on the sale of data for any professional matches involving a junior tennis player. This would be achieved in the same way as for types of match.

    41.1 Tennis players on the whole have regularly been subjected to unfair, and often vile, online harassment by bettors. Indeed, nearly every player the Panel interviewed reported some level of online abuse.

    41.2 Impressionable junior players are also targets of corrupt approaches. As noted in the Environmental Review, many young players just starting their careers are *"not earning substantial money"* and cannot *"support the cost of coaching, air fares, hotel bills, etc."*[24]. In addition, these young players may not fully appreciate the serious *"consequences for both themselves and the sport"* of participating in corrupt activity[25]. In order to protect younger players, data are not sold in respect of the junior level of the sport, and the TIU should consider whether such young players are as deserving of such protection when they play at a higher level.

22 Chapter 13, Section B.

23 Chapter 3, Section A.

24 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008) ("Environmental Review"), page 12, paragraph 2.33, available at Appendix: Key Documents

25 Environmental Review, page 35, paragraph 3.102.

Withdrawal of data in respect of particular events or matches

42. Fourth, the TIU should have the power to direct that live scoring data should be withdrawn in respect of a particular set of events, event, or match if the TIU determines, based on its experience and expertise as well as the specific information available to it, that supplying official data presents a significant risk of facilitating a breach of integrity by or with respect to the events, event, or match.

43. While not necessarily indicative of match-fixing, the evidence and TIU database data reflect that certain events and certain players are more likely than others, for whatever reason, to raise integrity concerns. In addition, the TIU may have intelligence suggesting concerns about a particular match. Just as some betting operators elect not to offer markets for certain matches, on a prophylactic and precautionary basis, in their commercial interests, the sport's own integrity unit should have that power, and exercise it, in the interests of safeguarding tennis integrity. While the withdrawal of data for betting purposes could raise some reputational concerns, the Panel considers that these are answered by the fact that the withdrawal of data is a prophylactic measure taken on a precautionary basis and does not impugn any event, match, or player.

44. It presently seems to the Panel that such a direction should not only be capable of being made in advance of an event or match, but also during it, if the evidence so warrants.

45. This would again be achieved by the TIU directing the relevant International Governing Body to cease to supply that data, the International Governing Body complying, and the International Governing Body having ensured that its data sale agreements allowed it to do this.

Such requirements and limitations are insufficient alone

46. The Panel recognises that these targeted approaches, while potentially valuable, are insufficient alone. Limiting data sales based solely on the quality of facilities at an event and on the specific type of match, as suggested by the first two proposals immediately above, is unlikely to address all or even many of the betting-related integrity concerns facing tennis. Further, the efficacy of empowering the TIU to cut off data supply based on specific indicators of potential wrongdoing will depend on the TIU's practical ability, with all the other challenges it faces, to pinpoint matches requiring disruption. These limitations inform the Panel's recommendation to discontinue the sale of all official data for ITF $25k and $15k

Impose contractual obligations on betting operators and data supply companies as a condition to supplying live scoring data

47. The measures proposed above can and should be achieved by ensuring that the International Governing Bodies' data sale contracts permit them, when appropriate, to withhold the supply of data described above to data supply companies and to require that the data supply companies withhold distribution of such data to betting operators. In the view of the Panel, the measures should be achieved, and reinforced, by the International Governing Bodies imposing contractual obligations on the data supply companies and, in turn, the data supply companies imposing contractual obligations on the betting operators, whose profitable activities facilitate the integrity issues that the sport faces. The Panel cannot directly impose obligations on data supply companies or betting operators. The Panel can, however, bring them about indirectly.

48. The Panel recommends that the International Governing Bodies include in their contracts for the sale of live scoring data to each data supply company, first, obligations on the data supply company itself and, second, a requirement that the data supply company impose specified obligations that betting operators must fulfil and continue to fulfil, in each case as a precondition of the continued supply of any tennis live scoring data. As these conditions would be contractual, they could be readily enforced between a governing body and a data supply company, and between a data supply company and a betting operator.

Supply of any official tennis data conditional on not using any unofficial tennis data

49. Betting operators and data supply companies that wish to operate on the basis of official tennis live scoring data should not at the same time offer or facilitate tennis betting markets based on any unofficial tennis scoring data at any level of the sport. The imposition of such contractual requirements is another significant weapon in the battle against the emergence of unauthorised parallel betting markets. To contribute to the effort to shut down such markets, each governing body should also contractually require its data supply company to impose obligations that each betting operator purchasing official data:

    49.1 will not make, or facilitate the making of, betting markets for tennis events or matches for which official data is not being sold; and

    49.2 will not resell or supply any official data on to anyone else.

50. In addition, each International Governing Body should contractually require its data supply company to impose obligations that each betting operator:

    50.1 will not make, or facilitate the making of markets for types of, or particular, tennis events or matches that the TIU directs should not be made; and

    50.2 will not offer markets on types of contingency that the TIU directs should not be offered. The TIU may identify, in its expertise and experience, particular types of contingencies that give rise to particular integrity concerns.

51. In the event of breach of any of these conditions, the data supply company should have contractual power to require compliance, failing which it would cease to supply data to the betting operator. Equally, the International Governing Body would be contractually entitled to require the data supply company to take this step against a betting operator in breach, and ultimately, to discontinue the supply of data to the data supply company if it failed to comply. As for the data supply company itself, it should also be contractually required not to make, or facilitate the making of, markets for tennis events or matches for which official data is not being sold, again on pain of losing its contractual right to official data. Data supply companies acquiring official data should not also be scouting events at levels of the sport for which official data is not sold due to integrity concerns.

Supply of data conditional on entry into and compliance with MoU

52. Second, the supply of official data by any betting operator should be conditional on the betting operator having entered into, and abiding by, a full MoU with the TIU committing the betting operator to assist effectively in the protection of integrity. To facilitate TIU investigations, this MoU should include obligations:

    52.1 to alert the TIU to any suspicious betting patterns as soon as possible;

    52.2 to make available to the TIU any betting-related information that the TIU reasonably requests, including betting information and bettor information, not only for intelligence purposes but also for use in disciplinary proceedings; and

    52.3 to report regularly to the TIU if the personal information maintained by the betting operator in connection with a betting account matches the identifying information provided to the betting operator by the TIU of any Covered Persons or *"Tennis Interested Parties"* (in other words, those who register with the TIU pursuant to the newly introduced registration program).

53. With respect to these obligations, the contractual conditions should also permit the TIU to require a governing body to direct its data supply company to discontinue the supply of data to any betting operator that has failed to satisfy such obligations.

54. While the Panel recognises that this recommendation has contractual implications for the existing live data sales agreement between the ITF and Sportradar, the Panel emphasises the importance of stopping the data sales for ITF matches, and it recommends that the ITF do so promptly.

55. The Panel hopes that the betting industry will look to support the position ultimately adopted for tennis. Data supply companies and betting operators generally share an interest in ensuring the integrity of the sports on which they offer markets, and the betting industry should help to combat the corruption of a worldwide sport, including at its developmental levels, and the abuse of its players.

Compensate the ITF for lost revenues

56. Discontinuing the ITF's sale of live scoring data for betting purposes will significantly decrease the ITF's revenues, which the ITF uses to support its operations and to advance its mission to develop tennis and tennis players throughout the world. In 2015, the ITF entered into a four-year data contract with Sportradar that is reportedly worth approximately $70 million. The ITF has informed the Panel that revenue from past data contracts was used, in part, to raise the prize money for $15k events to $25k in 2016 and the prize money for $10k events to $15k in 2017.

57. To compensate for the ITF's loss of revenue and to permit it to continue to serve its important functions, the Panel presently intends to require the International Governing Bodies to contribute significant amounts to assist the ITF in promoting developmental tennis. The Panel welcomes input and proposals from the International Governing Bodies, including the ITF, on this matter.

Eliminate gambling sponsorships from tennis

58. The TACP prevents players and other Covered Persons from receiving sponsorship money from betting operators[26], but nothing currently restricts the International Governing Bodies or professional tournaments (other than ITF events[27]) from themselves receiving such sponsorship money.

59. The Panel presently considers that the International Governing Bodies should lead by example: If they consider it inappropriate for players and Covered Persons to receive sponsorship money from betting operators, the same standard should apply to the International Governing Bodies and the tournaments they endorse. The Panel appreciates that the considerations underlying the sponsorship prohibition in the TACP – which appears to be designed to discourage players from contriving matches and passing along inside information – do not apply in quite the same way to the International Governing Bodies. Nevertheless, in the current climate, betting operators' sponsorship of the International Governing Bodies or professional tennis events sends the wrong message about the sport to its participants and spectators.

60. There is also a risk that sponsorships with betting operators will encourage players to disregard the TACP; specifically, if the International Governing Bodies are making money from gambling, players may reason that they are entitled to do the same. During interviews with the Panel, several players criticised these sponsorships as hypocritical and inappropriate.

61. To promote both the reality and appearance of integrity, betting sponsorships of professional tennis events should cease.

26 TACP (2018), Section D.1.k. (*"No Covered Person may be employed or otherwise engaged by a company which accepts wagers on Events."*); see also TACP (2018), Section D.1.b (*"For the avoidance of doubt, to solicit or facilitate to wager shall include, but not be limited to: display of live tennis betting odds on a Covered Person website; writing articles for a tennis betting publication or website; conducting personal appearances for a tennis betting company or any other company or entity directly affiliated with a tennis betting company; and appearing in commercials encouraging others to bet on tennis"*). This is explained further in Chapter 4, Section G.

27 The ITF Pro Circuit Regulations, 2018, Appendix G(3) (*"For the avoidance of doubt no sponsorship will be permitted either as part of the Commercial Rights or as Circuit Sponsor Rights to any entity in respect of tobacco products, hard liquor products, betting companies, political activity or other category deemed to be detrimental to the sport of tennis, as reasonably determined by ITF in consultation with the applicable National Associations"*) available at: http://www.itftennis.com/procircuit/about-pro-circuit/rules-regulations.aspx [accessed 9 April 2018].

Reassess betting markets and live scoring data sales after the data sales are discontinued

62. As noted above, it is difficult to predict with certainty the consequences of the proposed changes, but the integrity challenges facing tennis require decisive action at this crossroads. Because the future is uncertain, the Panel recommends that the TIU closely monitor and assess in writing, at least annually, the impact of the recommended discontinuation of data sales. In addition, the International Governing Bodies, in consultation with the TIU, should commission in due course an independent audit or review of the betting markets and the data sale arrangements for tennis several years after the data sales are discontinued pursuant to the recommendations in the Panel's Final Report. This review should examine the efficacy of the Panel's recommendations after adoption, as well as the implementation of those recommendations by the International Governing Bodies and the TIU.

(2) REDUCING THE INCENTIVES FOR BREACHES OF INTEGRITY THAT ARISE OUT OF THE ORGANISATION OF PROFESSIONAL TENNIS

63. At the root of many of the integrity-related issues facing tennis today is the fact that there are too many players and events at the nominally "professional" level. The present base of the player pyramid is too wide for the sport's resources to fund and too wide to allow for proper movement of players up, and down, the rankings.

64. To address this problem, therefore, a fundamental restructuring of "professional" tennis is needed. The sport must reset where the developmental sport ends and the professional sport begins. In the Panel's present view, the International Governing Bodies must adopt a new player pathway to ensure that there are sufficient financial incentives, and prospects of progression, for all professional tennis players.

65. Apart from the appropriate size of the professional ranks, there are, in the Panel's view, several structural elements of the organisation of professional tennis that contribute to breaches of integrity because they fail properly to align player incentives[28]. The importance of addressing these elements has long been recognised, including in the Ings Report in 2005[29] and in the Environmental Review in 2008[30]. While some of the steps recommended to modify the organisation of professional tennis were taken at each of those stages, others were not. For example, the 2005 Ings Report recommended that tennis modify its ranking system so that *"every match counts"*[31]. Similarly, the 2008 Environmental Review recommended that the International Governing Bodies study matches that did not count toward a player's ranking and, if that study showed that those matches were *"vulnerable to the integrity of tennis, then [give] careful consideration... to the Ranking Rule being changed to make each match count"*[32].

66. The Panel presents below a number of specific changes to various structural elements of professional tennis for consultation, before making firm recommendations in its Final Report. The Panel appreciates that changes to elements of professional tennis, such as the ranking system, may address incentive issues while simultaneously creating unintended, and negative, knock-on consequences for players and the sport as a whole. The Panel also appreciates that there may be other suggestions for improvement. Accordingly, the Panel approaches the task of recommending specific changes in this area with particular caution, inviting input from interested stakeholders on the following specific recommendations, and on other possible suggestions for improvements.

28 Chapter 6, Section C.

29 Chapter 7, Section A.

30 Chapter 8, Section B.

31 2005 Ings Report, page 43, paragraphs 252-59.

32 Environmental Review, page 43, paragraph 4.2.

The player pathway requires restructuring to ensure sufficient financial incentives and prospects for progression

67. Recently, the International Governing Bodies have put forward various proposals to draw the line between the professional and developmental levels of tennis at a point different from where it is now[33]. Some of these proposals have suggested that types of events should be categorised as *"professional"* or *"developmental"*, such as the AELTC's proposal that the professional sport stop with the ATP Challengers and their WTA and ITF women's equivalents, thereby excluding all ITF $25k and $15k events. Others have suggested that a dividing line should be drawn at a certain ranking cut-off to separate these two levels, and then that enough events provide "jobs" for that number of professional players being identified.

68. The ITF has also announced that it plans to introduce a new "Transition Tour" in 2019. This Transition Tour will feature *"a new category of interim tournament at entry-level that will better aid the transition from junior to professional tennis and ensure a continued opportunity for players from any nation to join the player pathway. These tournaments will be held within a localised circuit structure that reduces costs and increases opportunity for players, and reduces staging costs for organisers"*. This new category of Transition Tour tournaments will be created by *"repositioning"* $15k events as developmental tournaments that are no longer part of the Pro Circuit. And *"Transition Tour tournaments will offer ITF Entry Points instead of ATP/WTA ranking points, with the two systems linked to ensure that the more successful players are able to use their ITF Entry Points to gain acceptance into ITF Pro Circuit tournaments"*[34].

69. According to the ITF, its *"proposed restructuring will radically reduce the number of professional players competing for ATP and WTA ranking points."* The ITF states that its *"extensive modelling work has led to a recommended professional player group of no more than 750 men and 750 women players. This new approach will introduce a clearer and more effective professional pathway and ensure that prize money levels at ITF Pro Circuit events are better targeted to ensure that more players can make a living from the professional game"*[35].

70. The ITF's planned restructuring and the other proposals discussed above stem from the common recognition that professional tennis, or what is currently nominally professional tennis, encompasses too many players and events, not only for the prize money available in the sport relative to costs, but also for the number of opportunities for progression through the rankings.

71. Under the current system, there are not nearly enough opportunities paying sufficient prize money to permit all nominally professional players to make a living playing tennis in light of the great costs involved. While there are approximately 14,000 nominally professional tennis players today, the ITF recently estimated that, in 2013, the economic break-even point was at the ranking of 336 for men and 253 for women, before accounting for coaching costs[36]. The ITF further estimated that the average costs of playing professional tennis in 2013 – including flights, accommodation, food, restringing, laundry, clothing, equipment and airport transfers, but not including coaching costs – were $38,800 for male players, but outside of the top 100, male players on average earned only $13,195 in prize money in 2013[37].

72. To further illustrate, even the winner of a "professional" ITF Futures tournament may well lose money for the week of competition after accounting for travel and accommodation costs, not to mention the costs associated with coaching, training, or medical care. Only a small fraction of nominally "professional" players today make a living playing tennis, and they largely compete, at least most of the time, on the Tours.

33 See Chapter 2, Section F and Chapter 12, Section C.

34 See Press Release, 'ITF Board of Directors, ITF announces professional tennis restructure', available at http://www.itftennis.com/news/256730.aspx [accessed 9 April 2018].

35 ibid.

36 ITF Player Pathway Review, available at: http://www.itftennis.com/procircuit/about-pro-circuit/player-pathway.aspx [accessed 9 April 2018].

37 ibid.

73. This imbalance of prize money and costs is a structural driver of breaches of integrity. Regardless of the content of the anti-corruption rules, if professional tennis players cannot earn a living from tournaments, they are more likely to be tempted to supplement their income through other means, in particular where they can do that without harming their progression through the rankings, either because the match in question does not count towards their rankings, or because the nature of the outcome fixed in advance does not preclude them going on to win the match.

74. At the same time, while very talented young players will quickly progress from the ITF level to the Tours, it is difficult for many to advance. Indeed, the ITF has calculated that the time taken from earning the first ranking point to entering the top 100 for male players increased from 3.7 years in 2000 to 4.8 years in 2013[38]. This is not only bad for the proper development of the sport; it also fosters financial need and disenchantment, making breaches of integrity more likely.

75. As a result, the Panel presently recommends in the interests of the protection of integrity that the International Governing Bodies adopt a delineation between the professional and developmental levels, as well as a new player pathway that provides sufficient financial incentives for performance in the *"professional"* ranks while also providing ample developmental opportunities and the prospect of progression for aspiring players. If prize money cannot be increased considerably, as appears to be the case, then the number of tournaments deemed *"professional"* needs to be reduced significantly.

76. Although the Panel anticipates that the new professional level of tennis will have significantly fewer players and events, the precise location of the dividing line between the new professional and developmental levels of tennis will depend on several factors, including the availability of prize money, scheduling and tournament logistics, and the developmental needs of the sport. However, regardless of the details of the new player pathway, the touchstone should be that professional players are able to make a living, if successful, and developmental players have enough support to progress up the ranks based on merit.

77. The Panel recognises that the ITF has already announced a major step in this direction. As noted above, the new Transition Tour should substantially reduce the number of professional players. This is a positive development, but in the Panel's view, it may not go far enough. According to the ITF's study, the break-even point in 2013 was 336 for men and 253 for women. The ITF's proposed restructuring, however, will create a new professional level with around 750 male players and 750 female players. As a result, even after the proposed restructuring, around half of all male professional players and two-thirds of all female professional players will still not be earning enough to make a living. The new player pathway must also realign the incentives for this vulnerable population of players.

78. The Panel recognises that the International Governing Bodies are in the best position to set the appropriate delineation between the professional and the developmental levels of the sport, and to identify the appropriate form for, and to implement, the new player pathway. At the same time, those International Governing Bodies, comprised as they are of the two professional Tours, the international association representing all the national federations, and the four Grand Slams, all have potentially divergent interests in relation to how the player pathway should be restructured. It has been suggested to the Panel that because of these divergent interests, the International Governing Bodies may ultimately be unable to agree on the delineation of the professional and developmental levels of the sport or on modifications to the player pathway. The Panel hopes that is not the case. Given the magnitude of the integrity issues facing the sport, however, if the International Governing Bodies are unable to agree on the delineation and proposed modifications to the player pathway, the Panel will, if requested, make a reasoned recommendation upon receiving comments from the International Governing Bodies as to where they believe the delineation should lie, and how they believe the player pathway should be restructured.

38 ibid.

Additional aspects of the player incentive structure on which the Panel invites further input from stakeholders during the consultation process

Modification of the ranking points system, not only to place a greater emphasis on making every match count, particularly at the lower and middle levels of the game, but also to facilitate greater mobility of players

79. Professional tennis uses a "best of" rankings system. For a player who competes in a large number of events, this can create an incentive for, or at least not impose a brake on, deliberate underperformance in matches that do not count toward his or her ranking[39]. The most obvious way to eliminate this structural driver of underperformance would be to eliminate the "best of" rankings system at all levels of the sport.

80. But in the Panel's present view, the benefits of such a change would be outweighed by the significant negative ramifications at the highest levels of the sport. Specifically, a system under which all matches counted might drive players to play too often in order to amass points. In addition, such a system would discourage players from entering events at which they felt they had a poor chance of winning, such as events on surfaces that they do not prefer.

81. The Panel, however, is considering, and welcomes input on consultation as to, whether it should recommend that the International Governing Bodies implement a significant change to the ranking system used for the lower and mid-level of the sport, and what the form of such a change might be. Possible changes could include taking into account for rankings purposes all events played (such as by dividing the total ranking points amassed by the number of events played) or altering the ranking system to account for the sets won and lost, in order to discourage players from deliberately losing sets for inappropriate reasons. Although the risk of integrity breaches may not be great enough to justify a fundamental change in the ranking points system at the highest level of professional tennis, the proportionality balance is significantly different at the lower levels of the sport because the magnitude of the problem is much greater.

82. In addition, the Panel is considering, and welcomes input on consultation as to, whether it should recommend that the International Governing Bodies modify the ranking system at all or some levels to provide greater mobility, and what the form of such a modification might be. While very talented young players will quickly progress from the ITF level to the Tours, it is difficult for many to advance because there are so many professional tennis players that there simply is not enough room at the top. This system leads to players who are stuck and frustrated at the lower levels of professional tennis, which can make breaches of integrity more likely.

Modification of the tennis calendar, to avoid incentivising players to lose

83. The tennis calendar may sometimes incentivise deliberate underperformance[40] Under the current calendar, events may run into each other and even overlap. As a result, players on occasion perceive themselves as better off losing and moving on than seeking to stay in a competition, and some act on that perception. In addition, the distribution of events saddles certain players with greater travel expenses than other players, which can incentivise them to supplement their income through betting, supplying information or agreeing with others to fix. The Panel's review of the evidence suggests that four aspects of the tennis calendar are particularly problematic, especially at the lower and mid level of the sport.

84. First, the tennis calendar creates an unintended incentive to underperform when the final stages of one singles tournament overlap with, or are close in time to, the qualifying rounds of another singles tournament the following week.[41] In these circumstances, if the first tournament is perceived by a player as less important than the second tournament taking place the following week, the player may be enticed to lose in an earlier round of the first tournament so that he or she can travel sooner, rest longer or avoid injury, and so compete more effectively in the more important tournament.

39 Chapter 4, Section A.

40 Chapter 4, Section A.

41 Chapter 2, Section A.

85. This problem is most prevalent at the lower and mid level of the sport because players often compete in back-to-back tournaments. In addition, it is essential that these players take advantage of any opportunity to compete in an event that offers more ranking points or prize money, even if it means foregoing an opportunity to win a less important tournament.

86. The Panel considers that all lower and mid level tournaments should take place within their allotted week, so that there is no overlap between back-to-back tournaments, and more travel and rest time for some. In some cases, this may be difficult; a multi-day rain delay, for instance, may force an event to stretch into the next week. Outside of these unusual circumstances, players should not be forced to choose between competing in one tournament and a chance at earning greater prize money or ranking points by deliberately losing so that they can compete elsewhere.

87. This problem could also be addressed by modifying the "special exempt" system. The ATP[42], the WTA[43], and the ITF[44] all have rules that, in certain circumstances, provide for the awarding of special exempt places in the main draw of the tournament to players who are unable to compete in the qualifying competition because they are still competing in a tournament from the previous week[45].

88. The special exempt system typically does not apply to players who cannot compete in the qualifying competition of a higher classified event because they are still playing in a lower classified event. On the ATP Tour, for example, a player can only receive a "special exempt" place for an ATP Challenger event if he cannot compete in the qualifying competition because he is still competing in an ATP World Tour event or another equivalent or higher classified ATP Challenger event, and he can only receive a "special exempt" place for an ATP World Tour 250 event if he is still competing in another equivalent or higher classified ATP World Tour event[46]. Similarly, on the ITF Tour, a player can only receive a "special exempt" place if he or she cannot compete in the qualifying competition of one ITF event because he or she is still competing in another ITF event of an equal or higher classification within the same continent[47].

89. This limitation generally makes sense because if the special exempt system applied irrespective of the level or classification within a level of the event, it would provide places in higher level or higher classification events to players who otherwise had little chance of qualifying for them. But on the other hand, if the special exempt system did allow a player competing in a lower level or lower classification event automatically to qualify for the main draw of a higher level or higher classification event, it would remove the unintended incentives created by the overlap of the two events.

90. As a compromise, the Panel proposes that the International Governing Bodies extend the special exempt system beyond events at the same or a higher classification to allow a player who is still competing in the later rounds of a lower classification event to be awarded a place in the main draw of a tournament one classification higher up, in the sense of its offering one greater level of available prize money. This would remove a substantial part of the incentive for the player to lose the match at the lower classification event in order to compete in the qualifying rounds of the higher classification event.

91. Second, another, related issue arising out of the tennis calendar, which was identified by many of the players interviewed by the Panel, concerns the overlap between the doubles and singles competitions within a tournament. Specifically, when players advance in doubles, but not singles, they may be incentivised to underperform so they can travel to the next singles event.[48]

92. Again, this problem appears to the Panel to be most prevalent at the lower and mid level of the sport. At these levels, players often compete in both singles and doubles. But these players often consider singles to be their priority – both

42 ATP Official Rulebook 2018, Section VII, Part 7.10, available at: http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

43 The WTA Official Rulebook, 2018, Section III, Part C, 1(a)(vi), available at: http://www.wtatennis.com/wta-rules [accessed 9 April 2018].

44 The ITF Pro Circuit Regulations, 2018, Article V, Part G, available at: http://www.itftennis.com/procircuit/about-pro-circuit/rules-regulations.aspx [accessed 9 April 2018].

45 Chapter 2, Section G.

46 The ATP Official Rulebook, 2018, Section VII, Part 7.10(A).

47 The ITF Pro Circuit Regulations, 2018, Article V, Part G.

48 Chapter 13, Section B.

because they prefer singles and it is more lucrative – so they play doubles to supplement their income and for additional practice opportunities. As a result, many will prioritise any chance to improve their singles ranking over an opportunity to continue competing in a doubles tournament, especially if the prize money is small.

93. To address this problem, the Panel proposes that all doubles competitions at lower and mid level events be completed by Friday evening. This change would have little commercial impact because there is generally limited spectator interest in the doubles matches at these events, and holding the final on Friday evening would still allow for the sale of tickets if that were an option at the relevant event.

94. Third, the tennis calendar creates an unintended incentive to breach integrity because events are not evenly distributed around the world.[49] Under the current system, events are concentrated in Europe, North America, and certain other regions. Travel expenses are consequently much greater for players from outside those regions. So too accommodation costs are likely to be higher for such players, because those from the regions where events are concentrated can return home for part of the time. This disparity poses a threat to integrity at the lower and middles levels of the sport because players who are saddled with large travel expenses – but unable to earn much prize money – may be incentivised to supplement their income through betting, providing inside information or agreeing with others to fix.

95. Although it is not possible to have a completely equitable distribution of tournaments and expenses, the Panel proposes that the International Governing Bodies address travel and accommodation costs by scheduling more *"swings"* the Lowest and Mid-Level events that are in close geographic proximity. Similarly, the Panel also proposes that the International Governing Bodies place greater weight on promoting tournaments at the lower and middle levels that can defray such costs by providing hospitality arrangements for players.

96. Fourth, another issue arising out of the tennis calendar concerns the overlap between professional events organised by the International Governing Bodies and *"money matches"* arranged at national levels.[50] Players at the lower levels of the sport, especially in Europe, will sometimes compete in national money matches. These matches are a legitimate way for players to supplement their income, but they can also create problematic incentives: As noted in the Ings Report[51], players may be incentivised deliberately to underperform in a professional match at an ITF or Tour event if they have also committed to play in a more lucrative money match later in the week.

97. The Panel consequently proposes that players be prohibited from entering a national money match in the same week as they have entered a professional ITF or Tour event. While this rule may prevent some players from earning extra money, it would eliminate any risk that players will deliberately underperform in a professional match because of a conflicting opportunity in a money match.

49 Chapter 4, Section A.

50 Chapter 7, Section A..

51 2005 Ings Report, page 2002, paragraph 216.

Specific measures to address accommodation and travel costs: hospitality at all professional events and travel grants from geographic areas with few events

98. Significant incentive issues arise because of the costs that tennis players must incur to compete.[52] The Panel therefore considers that a practical and valuable change might involve redistributing available funds to reduce players' costs.

99. The costs identified by players as constituting the most significant financial challenge in terms of sustaining their careers are the costs of accommodation and travel. In short if players can live and can move between events, they are better able to sustain their participation in the sport.

100. The Panel invites input on consultation as to whether all events that remain within the proposed new professional level of the sport should provide hospitality or accommodation and board. The ITF is considering requiring all its events at the proposed new professional level to provide hospitality.[53] The Panel considers that the ITF should do this, and that the ATP and the WTA should do the same.

101. This leaves the problem of travel costs, which will vary greatly depending on where players reside. Anecdotally, it appears that an important contributory cause of low-level breaches of integrity is the extent of the costs to travel from geographical areas where there are not many events to the areas where there are.

102. Providing hospitality, creating more events in certain underserved areas, and creating more swings of events, as described above, may help to improve matters, but the disproportionate costs of travel will persist. The Panel considers that the International Governing Bodies should give consideration to the provision of travel grants to players from geographic areas where there are few events.

Modification of certain rules on player entry to events that may create incentive problems for players

103. The rules on player entry to events also sometimes create incentive problems[54]. Players usually gain access to events either by virtue of their ranking being sufficient to secure them a main draw place or by their advancing sufficiently far in the qualifying competition, access to which is also generally determined by ranking. However, there are limited exceptions to this general rule that grant entry to players who would not otherwise qualify through these traditional routes. Although these alternative means of qualification serve important purposes, they can create incentive problems for players.

104. First, the "lucky loser" system can incentivise deliberate underperformance[55]. In the past, if a place opened up in the main draw of event, it was filled by the highest-ranked "lucky loser" who lost during the final round of qualifying. This system, however, sometimes allowed players to enter the final round of qualifying knowing that they were guaranteed to be a lucky loser, regardless of the result of the final qualifying match. Consequently, as noted by both the Ings Report[56] and the Environmental Review[57], the lucky loser system used to be a driver of deliberate underperformance.

52 Chapter 4, Section A.

53 Chapter12, Section C.

54 Chapter 4, Section A.

55 Chapter 4, Section A.

56 2005 Ings Report, page 22, paragraphs 115-25.

57 Environmental Review, page 14, paragraph 2.49.

105. The International Governing Bodies now randomly draw lucky losers from a pool of players to avoid this problem[58]. The ITF, for example, draws lucky losers from a pool of all ranked candidates[59]. By contrast, the ATP and the WTA both draw from the two highest-ranked candidates[60] while the Grand Slams draw from the four highest-ranked candidates[61].

106. In the Panel's view, complete randomness is not necessary. The Panel is however considering, and welcomes input on, whether it should recommend that all International Governing Bodies draw lucky losers from a pool of at least four players to ensure that no player has a substantial chance of being randomly drawn.

107. Second, the player incentives arising out of the wildcard system should also be addressed. The wildcard system allows tournament directors to grant entry to players who would not otherwise qualify for a tournament based on their ranking. Although tournament directors have complete discretion to award wildcards, they are generally awarded to local players who will be of interest to the tournament spectators. In this way, the wildcard system provides local players with a valuable opportunity to play on a big stage, and tournaments with a means to increase ticket revenues.

108. This system is, however, vulnerable to corruption. The Panel has seen evidence that wildcards have been sold on a number of occasions. And even when money does not change hands, wildcards may give access to potential corruptors. Indeed, the lowest-ranked player in a tournament – who may be the most vulnerable to corruption – is often a wildcard. In addition, a wildcard may be more willing to deliberately underperform because he or she already has a lower chance of winning against higher-ranked competition.

109. Accordingly, the Panel is considering, and welcomes input regarding, whether it should recommend that all International Governing Bodies limit the sale of wildcards to players ranked within a certain range of the cut-off for the main draw. For example, if a Grand Slam invites the top 105 players to compete in the main draw, then this rule might prevent the organiser from giving a wildcard to any player who is ranked outside of the top 205, 255 or 305. This type of limitation should restrict wildcards to players who were already close to qualifying.

Provision that players who must withdraw due to injury from the main draw of a ATP or WTA Tour event should receive a share of the losing first-round prize money

110. High-level ATP and WTA Tour events offer players who qualify for the main draw a large amount of prize money, even if they lose in the first round. For example, female players who lost in the first round of the 2017 Madrid Open received €15,146 in prize money, and male players who lost in the first round of the 2017 Shanghai Masters received $21,085.

111. As a result, players who qualify for these events face strong incentives to play, even if they are too injured actually to compete, in order to collect the losing first round prize money.[62] This, in effect, creates an incentive to underperform by playing when too injured to give best efforts.

112. To address this problem, the Panel proposes that injured players who withdraw in advance of a high-level ATP or WTA Tour event share the first-round prize money with the qualifier who replaces them. Although this may leave less prize money for the qualifier who takes the injured player's place, the qualifier will be adequately compensated by the chance to play, and possibly to advance, in an important event. In addition, if the qualifier advances, he or she will be able to keep all of the extra prize money earned after the first round.

113. The Grand Slam Board recently adopted a similar rule change.[63] In November 2017, the Grand Slam Board announced that – starting with the 2018 Australian Open – players who are forced to withdraw because of injury after the Thursday

58 ibid *("A similar threat used to apply to 'lucky loser' matches but that loophole has been partially closed by making 'lucky loser' qualifiers random choice at Lowest Levels and Grand Slam levels").*

59 The ITF Pro Circuit Regulations, 2018, Section V(I)(4).

60 The ATP Official Rulebook, 2018, Section VII, Part 7.20(A)(1); The WTA Official Rulebook, 2018, Section III, Part C, 1(a)(v)

61 Official Grand Slam Rule Book, 2018, Article I, Section J(1)(a), available at: http://www.itftennis.com/officiating/rulebooks/grand-slams.aspx [accessed 9 April 2018].

62 Chapter 4, Section A.

63 Chapter 4, Section A.

preceding the start of a Grand Slam, but before the start of play, will share the first-round prize money equally with the player who replaces them[64].

114. Similarly, the ATP adopted a new rule for the 2017 season – on a trial basis – that provided that players who withdrew in advance of the first round of an ATP event because of injury would receive the full amount of the first-round prize money[65]. The ATP fully adopted this rule for the 2018 season[66].

115. Further, the WTA should also adopt either the ATP's new rule or the Grand Slam Board's new rule going forward. Indeed, the available evidence suggests that the ATP's trial rule[67] and the Grand Slam Board's new rule[68] have already had an impact. While it is not possible to know the precise cause of this rise in withdrawals, it is consistent with players feeling more comfortable to withdraw because of injury.

116. The Panel welcomes input on consultation as to the relative merits of the two different rules presently in place or whether a third course is appropriate.

Provision to permit players to qualify for a medical exemption and thereby avoid a withdrawal penalty by seeing a doctor closer to home, rather than requiring players to travel to the tournament for a medical examination

117. The ATP and WTA rules impose an escalating schedule of withdrawal penalties on players who renege on a commitment to play in an event[69]. While players can receive an exemption if they are unfit to compete[70], the rules sometimes require that they be examined by a doctor at the tournament site to receive such an exemption[71]. As a result, some players may decide to compete in the event, and play injured, because they must incur the travel costs regardless.

118. The Panel proposes that players be allowed to qualify for a medical exemption by seeing a local doctor. To facilitate this process, the International Governing Bodies could create a list of local doctors who are approved to perform these examinations; a good starting point might be the doctors who serve at events in the area.

64 Official Grand Slam Rule Book, 2018, Article I, Section Z(2)(h).

65 The ATP Official Rulebook, 2018, Section III, Part 3.08(A)(3)(a) and Chapter 4, Section A(5).

66 The ATP Official Rulebook, 2018, Section III, Part 3.08(A)(3)(a).

67 As reported in the press, the number of pre-tournament withdrawals more than doubled during the first six months of the ATP season. Convincing Injured Tennis Players to Withdraw Is a Tricky Matter, Economist (July 8, 2017), available at https://www.economist.com/blogs/gametheory/2017/07/early-retirement [accessed 9 April 2018].

68 Ben Rothenberg, Retirements Are Down at the Australian Open. Is Money the Reason?, N.Y. Times (Jan. 16, 2018),available at https://www.nytimes.com/2018/01/16/sports/tennis/australian-open-retirements.html [accessed 9 April 2018]. (noting that there was only a single retirement in the first round of the 2018 Australian Open, the lowest total at the event in ten years, which "many in the sport" attributed to "the implementation of a new rule that allows injured players to withdraw before taking the court and still receive half of their first-round prize money").

69 The ATP Official Rulebook, 2018, Section VIII, Part 8.03(B),(D); The WTA Official Rulebook, 2018, Section III, Part B and Chapter 4, Section A(5).

70 The ATP Official Rulebook 2018, Section 8.03(J); WTA Official Rulebook 2018, Section III(B)(2)(4).

71 The ATP Official Rulebook, 2018, Section VIII, Part 8.03(J)(b), (players who withdraw after noon on the Friday before an event "shall not have the late withdrawal fee assessed" provided that, among other requirements, they are "examined by that event's Doctor and determined to be unfit for the following week's tournament"); The WTA Official Rulebook, 2018, Section III, Part B, 4.c.ii, (players may be *"relieved of the obligation to pay a Late Withdrawal fine"* provided that, among other requirements, they *"meet the on-site PHCP and Tournament Physician for an evaluation and assessment of the injury or illness").*

Limitation on amounts that can be paid as pure "appearance fees", as opposed to prize money, and requirement that events publish appearance fees and report them to the TIU

119. Tournament organisers sometimes pay highly-ranked players to compete in their tournaments. These payments are referred to as "appearance fees". In many cases, appearance fees are lump sums payable on participation, and are not tied to performance. Although players likely prefer, and negotiate for, this type of arrangement, this payment structure reduces players' incentives to perform well and progress through the tournament, as the appearance fee alone provides a significant return, and the possible additional prize money from continuing to play may not warrant the risk of fatigue and injury – especially before an event that is perceived to be more important.

120. The scope of this problem should not be overstated, as only a small group of players receive appearance fees. But the Panel has received evidence that players who do receive appearance fees sometimes fail to give their best efforts at those events once the principal fee is earned.

121. To counteract this concern, the Panel proposes that appearance fees be awarded in performance-related tranches. For example, a permissible arrangement might allow a player to receive 50% of the fee for participating in the first round, the next 25% for reaching the second round, and so on. Under this system, players would be incentivised to do more than just show up.

122. The Panel also proposes that tournaments be required to publish the details of appearance fee arrangements, such as the overall amount and the performance tranches. While this measure would not create a direct link between performance and compensation, it would encourage all players to give their best efforts. In addition, if suspicions were raised about a match involving an appearance fee, the TIU would have the relevant information. All of this disclosure should further deter misconduct.

B ESTABLISHING A RESTRUCTURED AND BETTER RESOURCED TIU WITH INDEPENDENT SUPERVISORY BOARD OVERSIGHT

123. The creation of the TIU in 2009[72] was an important step in addressing betting-related breaches of integrity in tennis. However, just as the nature and extent of the problem facing tennis has changed significantly since 2009, so too are significant changes to the organisation, staffing, and governance of the TIU now appropriate to ensure that it can effectively and independently discharge its duties.

124. This Section addresses the inadequacies in the current system and the changes proposed by the Panel in four Subsections.

124.1 Subsection (1) below sets out recommendations that will significantly overhaul the Tennis Integrity Board ("*TIB*"), which is currently entrusted with the provision of governance and oversight over the TIU, and replace the current structure with a new independent supervisory board. Although the TIB, in theory, serves a valuable purpose, in the present view of the Panel, it currently lacks sufficient independence from the International Governing Bodies to effectively supervise the TIU. The Panel's recommendations are designed to ensure the replacement of the current TIB with an independent body that can provide effective governance and oversight of the TIU.

124.2 Subsection (2) below sets out recommendations that will significantly reform the TIU itself. In the present view of the Panel, the TIU has insufficient resources to address the problem now faced. It is insufficiently funded, it has too few staff, it is missing staff with particular skills, and it is not structured in a way that gives it a sufficient presence around the world. In the present view of the Panel, the TIU must be afforded the necessary resources, personnel, skills and footprint to carry out its functions more rapidly, more comprehensively, and in more places. The Panel's recommendations are focused on creating a new TIU that is equipped to tackle the serious integrity challenges facing tennis.

124.3 Subsection (3) below sets out the recommendation that there be an annual independent audit of the operation of the system.

124.4 Subsection (4) below sets out recommendations for the funding of the system.

72 As described in Chapter 8.

125. In determining the appropriate constitution of the TIU and the supervisory board overseeing it, the Panel has considered the structure of other independent governance boards and organisations. In addition, the Panel has considered by analogy the principles for good governance laid out by UK Sport for sports governing bodies in 'A Code for Sports Governance', which include:

125.1 *"Organisations shall have a clear and appropriate governance structure, led by a Board which is collectively responsible for the long-term success of the organisation and exclusively vested with the power to lead it"*;

125.2 *"Organisations shall recruit and engage people with appropriate diversity, independence, skills, experience and knowledge to take effective decisions that further the organisation's goals"*;

125.3 *"Organisations shall be transparent and accountable, engaging effectively with stakeholders and nurturing internal democracy"*;

125.4 *"Organisations shall uphold high standards of integrity, and engage in regular and effective evaluation to drive continuous improvement"*; and

125.5 *"Organisations shall comply with all applicable laws and regulations, undertake responsible financial strategic planning, and have appropriate controls and risk management procedures"*[73].

126. The Panel has also taken into account the proposals of the International Governing Bodies in relation to governance in their *"Tennis Integrity Review – Principles of Proposals"* document, and the 2017 arrangements for the new Athletics Integrity Unit that some of those proposals resemble[74]. The Panel has also taken into account the proposals of the TIU in relation to its future structure and resources, including its *"wish list"* containing a staffing chart[75], which it has told the Panel is what it would want *"in an ideal situation"* [76]. Lastly, the Panel has taken into account that the International Governing Bodies have raised the possibility that the new system should also deal with anti-doping under the Tennis Anti-Doping Programme ("TADP").

(1) THE NEW SUPERVISORY BOARD ("SB")

127. When the International Governing Bodies created the TIU, they also created the TIB with the role, among other things, of overseeing the TIU, appointing its Director, approving its annual budget, and appointing Anti-Corruption Hearing Officers ("AHOs").

128. The members of the TIB, however, are appointed by and have dual roles as officers of the International Governing Bodies. While the TIB has, correctly in the Panel's view, allowed the TIU significant independence to conduct its operations, and does not appear to have interfered in the TIU's decisions, the TIB members' dual roles give rise to the possibility that the members might prioritise the International Governing Bodies' reputational and other interests over the TIU's mission to safeguard the integrity of tennis. This possibility creates an apparent conflict of interest and undermines confidence that the TIU is sufficiently independent to police tennis effectively.

129. This apparent conflict of interest arising out of the composition of the TIB, and the TIB's resulting hands-off approach in its supervision of the TIU, has in the present view of the Panel resulted in a lack of effective oversight. To remedy this, and to ensure that the TIU has truly independent oversight, a new Supervisory Board is needed.

73 UK Sport, A Code for Sports Governance, Section s3.1 to 3.5, pages 10-11, available at: http://www.uksport.gov.uk/resources/governance-code [accessed 9 April 2018].

74 Chapter 12, Section C.

75 Chapter 12, Section C.

76 Response to the TIU to Notifications given under paragraph 21 ToR.

The SB should function as a corporate board with the equivalent supervisory role

130. The TIB is formally responsible for monitoring the activities of the TIU. However, as a matter of practice, the TIB has largely deferred to the TIU's management for the organisation's operation. For example, the TIB is responsible for monitoring the TIU's staffing and resources, yet the TIB has never addressed the TIU's chronic understaffing and underfunding. To be clear, the TIB has not prevented or discouraged the TIU from adding to its staffing, and appears to have always been prepared to approve recruitment or funding requests, but nor has it taken an active role in supervising the assessment of the needs of the TIU or in encouraging the TIU to add to its staffing.

131. The TIU needs more active oversight from a truly independent body. Although it will be for the SB to decide the specifics as to how it can most effectively interact with the TIU, the SB's role, in general, will be akin to a corporate board; it will monitor and supervise the management of the TIU.

132. As part of this role, the SB will have responsibility for the appointment, oversight, strategic direction, and financial management of the TIU. Specifically, consistent with the TIB's current duties, the SB will be responsible for the appointment and removal of the Chief Executive Officer (currently Director) of the TIU and his or her staff; the approval of an annual budget for the TIU; oversight over the annual audit of the TIU's investigations; and any other matters related to the operation and performance of the TIU.

133. The SB will also assume responsibility for two other important duties: (a) approving all changes to the TACP and TIPP[77]; and (b) engaging international arbitral bodies to appoint independent hearing officers (if the decision is ultimately made to select disciplinary hearing officers in this manner, as discussed below). At present, both of these duties are performed by the TIB. While there is no evidence that the representatives of the International Governing Bodies have used their positions on the TIB to shape the TACP or the selection of AHOs in any inappropriate way, their involvement poses an inherent apparent conflict of interest. Accordingly, transferring these important duties to the new and independent SB will help to safeguard the integrity of the TACP and the disciplinary process.

134. To this extent, the Panel agrees with the proposal of the International Governing Bodies in their 'Tennis Integrity Review – Principles of Proposals' document, that there should be a board undertaking *"independent oversight"*, and to an extent with the proposal that this body also should serve as the *"leadership body"*. The Panel however disagrees that the new board should constitute the executive leadership of the TIU, to the extent that is suggested, and disagrees that it should make disciplinary prosecutorial decisions. In the Panel's present view, the new CEO of the TIU should provide immediate day to day leadership.

77 Paragraph 145.

The composition of the SB should ensure its complete independence

135. Pursuant to its Charter, the TIB is currently composed of four members: the President of the ITF, the Executive Chairman of the ATP, the Chairman and CEO of the WTA, and one of the GSB Chairmen[78].

136. In the view of the Panel, the inclusion of representatives of the International Governing Bodies on the TIB jeopardises the independence of the TIU. To ensure that the TIU remains sufficiently independent, the newly reconstituted SB should be an entirely independent body.

137. In the present view of the Panel, the SB should include seven independent voting members, one of whom would initially (and only initially) be appointed by each of the GSB, the ATP, the WTA, and the ITF. In light of the pressing integrity-related matters facing tennis, these board members should be appointed within three months of the publication of the Final Report. These four voting members should then appoint the remaining three voting members of the SB. The CEO of the TIU should serve in a non-voting, ex officio role on the new SB. The SB should also elect a Chair of the board, from among the seven voting SB members, who should preside over the SB's regular periodic meetings.

138. To ensure both the reality and appearance of independence, the members of the SB, however appointed, cannot have any personal interests connected to tennis, financial or otherwise, and should not have had any connection to tennis or the betting industry for a considerable period of time, which the Panel presently considers to be ten years. This would, for example, preclude service by anyone who, in the prior decade, played professional tennis, worked in any capacity for any of the International Governing Bodies, worked as a senior employee of a tennis equipment manufacturer or distributor, or worked in any capacity for the TIU. At all times, the members of the SB should be individuals with the highest character and reputations for integrity.

139. Subject to the above requirements, appointments to the SB should place weight on, among other factors, the goal of creating and maintaining a diverse SB with an international composition, sports enforcement/regulatory expertise, and financial and legal competencies[79]. If anti-doping and the operation of the TADP is to be included within the scope of the TIU's remit, a possibility raised by the International Governing Bodies, appointments should also place weight on including scientific and medical competency on the SB.

140. The Panel considers that the entire SB should be independent of the International Governing Bodies and does not consider sufficient either of the alternative proposals of the International Governing Bodies in this context in their "Tennis Integrity Review – Principles of Proposals" document. The Panel understands that a minority of appointees of the International Governing Bodies could provide tennis input and would reflect the source of funding of the system, but these factors are outweighed by the need to ensure actual and apparent independence.

78 TIB Charter, paragraph 3.a.

79 See UK Sport, A Code for Sports Governance, Section 5.4, page 20 (*"Having people with the right experience or knowledge and a varied range of opinions can lead to improved decisions and better outcomes").*

The SB should be self-perpetuating and its membership should change regularly

141. The SB should be self-perpetuating, with new members elected by the existing board members. This arrangement will create additional distance between the International Governing Bodies and the SB, further enhancing the SB's independence. The International Governing Bodies would appoint only four of the first seven members, all of whom would have to satisfy the independence requirements set out above, and the International Governing Bodies would have no further role in appointments.

142. To balance experience with independence, the terms of the board members should be staggered and limited. Specifically, the board members should hold alternating four and five-year terms, with a two-term limit[80]. The four board members appointed by the Grand Slam Board, the ATP, the WTA, and the TIU will hold the initial four-year terms while the three remaining board members they, in turn, appoint will hold the initial five-year terms.

Liaison between the SB and the International Governing Bodies

143. Just as it will be for the SB to decide the specifics as to how it can most effectively interact with the TIU, it will be for the SB, and indeed the International Governing Bodies, to decide how they will liaise with one another.

144. The Panel does not consider that the fact that the SB must be entirely independent means that it should not be able to receive input from the sport's International Governing Bodies, which have a great interest in the proper protection of integrity in the sport, and which are funding the system designed to achieve that. That input must however be clearly and apparently external, and the SB must ensure that it does not affect its independence.

(2) THE NEW TIU

145. Between its inception in January 2009 and December 2017, the TIU successfully pursued 33 disciplinary cases for offences under the TACP, ranging from match-fixing and betting on tennis to improper sponsorships by betting operators.[81] In addition, the TIU has overseen the creation of a global non-credentials list. In 2011, TIU created an online educational program for players called the Tennis Integrity Protection Programme ("TIPP"); since the TIPP became mandatory for professional players in 2014, over 25,000 players have completed it[82].

146. While the TIU deserves credit for these efforts, the nature and extent of the problem faced has developed rapidly since the TIU's inception. The Panel's review has led it presently to conclude that the TIU currently lacks the funding, staff numbers, staff skills, and structure properly to carry out its investigative mandate in the present environment. The TIU is overwhelmed by the caseload it faces and, in part due to its lack of resources and staff skills, has not made sufficient use of investigatory mechanisms that might have borne fruit, but has instead concentrated on a conservative approach to dealing with breaches of integrity. Its structure has similarly prevented the TIU from engaging as fully as it might the assistance of national federations and agencies. In addition, the TIU's lack of a separate legal personality has limited its independence and authority.

80 UK Sport, A Code for Sports Governance, Section 7, page 33, available at: http://www.uksport.gov.uk/resources/governance-code [accessed 9 April 2018], *("Term limits ensure a periodic injection of new people and ideas and provide an opportunity to refresh the skills base of a [board] to suit its purpose.").*

81 Chapter 10, Part 1, Section B.

82 Tennis Integrity Unit, Briefing Note at 1 (April 7, 2017), available at http://www.tennisintegrityunit.com/storage/app/media/TIU%20Briefing%20Note%20April%202017.pdf [accessed 9 April 2018].

The TIU should be established as a body independent of the ITF, with its own separate legal personality and premises

147. As currently constituted, the TIU has no distinct legal personality. It is located in the same building as the ITF. Its staff are formally employees of the ITF. While the Panel has seen no evidence that the ITF has improperly influenced the TIU or its investigations, this organisational structure poses a threat to the independence of the TIU. It also gives rise to an inaccurate perception that the TIU is part of the ITF.

148. In addition, this organisational structure limits the authority and effectiveness of the TIU. For example, without separate legal personality or status, the TIU is limited in its ability independently to enter into contracts or join in civil or, in certain jurisdictions, criminal proceedings as a party.

149. Accordingly, the TIU should adopt an independent legal personality of its own. Once the SB is constituted, it should determine the specific form of the TIU's legal personality, bearing in mind before incorporating the TIU in a certain country, among other factors, that the TIU's place of incorporation should not prevent mutual assistance in criminal matters with authorities from other countries, such as under the Convention on the Manipulation of Sports Competitions (the "Macolin Convention[83]"), or make such cooperation unduly difficult.

150. In addition, to avoid creating an inaccurate perception of the TIU's independence, the TIU should have its own premises, separate from any International Governing Body and any other tennis body.

The TIU should be led by a CEO who is appointed by the SB

151. The new TIU will assume several additional and expanded responsibilities and functions. In addition to its roles of preventing unauthorised access to players, educating stakeholders, investigating breaches of the TACP and preparing cases for disciplinary prosecution, it presently seems to the Panel that the TIU will also need to take on the additional matters identified in this Chapter, including:

151.1 The new TIU will devote greater attention to education. Although the TIU currently conducts integrity trainings and administers the TIPP, the Panel recommends that the TIU expand its in-person training efforts and deliver more integrity education to the most vulnerable participants in the sport[84]. The TIU recently appointed an Education Manager and plans to appoint an assistant to the Education Manager. The TIU must include, as it now appears it will, specialist educators as opposed to investigators who educate.

151.2 The new TIU will engage to a greater extent with betting data, including betting information and bettor information[85]. Because the TIU has not to date had a betting expert, the TIU generally has not used betting data sufficiently to direct its investigations, such as by identifying linked accounts that regularly bet on suspicious matches and by identifying highly unusual betting activity that, when coupled with analysis of unusual match play, could prove or at least evidence match-fixing or other breaches of integrity. As discussed further below, the Panel recommends that the TIU appoint a betting expert who will be able actively to liaise with betting operators and obtain and then analyse relevant data. As a result, the new TIU will have greater engagement with the betting markets – as well as with betting operators.

83 Council of Europe Convention of the Manipulation of Sports Competitions, Council of Europe Treaty Series No. 215, available at http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016801cdd7e [accessed 9 April 2018].

84 Section C below.

85 Section D below.

151.3 The new TIU will also actively monitor the betting markets in order to detect where markets are being made.[86] This task is distinguished from monitoring the betting markets to identify unusual or suspicious betting patterns, for which the TIU will continue to rely on betting operators under compulsory MoUs. Some betting operators may attempt to create parallel markets based on unofficial data for matches as to which live scoring data would not be sold, or supplied, under the Panel's data sales recommendations.[87] The new TIU can counteract these attempts by monitoring the online betting markets for the emergence of any markets created using unofficial data and then by acting to prevent it.

151.4 The TIU will have the ability to limit the availability of live scoring data to particular events or matches, or to particular betting operators who fail to comply with their MoUs, in order to police betting markets in the interest of safeguarding tennis integrity.[88]

151.5 The new TIU will engage in greater coordination with the national federations and other agencies. The new TIU will leverage the manpower of the national federations effectively to gather intelligence, to monitor events, and to deliver integrity education all over the world.[89] The new TIU will also engage in greater coordination with law enforcement agencies and regulators around the world, and become actively involved in international cross border initiatives, such as the platforms and mechanisms established under the Macolin Convention.

151.6 The new TIU will also have authority over disciplinary prosecutorial decisions. The Panel recommends that the International Governing Bodies place disciplinary charging authority in an independent TIU to increase the integrity of the disciplinary process.[90] And as an independent body, the TIU will be afforded broad prosecutorial discretion, subject to oversight by the new and independent Supervisory Board.

151.7 As addressed below, it is possible that anti-doping and operation of the TADP may be brought within the purview of the same body.

152. The TIU therefore needs a Chief Executive Officer to oversee the entire breadth of its mandate. In the view of the Panel, this mandate includes, but also extends substantially beyond, the functions currently comprised in the position of the TIU's Director of Integrity.

153. The SB should appoint the TIU's CEO, subject to the same independence and integrity requirements as the members of the SB, but without any term limitation. The CEO of the TIU should be appointed within five months after the Panel's Final Report is published.

86 Section A below.
87 Section A below.
88 Section A below.
89 Sections C and D below.
90 Section D below.

The CEO should determine the TIU's structure and staffing to ensure adequate and diverse coverage of key competencies

154. When the TIU's CEO is appointed, he should examine the current structure of the organisation and determine whether the TIU requires restructuring to discharge all of its existing and new responsibilities effectively. As noted in the UK Sport Code, it is essential that the TIU have a clear and appropriate structure because such a structure ensures that *"decisions* [are] *made at the right level* [and] *enables the best decisions to be made to drive the success of the organisation"*[91].

155. Similarly, the TIU's CEO must ensure that the TIU is adequately staffed.

155.1 The TIU has been understaffed in terms of investigators and intelligence analysts since its inception.[92] Indeed, the TIU did not reach the staffing levels identified under the model that Jeff Rees had proposed in the Environmental Review, and the International Governing Bodies had adopted – with two full-time investigators – until two years after the TIU's inception. More recently, following the four-fold increase in Betting Match Alerts in 2015 and the announcement of the Panel's Review, the TIU has increased the number of its full-time investigators from two to six[93]. So too, there was only one intelligence analyst until another was hired in 2006.

155.2 The TIU submitted a staffing chart as part of its *"wish list"* to the Panel, which states that it needs at least twelve investigators to cover its current responsibilities in the future, and at least four intelligence analysts[94]. The TIU has since represented to the Panel that *"[t]he chart referred to was supplied together with many other considerations at the request of the Panel for a 'Wish List' in an ideal situation. If each alert was investigated as suggested by the panel then even more staff than this chart shows would be required."* The TIU has added that *"it is necessary to take a proportionate and responsible approach to resources. For example, the number of alerts will be considerably less this year than last year and I would want to review the trends before requesting further investigators in any event in order to ensure that additional resources are justified"*[95].

155.3 While the TIU's CEO should appoint as many new staff members as he or she believes are required for the TIU properly to discharge its responsibilities, the Panel expects that the TIU's initial appointments will at least satisfy the parameters set out in the TIU's wish list, including raising staffing to at least a total of 12 full-time investigators and four intelligence analysts.

156. In the present view of the Panel, the staffing of the TIU at present is not only too few in number, but also lacks staff members with specific skill sets. The Panel presently recommends that the TIU's CEO appoint several experts:

156.1 Given the centrality of betting to the TIU's remit, the Panel considers that the TIU should employ an in-house betting expert. The TIU currently has no betting analyst on staff to understand betting alerts fully, to advance TIU investigations through requests for additional betting information and bettor information, to undertake analysis of linked account betting or to present analysis of betting data during enforcement proceedings. A full-time betting analyst will be able to mine, and develop evidence from, the hundreds of alerts that the TIU receives each year. In addition, employing a betting expert will permit the TIU to forge more cooperative relationships with betting operators while also ensuring that the TIU is not entirely dependent for its data analysis on those operators, whose interests may at times diverge from those of the TIU. And as noted above, a betting analyst will also assist the TIU in monitoring the online betting markets for the emergence of markets created using unofficial data. In its *"wish list"*, the TIU itself suggests that one of its additional intelligence analysts should come from a betting background.

91 UK Sport, 'A Code for Sports Governance', Section 3.1, page 10, available at: http://www.uksport.gov.uk/resources/governance-code [accessed 9 April 2018].

92 Chapter 10.

93 Further discussion about the ideal number of investigators is set out at Chapter 10, Part 2.

94 TIU Wish List staffing chart, Chapter 12, Section C.

95 TIU Representations, comment on paragraph 28 of the IRP's Notification.

156.2 The TIU should engage one or more tennis experts to assist in evaluating tennis issues as they arise, including in the evaluation of video footage from matches. In the past, the TIU has largely relied on the reactions of event officials to what they have seen, and on the PTIOs' appreciation of alternative *"tennis reasons"* for on-court actions. In the Panel's view, the TIU should be able to rely on one or more independent tennis experts who can assess the evidence of the on-court play, including videotape and witness statements, in the context of all the other available evidence, including betting data, and give evidence in disciplinary proceedings as to the significance of what happened in a suspect match.

156.3 The TIU should also employ an in-house lawyer, preferably with a disciplinary and/or criminal law background and international experience, who can provide prompt and regular legal advice and assist in shaping investigations and enforcement actions. Although this will entail the additional cost of a salaried professional, the Panel considers that hiring an in-house lawyer for the TIU is now necessary and may ultimately result in cost savings for the TIU by allowing the TIU to more effectively channel its resources to fight corruption.

156.4 Plainly, if the new TIU is to take on anti-doping and the operation of the TADP, then significant numbers of staff will need to move from the ITF, which currently has this responsibility, or be hired.

157. In making such appointments, the TIU's CEO needs to bear in mind the need to appoint staff members who can effectively carry out the TIU's international mission. While the TIU has appointed qualified and experienced investigators, those investigators have all come from a law enforcement background in the United Kingdom. In the present view of the Panel, the homogeneity of the TIU's investigative staff hampers its ability to conduct international investigations. The TIU should in the Panel's present view take two steps to address this issue:

157.1 The CEO should place a greater emphasis on appointing staff with international diversity. Although the TIU reports that some members of its current investigative staff are fluent in various languages, including English, Spanish, Portuguese, Greek, and Gujarati, it lacks fluency in many other languages common in tennis. Given that tennis is a global sport, the TIU would benefit from employing investigators with a wider range of cultural and linguistic backgrounds.

157.2 As discussed further in Section D, the TIU should designate regional TIU officers to help build relationships with the national federations and connections with officials and players in other regions. Because of their command of the language and their familiarity with the local cultural and legal framework, regional TIU officers should be able to develop closer working relationships with their respective national federations. These regional officers will also be well-positioned to gather intelligence due to their familiarity with the local players, tournament supervisors and officials, regulators, and law enforcement agencies. While the particular geographical distribution of regional officers is left to the TIU's judgment, regional officers should be appointed to cover all of the significant tennis-playing regions of the world, with an emphasis on ensuring that culturally and linguistically diverse regional officers are assigned to cover areas that pose the greatest risk to tennis integrity.

158. To enable the TIU's CEO to determine its staffing, any further appointments by the TIU pending the CEO's appointment should be on a provisional basis, subject to review by the CEO when he or she takes office.

It is for the International Governing Bodies to decide whether to include anti-doping and any other integrity matters under the new TIU's purview

159. The International Governing Bodies have proposed that the TIU comprise four, as opposed to a single, *"integrity services"*.[96] In addition to (a) a service dedicated, largely as currently, to *"match-fixing and betting related corruption"*, there would also be (b) a service dedicated to anti-doping, (c) a service dedicated to other integrity related offences, and (d) a service providing common services[97]. Plainly if adopted this would affect the structure of the TIU significantly.

160. The Panel takes the view that under the Terms of Reference, it is beyond the scope of this Review to determine whether anti-doping efforts in tennis and the operation of the TADP, which the Panel is not asked to examine and has not examined, should come within the purview of the new TIU. This is a matter for the International Governing Bodies to address, preferably in connection with the establishment of the new TIU. While the Panel can see that there are a number of common roles that exist, and that a combined body might be more efficient, there are also a number of aspects that are quite distinct.

161. The same applies to other matters that fall under a broader concept of integrity than that which the Panel is charged with reviewing, such as other forms of cheating to win and generally bringing the sport into disrepute.

162. As to best efforts, the Panel presently considers that on court violations should remain to be dealt with by the International Governing Bodies.

(3) THERE SHOULD BE AN ANNUAL EXTERNAL AUDIT OF THE TIU'S AND SB'S PERFORMANCE

163. In order to promote public confidence, an external independent auditor should produce an annual public report on the performance of the TIU, following a review of the TIU's investigative files. The audit should also extend to the SB's performance of its functions. This report should be produced by the external auditor to the SB, and then published by the SB.

164. Due to privacy concerns, the external auditor should avoid publication of information that could jeopardise ongoing investigations, and its public report should be subject to the right of the TIU and the SB to redact confidential information.

165. There may also be some matters that the auditors believe should be brought to the attention of only the TIU and the SB. That option should be available to the auditor within its discretion.

(4) THE TIU SHOULD BE PROPERLY AND SECURELY FUNDED

166. The International Governing Bodies should ensure that the TIU has adequate funds to fulfil its mission.

166.1 Under the current system, the International Governing Bodies each fund a set proportion of the TIU's budget. In practice, the International Governing Bodies have granted every request for an increase in funding that has been made by the Director of the TIU. They have not made the grant of funding conditional upon the TIU's performing its functions in any particular way.

166.2 But in theory, the International Governing Bodies could withdraw funding from the TIU or seek to influence operational decisions through its funding power. The contingent nature of the TIU's funding poses a threat to its independence, and it may also create the appearance of improper influence.

166.3 The International Governing Bodies should thus put in place mechanisms to guarantee funding of the new TIU in a way that is irrevocable and unconditional. Specifically, the International Governing Bodies should enter into a long-term contractual commitment to pay into a fund that can be drawn on by the TIU as it sees fit. The amount necessary should be set through discussions among the TIU, the SB, and the International Governing Bodies.

96 Chapter 12, Section C.

97 Principles of Proposals document, paragraph 3.

C PREVENTING BREACHES OF INTEGRITY THROUGH EDUCATION, CONTROL OF ACCESS AND DISRUPTION

167. In addition to preventing breaches of integrity by reducing the incentives and opportunities to breach integrity, an effective system must also seek to prevent contemplated breaches of integrity from occurring. A fundamental element of prevention is deterrence through detection, disciplinary conviction, and significant dissuasive sanction. For many players and others, these prospects of such adverse consequences do not outweigh the incentives to breach integrity, because the risks are low, and the need, or greed, for additional funds is high.[98] While these factors must of course be addressed,[99] there are additional mechanisms that an integrity unit can adopt to prevent contemplated breaches. These are dealt with in three Subsections below, and in each instance, the Panel presently considers that there is room for improvement because the approach currently adopted is insufficient to address the problem faced: (a) integrity education; (b) control of access to players through registration and accreditation systems, as well as through safeguarding and exclusionary measures; and (c) the use of disruption[100].

(1) IMPROVEMENTS TO EDUCATION

168. The Panel shares the belief of those at all levels of the sport that education forms a crucial part of the response to the problem currently faced. Education not only prevents commission of breaches by those who are reached by it, but also encourages others who are reached by it to report improper conduct. Effective education can turn the tide from an atmosphere of acceptance and resignation to an atmosphere of active participation and resolution to deal with the problem faced.

169. In the view of the Panel, while significant improvements in education have been made, not least with the recent appointment of two specialist educators who will further develop the existing education system, the following shortcomings from the education delivered in the past are concerning:

169.1 there are many players and others who remain unaware of important aspects of the rules and the behaviour expected of them;

169.2 there are significant numbers of players and others who are aware that their behaviour is against the rules, but who have not been convinced by the education provided to change that behaviour;

169.3 there is in some contexts a culture of low-level rule breaking; and

169.4 there is an atmosphere of acceptance and resignation, even among many who comply with the rules, that little can be done to make others comply.

170. In the view of the Panel, these are issues that the education system needs to address. In particular, it seems to the Panel that it must be brought home to all how damaging breaches of integrity are to the sport, and that it is in their own interests and the interests of the sport to root out corrupt actors through active reporting to the TIU. How best to change the existing tennis culture through education will be for the newly appointed specialist educators. The Panel would however expect the mechanisms identified below to be included in the approach adopted.

98 Section D below.

99 As described in Sections A, B and D.

100 Section C.

Increase or establish mandatory in-person integrity training at all levels for players and officials

171. The TIU gives regular in-person presentations to players on integrity issues, but this training is focused on players at the highest levels of the sport – even though the evidence suggests that integrity concerns are greatest at lower level events. The TIU's in-person training, in the professional ranks, includes presentations at the ATP University to the players who enter the top 200 rankings for the ATP, and one-on-one anti-corruption training for the players who enter the top 200 rankings for the WTA. It also includes presentations to up-and-coming players at the WTA's Rising Stars Invitational and to top junior players at select events, including Wimbledon, the Australian Open, and the U.S. Open. Other than for the select few who play at the Junior Grand Slams or who rise to the higher levels of the sport, the Panel does not understand the TIU to have any initiative to provide in-person training to younger players.

172. In the present view of the Panel, in order to improve the effectiveness of its educational programs, the TIU should expand its in-person integrity training efforts to focus on the levels of the sport where tennis is most vulnerable to breaches of integrity.

173. The TIU should, in the view of the Panel, provide greater in-person integrity training to players outside the top 200, in two ways:

173.1 First, the TIU should provide in-person integrity presentations at ITF men's and women's, ATP Challenger, and WTA $125k events. These in-person presentations could be one-on-one or in small groups, and attendance could be required for completing registration for an event. The in-person training should ensure that major integrity education issues are covered and should provide players with materials they can review. Recognising that there are logistical issues with training all professional tennis players around the world or providing in-person training at all events, the TIU should target its in-person training efforts at tournaments and player populations that the evidence suggests may be most at risk. The TIU should also leverage its Regional Officers to identify these populations and to deliver in-person education to them. At the same time, however, the TIU should ensure that it provides in-person training at a diverse range of events around the world and among the varying levels of the sport.

173.2 Second, the TIU should make efforts to facilitate in-person integrity training through the national federations. The TIU should establish working relationships with national federations, and *"train the trainers"* by leveraging the national federations' manpower to deliver in-person integrity training at more events around the world.

174. As the Panel understands it, the TIU currently conducts in-person integrity training for officials only at Grand Slams, and officials at other levels do not regularly receive integrity training from the TIU. In the view of the Panel, the TIU should provide greater in-person training for officials at the lower and middle levels of the sport, where the integrity threats appear to be most significant.

175. As the Panel understands it, the TIU currently provides in-person integrity training for tournament directors only at tournament director meetings or forums. In the view of the Panel, the TIU should consider providing in-person integrity education for all Tournament Support Personnel, not just tournament directors. Such training could be delivered through the tournaments, by TIU officials or tournament directors, as a condition of working at those events.

176. As to the budget to organise this new training, the TIU may want to consider that certain international organisations, such as the Directorate General for Education and Culture of the EU Commission, may be willing to finance a variety of sport-related projects such as the TIU integrity training project.

Require online integrity education of Related Persons and Tournament Support Personnel

177. The TIU oversees a few major educational efforts, including the TIPP, an online educational program that all professional players must complete every two years[101]. The TIPP currently includes videos and questions covering match-fixing, social media threats, and betting. Since the TIPP became mandatory for players in 2014, over 25,000 players have completed the program[102].

178. As the Panel understands it, there are currently no TIU educational efforts directed at coaches, trainers, agents, or other Related Persons. In addition, while the TIU has developed educational videos for officials, there is no online educational program like the TIPP for officials. Nor are there TIU educational efforts targeting other Tournament Support Personnel, other than the TIU's non-mandatory presentations to tournament directors.

179. To fill these gaps, the TIU should, in the present view of the Panel, create online training for officials, coaches, trainers, agents, and other Related Persons and Tournament Support Personnel. This online training would increase awareness of the TACP's requirements and the dangers posed by would-be corruptors. The online integrity education should be run in concert with the Panel's proposed new registration system, as discussed further below.

Use social media and branded materials to keep players and the public informed of breaches and other integrity issues

180. To improve awareness about integrity issues and to promote informal integrity education, the TIU should, in the present view of the Panel, create a news bulletin email and regular bulletin post on the International Governing Bodies' player portals to inform the tennis community whenever a player has been sanctioned, with an accompanying description of the facts and basis for the sanction. These bulletins should also include informal education on betting and corruption.

181. The TIU should also engage with the public in other ways, including through its own Twitter account or by drafting messages that could be sent through the International Governing Bodies' Twitter accounts.

182. In addition, the TIU should develop TIU-branded educational materials that can be distributed to players at events. Distribution of this information, in electronic or hard copy, will raise player awareness about integrity issues and more regularly remind them of their obligations under the TACP.

An educative campaign to change the atmosphere and the culture

183. It seems to the Panel that consideration should be given to an educative campaign, similar to those that have been undertaken in some sports against doping or other inappropriate behaviour, aimed at changing the culture amongst rule breakers, and the atmosphere of acceptance and resignation amongst the rule compliant, described above. The themes of this campaign would include broad messaging to tennis participants about how breaches of integrity threaten the sport and the livelihoods of all of its participants and how all tennis participants need to, and can, actively combat that threat.

101 Chapter 10, Part 4, Section A.

102 Tennis Integrity Unit, Briefing Note at 1 (April 7, 2017), available at http://www.tennisintegrityunit.com/storage/app/media/TIU%20Briefing%20Note%20April%202017.pdf [accessed 9 April 2018].

(2) CONTROL OF ACCESS TO PLAYERS AND OTHERS

184. The second mechanism that an integrity unit can adopt to prevent contemplated breaches is to seek to control access to players of those who may seek to breach integrity. It presently seems to the Panel that while access cannot be prevented entirely, it could be limited to a greater extent through an enhanced registration and accreditation system, and through safeguarding and exclusionary measures. It presently seems to the Panel that:

184.1 There is uncertainty as to whether some people, while covered by the terms of the TACP, are in fact bound and effectively capable of being required to comply with the TACP.

184.2 Accreditation that provides access to too many areas is too readily provided.

184.3 The infrastructure is often not in place to ensure that unauthorized people do not gain access to player areas.

184.4 The online security of players is inadequate.

184.5 There are insufficient limits on player access away from tournaments for people who may seek to breach integrity.

The TIU should implement a registration system to qualify individuals for accreditation

185. The term Covered Persons is broadly defined to bring as many people as possible within the TACP's reach. By casting a wide net with the TACP, the International Governing Bodies have sought to govern the behaviour of a wide group of people and to eliminate the possibility that someone associated with tennis does not fall under the anti-corruption rules.

186. For practical purposes, however, Covered Persons are not bound by the TACP unless they contractually agree to be bound. This includes some important tennis participants who should be bound by the contractual requirements of the TACP, including coaches, trainers, physiotherapists, and other medical personnel. Because they play an integral role in the sport, they have significant relationships with players, and they have access to inside information about players, such individuals should be required to register with the TIU, with the endorsement of the player with whom they are associated. Through such registration, they would undertake to be bound by the TACP at all times and so long as on the register. As explained further below, while the registration system that the Panel contemplates would require the provision of some information, it would not amount to a certification system. If, however, the International Governing Bodies propose to introduce certification systems in the interests of the development of tennis, the registration function could be incorporated in the certification process.

187. While complicated by the fact that the laws on when a Covered Person *"agrees"* to be bound by the TACP may differ by jurisdiction, broad recommendations that seek to obtain voluntary signatures from as many Covered Persons as possible should help to bring as many people as possible under the TACP.

188. Registration, and continued presence on the register, would entitle the registrant to the appropriate level of accreditation for the registered role, allowing access to the areas that other accreditation would not. The WTA's current practices provide an example of how this may be done. The WTA requires that those seeking accreditation pre-register with the WTA so that a background check can be performed[103]. Once approved, they are *"registered"* and can be granted accreditation on multiple occasions for a defined time. This approach could be applied across the board to all accreditation, with the registration process including a clear agreement to be bound by the TACP. Equally, however, it seems to the Panel that individuals should not be able to seek ad hoc accreditation to access areas for which registration is deemed appropriate. Accordingly, the only individuals who would gain access to player areas would be individuals who had registered, accepting the TACP's application to them at all times.

103 Statement of Matt Cenedella (WTA).

189. In addition to ensuring enforceability against Covered Persons, accreditation controls, which should be a minimum requirement for any tournament at least for which official data is sold, and ideally for others as well, serve important purposes.

189.1 First, accreditation controls permit tournaments to identify individuals who should have access to secure areas, and to exclude those who should not. Controls allow tournaments to draw distinctions between coaches and physicians, who may need to access player areas, and players' entourages, who likely do not have a tennis-related reason for being in player areas.

189.2 Second, in the event of a suspected integrity offence involving a player, better controls permit the TIU to identify which individuals have had special access to the player. After a suspected breach, the TIU would be able to review the accreditation records and identify whom the player granted access to the event.

189.3 Third, accreditation controls provide an opportunity to require Covered Persons to agree to be contractually bound by the TACP. There is currently no mechanism to require Covered Persons to be bound by the TACP.

190. Given the purposes of the accreditation and registration systems, the Panel proposes that the TIU manage a centralised registration system with consistent standards. With thousands of tournaments worldwide, consistency and efficiency would be difficult if each tournament continued to maintain its own accreditation system. While the question of whether tennis should employ a system for certifying individuals as qualified to perform such functions is beyond the Panel's role, registration should be a prerequisite to obtaining special accreditation to non-public areas at events, as discussed below.

191. The registration process should require all adult applicants to provide basic personal information (such as name, address, and date of birth) and contractually agree to comply with the obligations set out in the TACP. In addition, the registration process should require the registrant to complete an integrity education program. Integrity education is a key component of eliminating corruption from tennis and is especially important for those seeking accreditation who may not be familiar with the possibilities for corrupt activity. Integrity education for those seeking accreditation may also serve as a deterrent to prevent the commission of corruption-related offences.

192. Coaches, trainers, physiotherapists and other medical personnel who seek accreditation to access special non-public areas otherwise available only to players and tournament officials should be required to register as such before the event. In addition, these individuals should be required to complete a more thorough educational program than recipients of accreditation who do not seek such access and should be required to pay a fee so the TIU can run a background check. Once a person is registered, the person should prima facie (but not necessarily) be entitled to accreditation for areas appropriate to their role. Persons who are not registered should not be able to obtain accreditation for such areas.

The TIU should require implementation of an improved accreditation system

193. The current approach to accreditation needs to be strengthened. In particular, the approach to levels of accreditation and what they signify needs to be reappraised. In the present view of the Panel, there should be no accreditation for player areas for any person who does not have a genuine tennis reason to be in that area. Further it seems to the Panel that while it may be appropriate for players to have guest tickets that they can provide to friends, they should not as a matter of course have accreditation to distribute.

194. In the present view of the Panel, in order to ensure that tournaments for which data is sold have secure accreditation procedures, these accreditation controls should be a minimum requirement for any tournament in respect of which official data is sold.

195. Also, in the present view of the Panel, they should be – to the extent possible – a requirement for ITF tournaments even without official data sales for those events. As noted, accreditation controls serve important integrity-related purposes, permitting tournaments to identify individuals who should have access to secure areas, and excluding those who should not, while permitting the TIU to identify which individuals have special access to certain players.

Accreditation should be given on an individual basis and should be non-transferable

196. Currently, at events at all levels of the sport, the level of accreditation provided and the range of player areas to which access is granted are often disproportionate to the needs of credentialed persons. A player may receive credentials for an event without ever having to specify who will use the credentials. The credentials typically do not restrict which areas within the tournament the holder may access. Such *"carte blanche"* authority allows excessive access to player areas.

197. In the Panel's present view, there are currently too many people of indeterminate role and responsibility with too much access to players at events. Limiting the access of accredited persons, based on their specific role, will help solve this problem.

198. Accordingly, accreditation should be provided only to a specific individual. To qualify for a level of accreditation at a professional tennis tournament, for example an area providing player access, there should have to be a personal application that includes identifying information and a commitment to comply with the TACP. All accreditations should be specific to the person for whom it is provided and incapable of transfer. Tournaments should not be permitted to give *"general"* accreditation that could be used by any person who holds the accreditation. Players should not be issued accreditation that they can provide to any third party.

199. Moreover, during the application process, the person applying for the accreditation should be required to undertake expressly to comply with the TACP.

200. Those who often seek accreditation should be able to choose to register with the TIU in a way that should accelerate receipt of credentials, whilst clearly requiring the applicant to undertake to comply with the TACP.

The TIU should operate a registration and accreditation central database

201. To support a consistent accreditation process, the TIU should, in the present view of the Panel, create and maintain a centralised database containing current registrations and past and current accreditations. This centralised database should serve as the repository for tournaments to determine whether an individual should receive accreditation and the level of accreditation to which the individual may be entitled.

202. The centralised database should also maintain information on persons who should not be credentialed. The TIU should maintain a list of individuals who should not receive accreditation – a *"no-credentials"* list – and provide access to this list to tournaments. If, for example, a person has been caught violating the prohibitions against courtsiding or is suspected of attempting to corrupt players, that individual should be placed on the no-credentials list and denied entry to any tournament endorsed by the International Governing Bodies.

The International Governing Bodies should ensure minimum security for tournaments at all levels

203. As discussed above, certain minimum-security requirements should be prerequisites to the sale of any official live scoring data for any professional tennis event. These include an appropriate accreditation system, perimeter control, and personnel on the ground to restrict access to the tournament grounds and secure player areas to appropriate persons. If a registration and accreditation system is to work, the infrastructure must be in place to ensure that it is applied.

204. In addition, regardless of whether official live data is sold, an event endorsed by the International Governing Bodies should have designated, on-site officials who are able, on the TIU's behalf, to disrupt attempts to create parallel betting and to harass or improperly influence players.

205. The ATP and WTA already has expert staff in place to deal with high level security threats in relation to Tour events[104]. In addition, there is an expert team of courtsider spotters that is retained by the ATP and the WTA, and some of the Grand Slams, to monitor betting markets and then to seek to identify courtsiders in the crowd. It presently seems to the Panel that there are here the foundations for the International Governing Bodies to develop security teams at all events in respect of which live

104 Statement of Bob Campbell (WTA).

scoring data is sold, and also – again to the extent possible – for ITF tournaments even without official data sales.

The International Governing Bodies and TIU should take proactive steps to safeguard players against online access and abuse

206. As noted above, players are subject to intolerable levels of online abuse, often from disappointed bettors. They are also subject to online approaches by corruptors. This appears to be a significant problem throughout all levels of tennis, and it must be addressed to better protect players. The WTA deserves recognition for putting in place measures to assist players in relation to abuse. In the present view of the Panel, however, the International Governing Bodies and the TIU can and should do more to coordinate their efforts in the interests of players:

206.1 The International Governing Bodies and the TIU should coordinate security efforts to ensure that robust processes are in place to handle online threats and corrupt approaches to players. To that end, the International Governing Bodies and the TIU should work together to develop guidelines and protocols for addressing inappropriate online contact to players, and each of the International Governing Bodies should appoint a liaison to interface with the TIU concerning such matters.

206.2 The TIU should use its unique access to information about betting on tennis and bettors to engage proactively with the International Governing Bodies, social media platforms, and law enforcement not only to safeguard players' physical security, but also to close the accounts of abusers and corruptors where possible and to pursue legal action against them where appropriate.

The TACP should prohibit Covered Persons from having contact with individuals who have been *"excluded"* by the TIU

207. The TIU currently lacks the ability to prosecute individuals who have not agreed to be bound by the TACP. Therefore, there is no ability to impose a penalty on these individuals for violations of the TACP.

208. A practical approach to address this issue, used in other professional sports, is to create an exclusion procedure. Under such a procedure, a person who has violated the rules but falls outside the class of people who can be sanctioned, because they are beyond the reach of disciplinary proceedings under the TACP, is classified as an *"excluded person."* Others can then be prohibited from having specified types of contact with that person and penalised for such contact.

209. The Panel recommends that the International Governing Bodies and the TIU adopt an exclusion procedure to prevent the exposure of players, officials, and other Covered Persons to individuals who have demonstrated a willingness to compromise the integrity of the sport.

209.1 This procedure should permit the TIU to apply to a hearing officer, for example as part of a disciplinary proceeding against a player, for a ruling that an individual should be classified as an *"excluded person,"* whether or not the excluded person is otherwise covered by the TACP. The application process should require the TIU to apply to a hearing officer to classify the individual as an excluded person, and the individual should receive notice of the application and have a full and fair opportunity to defend his or herself from such a classification before the hearing officer. A hearing officer should be able to classify an individual as an excluded person, for a period at the discretion of the hearing officer, if the person violated the TACP or the person was involved in the commission of a corruption offence involving a Covered Person.

209.2 During the period of exclusion, the excluded person should be barred from having tennis-related contact or association. This means the excluded person should not be given credentials for events; be involved in professional tennis; or attend any event in any capacity.

209.3 It should be an offence for any Covered Person to have any contact or association with an excluded person. The offence should require that the Covered Person knew or ought reasonably to have known that the excluded person was so excluded. There may be limited circumstances where a Covered Person would continue to be permitted to have contact unrelated to tennis with an excluded person, such as a close family member, but those exceptions should be rare and limited.

209.4 If the TIU has identified players who have regular contact with an excluded individual, the TIU should notify those players of their obligations to avoid tennis-related contact or association with that person.

209.5 Finally, the TIU should make the names of everyone on the "warned off" list available to all Covered Persons.

(3) DISRUPTION

The TIU should consider using disruption more often in certain circumstances

210. The Panel has considered whether the TIU should make efforts to *"disrupt"* suspicious activity, for example, by notifying players or officials when the TIU receives Betting Match Alerts before matches which suggest that a match has been fixed or that gamblers have inside information about a player's expected performance. Potential disruption techniques also include confronting players for whom the TIU has received multiple prior Betting Match Alerts within a particular period.

211. The Panel has reviewed the TIU's current standard practices, which do not generally include such disruption techniques, and has conducted interviews of players and officials to determine their views as to whether such efforts by the TIU would be feasible and worthwhile. The previous director of the TIU, Jeff Rees, told the Panel that he is sceptical of disruption practices, but he was open to using them during his tenure at the TIU. Mr. Rees' view is that *"disruption techniques are not a tactic of choice, but sometimes the only resort available"*[105]. Similarly, under the leadership of Mr. Willerton the TIU has not generally engaged in disruption techniques based on prior communication of suspicious betting patterns[106].

212. The Panel understands that disruption is by its nature inconsistent with the alternative approach of gathering enough evidence of a breach to bring disciplinary proceedings, and then successfully punishing the person in breach. In those circumstances, the person is punished as opposed to let go, securing a valuable deterrent. Furthermore, if there were never disciplinary proceedings, and all that might happen instead were disruptive activity, it is possible that some players might be more likely than otherwise to breach integrity.

213. The Panel also understands that there are valid concerns with using disruption:

213.1 Disruption could prompt players or officials who intend to engage in misconduct or who have already done so to destroy relevant evidence, including mobile phones. This concern is supported by the TIU's experience. The Panel has identified instances where players, after receiving advance notice that the TIU sought to examine their phones, reported to the TIU that those phones had been suspiciously *"broken"* or *"stolen"*[107]. Indeed, the current practice of the TIU is to confront Covered Persons to request mobile phones with no prior notice, consistent with a concern that the phones may be tampered with if the TIU gives advance notice[108].

213.2 Relatedly, disruption could make a corrupt player or official more careful in concealing misconduct in the future, making it more difficult for investigators to uncover such misconduct.

213.3 There is a concern that disruption practices may at times be ineffective, because they may not discourage those who intend to engage in misconduct from actually engaging in this misconduct.

214. And at the same time, from the opposite point of view, approaching an innocent player immediately before a match, such as to confront the player with a suspicious betting pattern that may have arisen for reasons other than some action of the player, might be seen as an unnecessary and unfair distraction. Because tennis is a mental as well as physical game, it is conceivable that disruption of players could negatively affect players' performances.

215. The Panel nevertheless considers that disruption could, in appropriate circumstances, help to promote the integrity of professional tennis at a relatively low cost to the sport.

105 Statement of Jeff Rees (formerly TIU).

106 A regulator from another sport informed the Panel that he believes it could be helpful to disrupt misconduct through notifying participants of suspicious betting patterns or telling participants that they are suspected of having engaged in misconduct. See Statement of Sal Perna (Victoria State Racing Authority). [paragraph 36]

107 Chapter 10, Section C.

108 Chapter 10, Section C.

216. In the Panel's view, the correct comparator is not always that there would instead be successful disciplinary proceedings. Often the comparator is that nothing at all is done. Further, it would remain the case that where disciplinary proceedings might be capable of being brought, the TIU would have the discretion to investigate the player rather than confront him or her, with a view to securing a disciplinary conviction. That deterrent would therefore remain. Disruption would be a tool to be used when appropriate, not as matter of course. As to the propositions that evidence might be destroyed or a player might be persuaded to be more careful in future, or might not be affected, it seems to the Panel that if the TIU considers that these outcomes might occur, then that would be taken into account in deciding what to do in a given case.

217. The Panel is also sceptical that it is unfair to give notice to a player about a suspicious betting pattern on a match before the start of the match. The Panel presently considers that it is to the benefit of players that they should have more, rather than less, information about a situation that may affect them adversely. The player who has done nothing wrong is unlikely to be unduly distracted by the communication of the information. It might also be possible to inform both sides to a match. The Panel also considers that at the level that live scoring data is to continue to be sold, players may have to become accustomed to being given such information as a consequence of their playing at this elevated level.

218. In the present view of the Panel, the potential benefit of disruption is that it may discourage and prevent imminent or future misconduct, in circumstances where there might not be enough to secure a disciplinary conviction. For example, disruption through pre-match notification to players of a suspicious betting pattern for an upcoming match, which alone could not form the basis for disciplinary action, could dissuade players from following through with plans to engage in improper conduct during the match – whether those plans involved fixing an aspect of the match, failing to give best efforts during the match, or playing the match while unfit to play. Likewise, disruption through notification to players of repeated prior betting alerts or of suspicions regarding past misconduct by those players could discourage them from engaging in future misconduct. Disruption practices for officials presents similar potential benefits – discouraging future misconduct.

219. It seems to the Panel that many Covered Persons may slip into low-level breaches of integrity because of temporary money problems, and then continue because it does not appear that anyone in authority is doing anything about it. Similarly, young players may be pressured into breaches of integrity but find it hard to break free from corruptors. It presently seems to the Panel that in each case, an approach by the TIU that made clear that a player was under observation in the light of suspicious betting patterns might lead a significant number of players to change their behaviour.

220. In addition, pre-match notification to officials of a betting alert for an upcoming match, or notification to officials that the TIU has received repeated betting alerts for players in a match, should place the officials on the lookout for suspicious or improper play or behaviour in upcoming matches involving the suspected players. Placing officials on greater alert for player misconduct should facilitate better identification of such misconduct.

221. In the present view of the Panel, the TIU should consider using pre-match disruption for at least the following two scenarios, amongst others that the TIU may deem appropriate:

    221.1 The TIU should consider alerting players in appropriate circumstances of a pre-match betting alert where the evaluation is that the suspicious betting may have been caused by the player intending to tank and that information leaking out without his or her knowledge. In those circumstances, it may be appropriate rather than seeking to bring disciplinary action if there is little evidence, to inform the player so that he or she can adjust his or her behaviour, if he or she did indeed intend to tank. The effect is to bring home to players the seriousness of using best efforts, and to cause any cheating at betting by others to be undermined.

    221.2 The TIU should consider alerting officials in appropriate circumstances of either a pre-match betting alert or that the match involves players who have been the subjects of repeat betting alerts. That should enable the officials to take appropriate action to ensure that best efforts are indeed used.

222. The Panel can, however, see the force of the proposition that the TIU should rarely, however, use pre-match disruption when it has reason to believe that a player or official has engaged in misconduct in the past. In such circumstances, it may well be that the concern over destruction of evidence outweighs any potential deterrence that may come from pre-match notification.

223. The TIU's discretion in utilising disruption is therefore key. Pre-match disruption does not need to be overly intrusive, and the TIU should judiciously avoid unduly disrupting the sport. It could consist simply of oral notice from the TIU representative onsite. Whatever potential effect pre-match disruption would have on a player's mental state before a match, the potential benefit from such disruption practices may outweigh the potential concerns in the appropriate cases.

224. As for disruption by approaching players who have racked up a number of suspicious betting patterns, it again seems to the Panel that whether this should be done depends on all the facts. For example, it may be that a player has a number of suspicious betting patterns against his or her name because someone known to him or her is misusing inside information. It is possible that confrontation, again absent good evidence of breach, might be more effective to bring about the end of the breaches of integrity.

225. Other disruption techniques include (a) replacing a suspected official before or during a match and (b) suspending play in circumstances where pre-match betting alerts or what is happening on the court indicate that the match may have been fixed or inside information may have been provided. Particularly in circumstances where a match has already started, the TIU must weigh the potential reputational harm to those involved in the match against the likelihood that corrupt activity is taking place in determining whether to employ such techniques.

The TIU should consider using integrity testing in certain circumstances

226. When the TIU has information (such as, for example, suspicious betting patterns) that a Covered Person may be engaged in corrupt activity, the TIU should carefully consider employing *"integrity testing,"* an investigatory technique whereby a trained, and where possible undercover, TIU representative would solicit the Covered Person to engage in an integrity offence, such as by fixing a match or providing inside information. To avoid abuses, any such test must be calibrated to the financial condition of the targeted Covered Person.

227. This practice would allow the TIU to test the integrity of a suspected Covered Person in a controlled environment. If the Covered Person rejects the approach and reports it, that would tend to dispel any suspicions about the Covered Person's integrity. The TIU has identified integrity testing as a technique that it would adopt, but the TIU will need to employ this technique cautiously, taking into account the legal environment, as it may conflict with the law in certain jurisdictions. Ideally, this technique should be employed in coordination with law enforcement authorities.

D ENFORCING EXPANDED INTEGRITY RULES AND PUNISHING OFFENDERS

228. The Panel considers that implementation of the recommendations in the prior sections must be coupled with expansions in the rules relating to enforcement, so as to allow for the aggressive pursuit of integrity breaches when they occur and to deter such misconduct in the first place.

229. In this Section, the Panel proposes changes designed to increase deterrence of integrity breaches, to improve the TIU's ability to investigate such breaches when they occur, and to enhance the public's oversight of the TIU's enforcement efforts. The Panel's recommendations are divided into five subsections.

229.1 changes to the prohibitions and obligations for Covered Persons under the TACP;

229.2 improvements and modifications to the TIU's investigative procedures;

229.3 changes to the disciplinary procedure;

229.4 improvements to the transparency of the TIU; and

229.5 improvements to promote greater cooperation with national federations and law enforcement and other concerned parties.

(1) CHANGES TO THE PROHIBITIONS AND OBLIGATIONS UNDER THE TACP

230. The International Governing Bodies are to be commended for the introduction of rules specifically aimed at dealing with the integrity problems faced by tennis. With the International Governing Bodies' individual amendments to their rules before 2009 and the International Governing Bodies' collective adoption of the uniform TACP with effect from 1 January 2009, tennis acted sooner than most other professional sports in addressing betting-related corruption and other breaches of integrity. The International Governing Bodies' adoption of the uniform TACP represented a broad expansion of the sport's integrity rules. Indeed, the International Governing Bodies sought to bring almost all individuals who participate or are involved in creating professional tennis events within the TACP's reach by broadly defining the class of *"Covered Persons."* And since 2009, the International Governing Bodies have amended the TACP to expand the scope of those included within the definition of *"Covered Persons,"* for example by amending the definition of Tournament Support Personnel in 2017 to clearly include Officials.

231. While the scope of parties that nominally fall within the purview of the TACP is broad, the prohibitions and obligations imposed on those parties are in the present view of the Panel inadequate in several respects to deal with the nature and the extent of the problem now faced. In the light of the dramatic increase in gambling on tennis, and the attendant increase in threats from betting-related corruption, the prohibitions and obligations under the TACP should in the view of the Panel be further expanded to address the problems faced by the sport today.

232. The Panel considers that the rules should be redrafted rather than simply amended; that process will necessarily raise further refinements. The Panel does not embark on that drafting exercise here, but it sets out below the principal recommended changes that it considers appropriate. As discussed below, the Panel considers that the TIU should enjoy broad prosecutorial discretion in deciding when and how to invoke the recommended rules in order to safeguard the integrity of tennis.

233. The new TACP should be accompanied by a practical guidance document so that the effect of the rules can be easily understood by those to whom they apply. Examples illustrating the application of the rules, particularly at the margins of prohibited and permitted conduct, would also help to educate Covered Persons about their obligations.

Contriving the result

The TACP should make it completely clear that a Covered Person is prohibited from contriving the result of a match, or any part of it, regardless of whether any benefit is offered or sought or whether it is done for betting or other corrupt purposes

234. In the Panel's view, the prohibition in the TACP against contriving *"the outcome or any other aspect of any event"* has been interpreted too narrowly by the TIU or, if correctly interpreted, is too narrow, to deal with the nature and extent of the problem faced by the sport. As currently interpreted[109], a contrivance offence has been regarded as only provable against a Covered Person if it can be shown that he or she acted in exchange for a promised benefit or for a betting or other corrupt purpose. In other words, the offence has been regarded as requiring proof of a corrupt link between the Covered Person and the bettor or corruptor or proof of some corrupt payment to the Covered Person, or the promise of it. In particular, as the rule is currently interpreted a player can only be charged when the player made a deliberate decision in advance to contrive the result of the match or part of it for betting or other corrupt purposes, but not when the player entered the match intending to tank or lose the match for reasons unrelated to gambling or corruption. The latter situation has not been regarded as falling within the scope of the contrivance offence, although the same decision was made in advance and then executed in the same way. The Panel does not consider that the narrow interpretation is correct, as it is not required by the words of the prohibition themselves. If that narrow interpretation is correct, however, then the prohibition needs to be expanded. Either way, the TACP must make it completely clear that a Covered Person is prohibited from contriving the result of a match, or any part of it, regardless of whether any benefit is offered or sought or whether it is done for betting or other corrupt purposes.

235. Corrupt links are by their nature likely to be hidden and thus hard to detect and prove. This is further complicated by the fact that deliberate underperformance in or *"tanking"* a match, is unfortunately and wrongly widely tolerated as part of the game, as has been consistently identified from the Ings Report onwards[110]. Due to the fact that deliberate underperformance is common, players who contrive matches for corrupt purposes, a serious offence, are able to conceal their misconduct as tolerated deliberate underperformance and so escape punishment.[111] Further, it is a smaller step for a player who is prepared deliberately to underperform for his or her own reasons, to then do so for betting purposes, than it is for a player who is not so prepared. In particular, the temptation for a player already intending to tank to place a bet in that knowledge is great in a context where so few nominally professional players can earn a living or break even. In addition, planned deliberate underperformance creates inside information that can then be used for betting purposes.

236. Moreover, whether or not a benefit, betting or other corrupt link is involved, deliberately contriving the result of a match is inimical to integrity, and it should be made clear that it is always an offence.[112]

237. As a result of this narrow, or narrowly interpreted, anti-contrivance rule, the TIU generally does not pursue investigations into suspected match-fixing unless it has identified direct evidence of a corrupt link between the player and bettor or payments to one or more of the players. The result is that some investigations into contrivance offences never begin and few disciplinary prosecutions have been brought for breach of the anti-contrivance rule, notwithstanding that analytic evidence, including that based on betting patterns and performance on the court, suggests a significant number of matches have likely been contrived, for whatever reason. For example, there are betting patterns that would not realistically arise absent advance knowledge of the result, and there are performances that are in effect unexplainable absent tanking. While neither of these instances demonstrates a corrupt link, they may, separately or together with other evidence, be sufficient to establish contrivance. Without the ability to charge a player simply with contriving the result of a match or part of it absent evidence of a corrupt link, many players have likely escaped sanction and disciplinary proceedings.

109 TACP (2018), Section D.1.d.

110 As it was put in the 2005 Ings Report, such deliberate underperformance both makes it harder to detect corruption and sows the *"seeds of corruption"* by promoting a culture that accepts tanking.

111 Chapter 4, Section B.

112 Chapter 4, Section B.

238. This interpretation needs to be altered or, if it is correct, this loophole needs to be closed. In the Panel's present view, entering a match with the deliberate intent to lose the match or part of it or to retire, even if that decision is unconnected to betting or some other corrupt purposes, constitutes a breach of integrity that in itself harms the sport, enables players to conceal corrupt misconduct, is a step on the way to corruption, and creates inside information for use by bettors. The anti-contrivance rules should prohibit playing in a match where a pre-match decision was made, even for reasons unconnected to betting or other corrupt purposes, to lose a match or part of it or to retire.

239. Providing or making clear that the TACP's anti-contrivance rule prohibits contriving matches for reasons unrelated to financial reward should encourage the TIU to pursue, and allow it to prove, contrivance offences based on circumstantial evidence of a corrupt link. If the corrupt link cannot be proved, there will still be a lesser offence based on contrivance alone, and indeed they can be charged in the alternative as addressed below. Significantly, betting alerts can provide important evidence that helps to identify contrivance offences. If a betting analysis suggests that the bettor was more likely than not certain that his bet would be successful, that analysis could support a finding that the betting was made with knowledge that the player intended to contrive the result or was due to inside information that a player was certain to underperform. Other evidence could suggest the existence of a prior decision to contrive the result of a match or part of it, including uncharacteristic and unexplained match play. In addition, while evidence of suspicious betting alone is not sufficient to prove a breach of the TACP, there are some combinations of suspicious betting patterns and on-court behaviour that are highly suggestive of a prior decision to contrive part of a match for betting purposes. That is particularly so in the context of suspected efforts to fix particular aspects of a match for purposes of a spot bet – for example, when a player uncharacteristically serves four double faults to the benefit of a bettor who bet that the player would lose a set. Evidence of uncharacteristic on-court behaviour coupled with betting data suggesting the on-court play was contrived may provide a basis for concluding that the TACP anti-contrivance rule has been violated[113].

240. Extension or clarification of the TACP's anti-contrivance rule to make clear that it prohibits contriving matches for reasons unrelated to financial reward should also deter players from engaging in what some incorrectly regard as *"benign"* underperformance and deter a culture that accepts tanking, which then in itself facilitating betting and match-fixing. If a player believes that benign underperformance may lead to a potential investigation and enforcement action by the TIU, the player is less likely to engage in such misconduct.

241. Support for this change can be found in the anti-contrivance rules adopted by other sports. In the recent case of Lamptey v. FIFA, a CAS arbitral tribunal considered whether a referee accused of match-fixing had violated Article 69(1) of the FIFA Disciplinary Code, which punishes *"anyone who conspires to influence the result of a match in a manner contrary to sporting ethics"*. Among other things, the referee argued that a violation had not been proved because there was no evidence that he had conspired with others; that is, he argued that there was no evidence of a corrupt link. The arbitral tribunal, however, concluded that it was *"not necessary to find that the Referee had plotted together with other people"*. Although Article 69(1) uses the word *"conspires"*, the arbitral panel reasoned that an interpretation of this rule that covered all attempts to contrive matches – whether involving more than one person or not – was more consistent with *"the purpose sought by the rule"*, the *"overall policy objectives sought by FIFA"*, and the *"interests protected"* by the rule[114]. Similarly, the PGA Tour's new Integrity Program Manual, which became effective for professional golf as of January 1, 2018, prohibits "Any Covered Person, directly or indirectly, contriving the outcome or any other aspect of any Professional Golf Event," apparently without any need to demonstrate financial reward or other consideration.[115]

113 CAS 2016/A/4650 (Klubi Sportiv Skenderbeu v. UEFA), (finding that football club was *"at the very least indirectly involved in match fixing activities"* as demonstrated by the suspicious betting patterns, the performance of some of the players on the team, and the removal of the live market bets on the game by an important Asian bookmaker).

114 CAS 2017/A/5173 (Joseph Odartei Lamptey v. FIFA).

115 Paragraph 2(a)(iv), PGA Tour Integrity Program Manual, (Effective January 1, 2018).

242. The Panel recognises that there is a distinction between (a) a player giving less effort during a match due to legitimate tactics or injury, which is legitimately part of the game, or a player ceasing to use best efforts during a match for whatever reason, which should be dealt with through an on-court violation and, if appropriate, discipline under the International Governing Bodies' Codes of Conduct, and (b) a player deciding in advance to lose a match or part of it or to retire for his or her own reasons, which should be prohibited by the revised anti-contrivance rule. In the Panel's view, however, any difficulties in discerning the difference between these two classes of conduct do not warrant failing to impose a robust rule and seeking to enforce it when appropriate. With this clarification of or expansion in the rules, however, it will be important to clearly explain, in the TACP, when conduct crosses the line from permissible to impermissible conduct. To be clear, under the revised rule, while strategic decisions to conserve energy at a particular moment with the ultimate purposes of winning a match would not fall within the prohibition, entering a match with the intent to lose it – even when the player makes that decision for his or her own reasons unconnected with benefit or betting or other corrupt purpose – should fall within the prohibition.

243. Further, the Panel recognises that there is a significant difference in culpability between someone who contrives the results of a match for financial gain or gambling purposes and someone who contrives the results of a match for his or her own reasons, unrelated to corruption or gambling. Accordingly, the TACP should include two offences: an aggravated offence for contriving the results of a match for financial gain or gambling purposes; and a lesser offence, subject to a lesser sanction, for circumstances where the proof of contrivance does not establish a financial or betting-related purpose. The key element of proof distinguishing the aggravated offence from the lesser offence should be proof that indicates the results of the match were contrived for betting or other corrupt purposes. Such proof includes evidence of a corrupt link or some corrupt benefit to the Covered Person related to the contrivance of the result or part of a match.

244. The same difference in culpability distinguishes someone who offers to fix a match for betting or other corrupt purposes, or solicits another to fix a match or influence a player's best efforts for betting or other corrupt purposes, versus someone who does the same but for personal reasons. There should be an aggravated offence where it is established that a benefit was offered or sought or that the actions were for betting or other corrupt purposes, as well as a lesser offence only requiring proof of the offer or solicitation to influence the player's best efforts.

245. At the same time, the TIU should have wide prosecutorial discretion and the ability to seek less severe sanctions, as discussed below, for instances when a player has contrived a match for purposes unrelated to betting or other corruption. The aggravated offence of contriving a match for betting or other corrupt purposes should continue to be severely sanctioned by a multi-year or lifetime ban and a significant disciplinary fine, whereas the lesser offence should result in more minor sanctions. For either the aggravated or lesser anti-contrivance offence, a player who is found to have contrived the results of a match, for corrupt purposes or not, should be subject to a restitutionary order that requires the player to return prize money or appearance fees. Moreover, the TIU should be permitted, in proper circumstances, to charge the two offences in the alternative.

246. Finally, while it is difficult to see how a non-player could contrive the results of a match, Covered Persons can solicit, induce, or facilitate a player to contrive the result or part of a match. Accordingly, the expansion of the anti-contrivance rule should also prohibit Covered Persons from directly or indirectly offering or soliciting any consideration or benefit to influence or actually negatively influence a player's best efforts, for betting or corrupt purposes or otherwise.

Playing while incapable of competing

The TACP should prohibit a player from entering a match when he or she knows or should reasonably have known that he or she is so injured as to be physically incapable of competing in that match

247. Entering a match while incapable of competing due to physical injury is a specific circumstance in which a player has entered a match with the pre-match intention to lose. Such conduct naturally raises integrity concerns. Players can use claimed injuries to attempt to conceal other integrity offences; when confronted with suspicious betting alerts suggesting a match was contrived, for instance, players can respond that their poor play was due to a pre-existing injury and that the suspicious betting could have resulted from a bettor obtaining information about the injury that was not factored into the betting odds. In addition, a player who plays knowing that he or she is too injured to compete may be tempted to bet in that knowledge. In any event, players playing when too injured to compete creates inside information that can be discovered and used for betting.

248. Recent experience has shown that players with such injuries often take advantage of their right to enter Grand Slam matches, particularly first-round matches, with the knowledge that they will have to, and therefore with the intent to, retire during the course of the match[116]. They do this, rather than withdraw in advance, so that they can collect the loser's prize money. For some players, the prize money for losing these first-round matches constitutes a significant part of their earnings during the year. In many cases, it seems relatively clear from the on-court performance that the player took the court with such a pre-match intent to retire during the match. Such behaviour is not currently addressed by the TACP, but is instead governed by the Codes of Conduct of the International Governing Bodies. Also, as discussed above, it can in part be addressed by a different approach to the distribution of first round prize money where a player has such an injury and properly withdraws in advance due to an injury. In the Panel's present view, however, this is insufficient.

249. Evidence also suggests that players enter matches, often at the lower levels, while too unfit to compete because they feel they must enter the match to avoid a withdrawal penalty[117]. For example, at the ITF level, once a player's three chances in a calendar year to withdraw late from a match without penalty are exhausted, the only basis on which a player can withdraw late without penalty is if the player travels to the event and is determined by the event doctor to be unfit to compete. The cost of travelling to the event is often less than the withdrawal penalty, so injured players may travel to the event, but once they have incurred the costs of travel, they attempt to recover those costs by playing rather than asking the doctor to determine them unfit. While this issue is also addressed in Section A with a recommendation that injured players have the option of being examined by a local doctor, rather than having to travel to the tournament site to visit the event's doctor, a prohibition against playing while too unfit would also help to deter this conduct.

250. Although entering a match while too unfit to compete could be covered in some circumstances under the anti-contrivance rule, it seems to the Panel that the distinction in the circumstances and the regularity with which this misconduct occurs warrants a separate offence to prohibit such misconduct clearly and unequivocally.

251. The Panel recognises that it may often be difficult to determine if a player entered a match while too unfit to compete or rather if the player was injured during the course of play or exacerbated an existing but minor injury. It may also be difficult to decide when a player is too unfit to compete because a player's performance in a match depends in part on the form and health of a player's opponent. Also, it may be difficult to decide when a player should have had the requisite actual or constructive knowledge that he or she was too unfit to compete. But as with the anti-contrivance rule, these difficulties should not discourage the creation of a rule that would allow for appropriate punishment of the misconduct as an integrity offence and deter players from engaging in such misconduct.

252. The TIU should have broad discretion to pursue disciplinary sanctions for playing while too unfit to compete. And such misconduct, absent any aggravating factors, should normally be subject to more minor sanctions and possibly restitution alone.

116 Chapter 4, Section A.

117 Chapter 4, Section A.

253. Moreover, in concert with this recommendation the Panel is also recommending other initiatives that should help decrease the incentive for players to play while too unfit to compete, including a financial compensation for players who withdraw from the first round of tournaments and the ability to withdraw from a tournament after obtaining a certificate from a local doctor, not the tournament's doctor, that the player is unfit to compete.

Disclosure of inside information

The TACP should prohibit a Covered Person from providing inside information to any person when the Covered Person knew or should reasonably have known that the information might be used for betting purposes, and it appears to have been so used, regardless of whether the Covered Person provided it for that purpose or obtained or sought any benefit in return for the inside information

254. The TACP's current rules[118] against disclosure of inside information, which prohibit only the provision of inside information in return for money or other benefit, are in the present view of the Panel both too complex and too narrow to deal with the nature and extent of the problem faced by the sport.

255. First, the definition of inside information is overly complex. "Inside information" is currently defined as *"information about the likely participation or likely performance of a player in an Event or concerning the weather, court conditions, status, outcome or any other aspect of an Event which is known by a Covered Person and is not information in the public domain"*, which is then separately defined. In the Panel's view, this term can and should be simplified. "Inside information" should be defined as information in relation to a player or event, whether of fact or opinion, that is not published or a matter of public record.

256. Second, for reasons similar to the reasons requiring clarification or expansion of the anti-contrivance rule, the rule prohibiting the provision of inside information should be revised to make providing inside information for betting or other corrupt purposes an offence irrespective of whether a reward was received, offered or sought for the inside information. As with the contrivance offence, it is often difficult to prove the existence of a corrupt link between the obtaining of inside information, the betting on that information and the passing of reward. As a result, those providing inside information may escape punishment. Further, betting based on inside information harms the integrity of tennis even when it is not possible to prove a corrupt inducement and even when such an inducement was not involved. In either instance, the same information that ought not to be available is used to cheat at betting. Expanding the prohibition against disclosing inside information should facilitate increased investigation and enforcement by the TIU against individuals who provide inside information for betting purposes and deter improper disclosure of inside information. It should also help to prevent players and others from failing to take sufficient care not to allow inside information casually to be obtained, which is then used for betting purposes.

257. Nonetheless, recognising that inside information must flow freely between the player and those within his inner circle and support staff, the Panel presently considers that a distinct limitation must be added to the recommended expansion of the rule: the recommended prohibition should not prohibit or deter the reasonable disclosure of information to coaches, physicians, doubles partners, and other trusted persons within the player's inner circle or support staff. In the ordinary course, there should be no reason for a Covered Person to suspect that such individuals would breach their own obligations under the TACP to exploit inside information for betting purposes. Players frequently, and appropriately, have conversations with their coaches or doctors or members of their family and other Related Persons about their fitness or form. As a result, there should not be an unqualified blanket prohibition on seeking or providing inside information. To aid in understanding the rule, as with the other rules, the TACP should provide examples and guidance on the application of this rule.

118 TACP (2018), Section D.1.h.

258. Accordingly, in addition to prohibiting any Covered Person from using, providing, seeking, or obtaining inside information for betting purposes, the TACP should also prohibit the provision of inside information by a Covered Person who knew or should reasonably have known that it might be used for betting purposes, and it appears to have been so used, regardless of whether the Covered Person provided it for that purpose or obtained or sought any benefit in return for the inside information.

259. Again, as with the anti-contrivance rule, the culpability of a Covered Person for improperly disclosing inside information is a matter of degree – those disclosing inside information for financial gain or betting purposes are more culpable, and should be subject to a commensurately greater sanction, than those who inappropriately supply inside information for no financial gain. And individuals who recklessly provide such inside information for no financial gain where they ought reasonably to have known that the information might be used for betting or other corrupt purposes are less culpable than individuals who intentionally provide such inside information for no financial gain knowing that the inside information might be used for betting or other corrupt purposes. On the other hand, a purely inadvertent leak of inside information in circumstances where the Covered Person exercises reasonable care to prevent the leak should be dealt with through increased security and accreditation measures at events, as discussed above, not generally through this rule.

260. The disciplinary sanction sought, and even whether it is appropriate, should depend on the degree of the offence. Accordingly, the TIU should have broad prosecutorial discretion, and these offences may, absent evidence of a corrupt link, be more appropriately addressed through a minimal sanction or restitution or through an alternative summary procedure.

261. Finally, while already covered by the prohibition against betting on tennis, the TACP should clearly state that use of inside information by a Covered Person to bet on tennis is an offence of the highest level and should, if proven, be subject to the highest sanctions. This type of offence is of a different order of offences than just betting on tennis without inside information.

Improper accreditation

The TACP should prohibit a Covered Person from providing an accreditation when the Covered Person knew or should reasonably have known that it might be used to facilitate betting or an integrity offence, and it appears to have been so used, regardless of whether the Covered Person provided it for that purpose or obtained or sought any benefit in return for the accreditation, and should prohibit the sale of accreditation in any circumstances

262. The prohibition in the TACP on the inappropriate provision of accreditation is likewise in the present view of the Panel too narrowly defined to deal with the nature and extent of the problem faced by the sport. Under the current rule[119], the prohibition only applies to a Covered Person who solicits or accepts money, a benefit, or some other consideration for the provision of accreditation in order to facilitate a breach of integrity or that, in fact, led to a breach of integrity. It does not expressly prohibit providing an accreditation for the purpose of facilitating an integrity offence if no benefit was solicited or accepted. Nor does it prohibit a Covered Person from offering a benefit for an accreditation to facilitate betting or an integrity offence.

263. These deficiencies should in the present view of the Panel be corrected:

263.1 First, the TACP should prohibit the provision of accreditation in order to facilitate a breach of integrity or that led to a breach of integrity irrespective of whether money, a benefit, or some other consideration is solicited or accepted. As with the contrivance and inside information offences, because such evidence is typically concealed, a corrupt reward in exchange for an accreditation will be difficult to establish, while its absence does not mean that a harm to the integrity of tennis did not flow from the inappropriate provision of accreditation. That means that wrongdoers may escape sanction. The provision of accreditation in these circumstances is equally damaging whether or not a reward is involved.

119 TACP (2018), Section D.1.c.

263.2 Second, the TACP should prohibit Covered Persons from offering or providing a corrupt reward to obtain an accreditation, not just soliciting or accepting a reward to provide an accreditation.

264. As with the other offences addressed above, this offence contains within it varying degrees of culpability. A Covered Person who offers, provides, solicits, or accepts money, a benefit, or other consideration for an accreditation for the purpose of committing an integrity offence should be subject to a greater penalty than a Covered Person who provides an accreditation to someone, without receiving any benefit in return, but when he or she knew or should reasonably have known that the person receiving the accreditation might take advantage of the accreditation to commit any offence under the TACP, and the person receiving the accreditation did in fact commit an offence under the TACP that was facilitated by the accreditation.

265. In addition, there is also, in the Panel's view, no legitimate reason why a Covered Person should ever be permitted to sell an accreditation, whatever the provable purpose or outcome. Accordingly, the TACP should also prohibit a Covered Person from offering or providing, or soliciting or accepting, money, a benefit, or other consideration for the purpose of providing an accreditation to someone. In the Panel's present view, the sanction for the deliberate sale of an accreditation should be a more significant one than the sanction for someone who recklessly provides an accreditation that is then used for betting purposes.

266. Furthermore, the TACP should in the Panel's view prohibit Players from making misrepresentations to seek or obtain registration or accreditation on behalf of any person that allows access to areas such person would not otherwise be permitted to access. For example, it should be an offence to seek accreditation for an individual to a players' only area, such as by falsely certifying that an individual was the player's coach.

Other prohibitions

The TACP should prohibit:

- **delaying or manipulating entry of scoring data to facilitate betting or any integrity offence, as well as offers or requests to engage in such misconduct;**
- **selling, purchasing, or offering to sell or purchase wildcards and other competitive benefits; and**
- **selling, purchasing, or offering live data obtained through courtsiding, scraping or scouting**

267. In the present view of the Panel, there are a number of other aspects of the TACP that are insufficient to deal with the nature and extent of the problem faced by the sport: the TACP currently lacks clear rules prohibiting tournament officials from delaying or manipulating the entry of live electronic scoring, prohibiting Tournament Support Personnel from selling wildcards and other competitive benefits and prohibiting the acquisition of live data in other ways.

268. First, the TACP currently contains no clear prohibition against delaying or manipulating the electronic entry of scores by officials. While the International Governing Bodies have taken some steps to address this issue, in the present view of the Panel these steps have proved inadequate. In 2015 and 2016, the Code of Conduct of Officials was amended to prohibit delaying entry of or manipulating the electronic entry of the score by officials. And as of January 1, 2017, the TACP was amended to add *"Officials"* to the class of persons that were included in the definition of *"Tournament Support Personnel"* and thus *"Covered Persons."* Nonetheless, it is not clear which current offence under the TACP affirmatively prohibits delaying or manipulating the electronic entry of scores – which arguably involves facilitating betting by another, contriving an aspect of an event, providing inside information, and providing payment to Tournament Support Personnel in exchange for a benefit, all of which are prohibited by the TACP. Given this ambiguity, the TACP should in the present view of the Panel be amended to include a specific prohibition against delaying or manipulating electronic entry of scores to facilitate gambling or an integrity offence. While this prohibition should not cover inadvertent delay or mistaken entry, it also should not require proof that such misconduct was in exchange for a benefit to the official that delayed or manipulated the electronic entry of the score.

269. As a corollary, the TACP should also provide for an express prohibition on offers and requests to delay or manipulate live score entry. To prove this offence, it should not need to be shown that the Official or Tournament Support Personnel sought, obtained, offered, or provided any reward in return for the offer or request to delay or manipulate the entry of a score, or that the reported score was actually delayed or manipulated, but rather only that an offer or request was made to delay or manipulate the entry of a live score.

270. Second, while the TACP generally prohibits Covered Persons from offering or providing a reward to any Tournament Support Personnel in exchange for any benefit, it does not expressly prohibit Tournament Support Personnel from selling or buying, or soliciting or offering to sell or buy, wildcards or other benefits. Since 2009, there have been several instances in which wildcards have been sold. While such misconduct is currently prohibited in the ATP, WTA, and ITF

Codes of Conduct, the TACP should in the view of the Panel be amended similarly to prohibit selling or purchasing wildcards or other competitive benefits. The TACP should also provide explanations and examples to clarify what types of benefits might be covered by the rule and to clarify that the rule specifically prohibits selling or buying wildcards.

271. The simple provision of a wildcard or some other benefit itself should not be prohibited; such conduct is not harmful to tennis. The prohibition, however, should prevent the corrupt acquisition of wildcards or other benefits, to the disadvantage of other players. Accordingly, the prohibition should not prohibit simply asking for a wildcard, a particular location in the draw, a particular playing date or time, or a practice court. But the prohibition should prohibit offering money, a benefit, or other consideration for these benefits, even if no money, benefit, or other consideration is in fact provided.

272. Moreover, the rule should clearly prohibit not just the actions of the requestor but also the actions of the person that is providing the wildcard or some other benefit.

273. Third, the TACP presently lacks clear rules prohibiting Covered Persons from selling, purchasing, or offering live data obtained through courtsiding, scraping, or scouting. That gap should be filled. While it is recognised that these activities are perhaps more likely undertaken by people who are not Covered Persons, it seems to the Panel that it should nevertheless be made clear that Covered Persons are prohibited from engaging in such activities.

Reporting obligations

The TACP should impose:

- **an obligation to report any knowledge or suspicion that a Covered Person may have breached, attempted to breach, or been approached about breaching the TACP;**
- **an obligation to report any knowledge or suspicion that a Covered Person is about to breach or attempt to breach the TACP; and**
- **a prohibition against any efforts to dissuade or prevent any person from reporting to the TIU**

274. The current reporting obligations are in the present view of the Panel unduly complicated and too narrow to deal with the nature and extent of the problem faced by the sport[120]. The current obligation on players requires reporting of: (a) any encounter that they reasonably believe was an attempt to influence the outcome of a match or to solicit from them inside information in exchange for a reward; (b) knowledge or suspicion that a TACP offence has been committed; (c) knowledge or suspicion that a Covered Person has been asked to influence the outcome of a match or to provide inside information in exchange for a reward; and (d) any new knowledge or suspicion in relation to a matter already reported. Covered Persons also have the first two obligations. A failure to fulfil any of the reporting obligations is an offence under the TACP.

275. However, the evidence suggests that there is widespread failure to report. There are several reasons for such failures[121]:

275.1 Player interviews suggest an attitude among some players that reporting is not important, appropriate, or desirable. Player interviews indicate that some players believe that it is not for a player to speculate whether what he or she has heard is true and so worthy of reporting; that it is not for a player to report an approach made to another player, which that other player should do; that honour precludes players reporting one another and that those who report will be ostracised in the locker room; and that some offences, such as a player betting on tennis, are not serious or should not even be prohibited.

120 TACP (2018), Section D2.a, b, c.

121 Chapter 13, Section C.

275.2 Player interviews also suggest that players are reluctant to report information to the TIU because of concerns about the reporting process and concerns about what the TIU will do when it receives the report. Some players believe that the reporting process is too complex and time consuming; that the TIU will treat the reporter as if he or she has done something wrong; that the TIU will not keep the report confidential; or that the TIU does nothing with reports and so there is no point in reporting.

275.3 Moreover, some players fear that they will, by reporting, incriminate themselves if they have delayed reporting. Finally, some players fear reprisals or violence against them or their family.

276. To alleviate these player concerns, the Panel is also making recommendations to improve education about players' reporting requirements and to create protocols to standardise the reporting process. The Panel considers that in addition to those recommendations, a Covered Person's reporting obligations should be clarified and expanded.

277. It seems to the Panel that the current reporting obligations leave room for interpretation, which may lead a Covered Person to conclude that he or she has no obligation to report. In particular, it is currently unclear whether there is an obligation to report when there is no reward expressly offered by the potential corruptor, but the reward is implied. Also, it is currently unclear whether a player must report a solicitation of inside information from a long-term sponsor of the player without any mention of a specific future reward, but where a future reward is expected in light of previous assistance. Further, the requirement that the person reporting should have knowledge or suspicion that an offence *"has been committed"* does not clearly cover situations where there is a belief that an offence may have been committed or might be committed.

278. These and other ambiguities should, in the Panel's view, be clarified. For example, even if an approach to a Covered Person to fix a match does not unequivocally specify a reward, the approach should be reported. Similarly, if the quid pro quo for inside information is past or future assistance, the approach requesting inside information should be reported. In both instances, the vice is in the approach, not whether a reward is offered. And in both instances, the intelligence would assist the TIU's investigations. In the same vein, intelligence that falls short of knowledge or suspicion that an offence has been committed, and only goes so far as to cover knowledge or suspicion that it may have been, or may be about to be, committed, or attempted, is of use to the TIU. Even information in the form of more general intelligence and rumours about the actions of other persons is of use to the TIU. Comprehensive reporting of such intelligence allows the TIU to form a complete and pursue targeted investigations.

279. The primary reason for the reporting obligation is to ensure the TIU is able to secure information and investigate misconduct efficiently. Accordingly, the reporting obligations imposed on Covered Persons should be driven by the information that it of value to the TIU. The reporting obligation should not be limited to instances in which the approach involves a reward or where the level of knowledge or suspicion is that an individual has committed an offence. The reporting obligation should be expanded to require reporting even if there is no reward element and to require reporting when there is knowledge or suspicion that an individual may have committed an offence.

280. In the Panel's view, a comprehensive reporting obligation should require all Covered Persons to report to the TIU without delay, on a continuing basis, as and when they have new information:

280.1 Any approach made by any person directly or indirectly to the Covered Person asking the Covered Person to contrive or influence the result of a match or part of it, or not to use best efforts, or to provide inside information.

280.2 Any knowledge or suspicion that the Covered Person has that such an approach has, or may have, been made to any Covered Person.

280.3 Any knowledge or suspicion that the Covered Person has that any Covered Person has committed or attempted to commit, may have committed or attempted to commit, or is about to commit or attempt to commit, any offence under the rules.

280.4 Any knowledge or suspicion that the Covered Person has that any Covered Person has failed, may have failed, or may be about to fail, to use best efforts.

280.5 Any knowledge or suspicion that the Covered Person has of any actions, or rumours of any actions, by any other person that may form part of, or may be preparatory to, the solicitation or facilitation of any offence under the rules.

281. Moreover, the TACP should also prohibit Covered Persons from preventing or impeding others from complying with their reporting obligations. And the rules should state that reporting will be kept confidential. Also, the rules should state that the TIU has an anonymous reporting system for those that want to report anonymously, but that anonymous reporting will not satisfy one's obligation to report under the rules.

282. As with the other rules described above, there are degrees of culpability for a failure to fulfil reporting obligations – a Covered Person who fails to report an approach to the Covered Person by a potential corruptor who offers money in exchange for contriving an aspect of a match is clearly more culpable than a Covered Person who fails to report a rumour that a particular person is generally interested in obtaining inside information from players. While in the Panel's view it should be an offence under the TACP to fail to report knowledge or suspicion that falls into any of the five categories above, the difference in quality of the information and the particular circumstances should inform the TIU's disciplinary prosecutorial discretion and the potential sanctions applied.

283. At the same time, as discussed below, a corollary to the reporting obligations should be that Covered Persons receive credit for complying. And the rules should make clear that late voluntary reporting is better than no reporting at all. However, even the credit that a Covered Person receives for reporting should depend on the circumstances. For example, reporting late because the Covered Person fears he or she may be under investigation should not be a basis for escaping liability for late reporting. The TACP should include guidance on these circumstances and clarify that the TIU's prosecutorial discretion will be exercised sensibly and proportionately, taking into account all the circumstances.

284. Finally, the TACP should continue to contain a safe harbour[122] for Covered Persons who delay reporting an offence as a result of a fear that reporting will result in reprisals or violence against them or their family, as long as the Covered Person reported the information promptly to the TIU. The rules should make clear that reports of such information will be kept confidential, that the Covered Person's fear of reprisal will be taken into account, and that the TIU will exercise its disciplinary prosecutorial discretion sensibly and proportionately, taking into account all the circumstances.

Cooperation, assistance, and preservation obligations

The TACP should:

- **permit the TIU to request an immediate on-site initial interview, and the immediate production of communication devices from any Covered Person;**
- **allow the fact that a Covered Person declined an immediate interview to be referenced in further proceedings, and require the Covered Person to answer questions fully and honestly at a later interview;**
- **require a Covered Person to provide his or her communication device, or if practicable an image of it, immediately upon TIU request, provided that the TIU should not be permitted to examine its contents absent the Covered Person's later consent or an order from a hearing officer; and**
- **require all Covered Persons to preserve relevant evidence**

285. The current provisions requiring cooperation and assistance are insufficiently broad. Moreover, the provisions granting the TIU the right to demand an interview and information from Covered Persons involve an inappropriate degree of uncertainty and delay. Combined, these limitations impair the TIU's ability to investigate TACP offences.

122 TACP (2018), Section E.4.

Expansion in Covered Persons' duties to cooperate

286. Covered Persons' current cooperation obligations are, in the present view of the Panel, insufficiently robust and clear to deal with the nature and extent of the problem faced by the sport.

287. First, under the TACP, Covered Persons have a general obligation to fully cooperate with TIU investigations and a general prohibition not to tamper with or destroy any evidence or information related to any corruption offence[123]. However:

287.1 The only example of the general obligation to cooperate is the giving of evidence at a hearing.

287.2 There is no obligation to preserve evidence or information, only an obligation that a Covered Person must not tamper with or destroy it.

287.3 The cooperation obligation does not clearly state that it applies not just to Covered Persons who are under investigation for TACP offences but also to Covered Persons who are not under investigation but who can assist the investigation.

288. Second, the current cooperation obligations require Covered Persons to assist in the TIU's investigations by attending "*an initial interview and follow-up interviews*" with the TIU[124]. However, under the current rules:

288.1 While the TIU can determine the date and the time of the initial interview and follow-up interviews, reasonable allowance must be made for the interviewee's tournament and travel schedules in arranging the dates for these interviews, the interviewee has the right to have an interpreter and counsel attend, and the interview must be recorded. As a result, the TIU is effectively unable to require the player to attend an immediate, preliminary interview at the event at which integrity concerns arose, because the TIU must accommodate the player's right to an interpreter or counsel. While such interviews may on occasion happen, they cannot be required.

288.2 The requirements mean that there is often substantial delay in arranging interviews. Arranged interviews often do not take place sufficiently quickly after a match, and indeed may not take place for several months while the arrangements are put in place. And a result, players who have breached integrity and may do so again are continuing to play for some considerable period.

288.3 Interviewees do not have an express obligation to answer questions honestly and truthfully or even to answer them at all.

288.4 There is no specification that a failure to attend an interview amounts to a disciplinary offence. It would appear, although it is not specified, that such failure could in appropriate circumstances lead to a disciplinary charge of failure to cooperate.

289. Third, the current cooperation obligations, as recently amended, require Covered Persons to assist in the TIU's investigations by providing, in response to TIU requests, *"any object or information regarding the alleged Corruption Offense" – "including, without limitation"*, "*personal devices,"* such as mobile telephones, access to social media accounts, hard copy or electronic records, and a *"written statement"*[125]. However:

289.1 The obligation to provide information only comes into operation *"if the TIU believes that a Covered Person may have committed a Corruption Offence"* and on that basis, makes a *"Demand to any Covered Person"* for the object or information.

123 TACP (2018), Section F.2.b.

124 TACP (2018), Section F.2.a.

125 TACP (2018), Section F.2.c.

289.2 As a result, the TIU first has to reach the requisite belief before making the demand. Until recent amendments adopted during the course of this Review, after a written demand was made, the Covered Person had seven business days to comply with the written demand. This resulted in some delay before information, and in particular devices such as computers and mobile phones, had to be handed over to the TIU. That delay allowed steps to be taken by a Covered Person to clean or dispose of such devices, or otherwise to dispose of or doctor evidence. The recent amendments to the TACP no longer appear to require that the TIU's information demand be in writing[126], and they no longer allow the delay in compliance, now providing that Covered Persons *"shall furnish such information [demanded by the TIU] immediately, where practical to do so, or within such other time as may be set by the TIU"*[127].

289.3 There is contractual agreement by all Covered Persons to waive any supposed entitlement to withhold any information, and therefore provision of storage devices, under the law of any jurisdiction.

289.4 An AHO may rule that a player is *"ineligible to compete"* or that any other person should be denied credentials "pending compliance with" a written demand for information by the TIU if the person fails to provide the requested information. This ineligibility ruling is in addition to the general ability of an AHO to provisionally suspend a Covered Person, on application of a PTIO.

290. Overall, the cooperation obligations should, in the present view of the Panel, require that each Covered Person, whether he or she is presently or potentially the subject of investigation or a witness related to a TACP offence:

290.1 Not in any way directly or indirectly hinder, or to seek to dissuade, any other person from reporting any approach or any knowledge or suspicion that that person is required to report under the rules.

290.2 Preserve any evidence or information, or any device on which it is stored, in relation to any present or potential investigation or in relation to any possible offence by anyone under the rules.

290.3 Not in any way directly or indirectly alter, conceal, tamper with or destroy any evidence or information or any device on which it is stored, in relation to any present or potential investigation or in relation to any possible offence under the rules, or cause or seek to persuade anyone else to do so.

290.4 Cooperate fully with any investigation undertaken by the TIU.

290.5 Not in any way directly or indirectly hinder, or seek to dissuade, any other person from cooperating fully with any investigation undertaken by the TIU.

290.6 Make himself or herself available for an interview in accordance with the procedure for interviews set out below, and if required under that procedure to answer or if he or she chooses to answer, any questions put by the TIU in relation to any investigation or in relation to any possible offence under the rules, answer them fully and honestly.

290.7 Provide to the TIU any evidence or information, or any device on which it is stored, in relation to any investigation or in relation to any possible offence under the rules, requested by the TIU.

290.8 Provide a written statement setting out fully and honestly his or her evidence in relation to matters identified by the TIU in relation to any investigation or in relation to any possible offence under the rules.

290.9 Give evidence at any hearing under the rules if requested to do so.

126 TACP (2018), Section B.8.

127 TACP (2018), Section F.2.c.

290.10 Preserve relevant evidence to a potential TACP offence once the Covered Person becomes aware that the TIU is investigating that offence.

291. A breach of any of these obligations should constitute an offence. But as with the other rules described above, the culpability of a Covered Person who fails to cooperate will be, depending on the particular circumstances in each case, a matter of degree. The difference in the particular circumstances should inform the TIU's disciplinary prosecutorial discretion and the potential sanctions.

292. Moreover, a breach of any of these obligations should, in the Panel's view, permit a hearing officer to draw an adverse inference based on the fact that a Covered Person refused to cooperate with TIU's requests for information or interviews:

292.1 Generally, a Covered Person who has committed a serious breach of the TACP may prefer not to cooperate with TIU requests at all, in the hope that the TIU will not be able to obtain sufficient evidence, and so will not be able to charge him or her with the more serious breach. Such a Covered Person may reason that if he or she is charged with a failure to comply with the one of the obligations to preserve evidence and to cooperate and assist, that is a less serious offence and so the likely sanction will be less than it would have been for the more serious offence. As a result, sanctions for failures to comply with the obligations to preserve evidence and to cooperate and assist should be sufficient to deter such behaviour.

292.2 To deter such behaviour, the TIU should also be able to request that the hearing officer draw an adverse inference from the Covered Person's failure to comply with his or her relevant obligation to preserve evidence and to cooperate and assist. The extent of that inference should depend, however, on the strength of the existing case supporting the more serious offence, and the nature and circumstances of the failure to comply.

292.3 At the same time, the severity of the suspected offence should be considered when determining the appropriate sanction. In the Panel's view, a failure to comply with the cooperation and assistance obligations should not always carry a severe sentence, for example if the failure to cooperate concerns a TIU inquiry about a minor offence.

Expansion in the TIU's investigative powers

293. In the Panel's present view, the TIU's authority to demand interviews and production of information should be broadened.

294. First, the TACP should, in the Panel's view, expressly permit the TIU to require a Covered Person immediately to attend an on-site, recorded interview, conducted by the TIU, a member of the Tournament Support Personnel, or some other delegate of the TIU, at any event at which he or she is present and in respect of which the TIU believes that a TACP offence may have been committed. In the Panel's view, on balance, if the Covered Person is present at the event, the potential benefits of immediate interviews outweigh the countervailing need to protect the interests of the Covered Person, including by ensuring that he or she is able to consult legal counsel before the interview. Because a Covered Person will not have available to him or her an interpreter or counsel at an on-site interview, then he or she cannot be forced to answer questions. Accordingly, at an immediate on-site interview, the Covered Person would not be required to answer the questions put to him or her. But if the Covered Person does answer questions, then he or she must do so fully and honestly and what he or she says should be reported and may be used in evidence. And if the Covered Person declines to answer any questions, that fact may be used in evidence and a hearing officer may draw an adverse inference may be drawn from it based on the circumstances. Such an adverse inference may be appropriate where an individual speaks the local language where the tournament is held but refuses to answer questions from an interviewer in that language. On the other hand, such an adverse inference may be inappropriate when a there is no interviewer who speaks the player's native language or other language with which the player has sufficient fluency. A transcript of the interview should be provided to the Covered Person by the TIU within a reasonable time.

295. Second, the TACP should, in the Panel's view, continue to permit the TIU to require a Covered Person to attend one or more arranged recorded interviews, conducted by the TIU or its delegate, in relation to any present or potential investigation into a possible TACP offence. The TIU should be able to set the date and time of the arranged interview, making reasonable allowance for the Covered Person's tournament and travel schedules but also with recognition of the need for interviews to take place without undue delay. At an arranged interview, the Covered Person should be required to answer, honestly and fully, questions put to him or her in relation to any present or potential TIU investigation. By participating in an event or accepting accreditation for an event or registering with the TIU, the Covered Person should have to contractually agree to waive and forfeit any rights, defences, and privileged provided by any law in any jurisdiction to refuse to answer any such questions. But the Covered Person should continue to have the right to request that the TIU provide an interpreter for the interview and to have his or her counsel, at the Covered Person's expense, attend the interview. A transcript should be provided to the Covered Person by the TIU of the interview within

a reasonable time.

The TACP should, in the Panel's view, continue to permit the TIU, through its employees or delegates, to demand the immediate provision of any computer, hard drive, mobile phone, or other information storage device in the possession of the Covered Person. By participating in or accepting accreditation for an event or registering with the TIU, the Covered Person should agree contractually to waive and forfeit any rights, defences, and privileges provided by any law in any jurisdiction to refuse immediate provision to the TIU of any computer, mobile phone, or other information storage devices in his or her possession.

296. The TACP should, in the Panel's view, continue to allow the TIU to seek an immediate order from a hearing officer that a Covered Person who fails to comply with his or her cooperation obligations is either ineligible to compete or should be denied credentials pending the Covered Person's compliance. Because of the need for expedited resolution, the TIU should be able to apply for such an order without providing notice to the Covered Person, subject to the Covered Person having a right to expeditiously apply to the hearing officer to discharge the ruling.

297. Moreover, the current provision requiring that the information and interview statements obtained by the TIU be kept in confidence should, in the Panel's view, be maintained.

Inchoate offences

The TACP should include "attempt," "incitement," "facilitation," and "conspiracy" offences

298. The TACP does not currently contain general inchoate offences of attempt, incitement, facilitation and conspiracy. Instead, some of the rules specify that they prohibit attempting to violate, indirectly violating, or soliciting or facilitating a violation of the rules. For example:

298.1 The prohibition in the TACP on betting is that no Covered Person *"shall, directly or indirectly, wager or attempt to wager."*

298.2 There is a specific provision in the TACP that no Covered Person *"shall, directly or indirectly, solicit or facilitate any other person to wager,"* which appears to be focused on promotion of betting.

298.3 The prohibition in the TACP on contriving the result is that no Covered Person *"shall, directly or indirectly, contrive or attempt to contrive."*

298.4 There is a specific provision in the TACP that no Covered Person *"shall, directly or indirectly, solicit or facilitate any player to not use his or her best efforts."*

298.5 Under TACP Rule E, a player may be responsible for an offence committed by another, and sanctioned as if he or she had committed the offence, if the player *"assisted the commission of"* the offence."

298.6 Also under TACP Rule E, for an offence to be committed *"it is sufficient that an offer or solicitation was made, regardless of whether any money, benefit or consideration was actually paid or received."* This is an *"avoidance of doubt"* provision, since each of the offences involving a reward element themselves specify that they arise on the basis of either solicitation or acceptance, or either offer or provision.

299. While some such circumstances may be covered, the approach is not comprehensive. The inclusion of the phrase *"directly or indirectly"* in all but one of the current TACP offences broadens the scope of those offences to cover many inchoate offences, but in the Panel's present view, it would be better to have general inchoate offences that could be applied to all substantive offences. Accordingly, pending a full drafting exercise, a Covered Person should be guilty of an offence if he or she directly or indirectly:

299.1 Attempts to commit one of the substantive offences or not to comply with one of the reporting or cooperation obligations. (This would entail removing the element of attempt from the anti-betting and anti-contrivance rules.)

299.2 Incites, induces, solicits or encourages any Covered Person to commit one of the substantive offences or not to comply with one of the reporting or cooperation obligations.

299.3 Facilitates or assists in the commission by a Covered Person of one of the substantive offences or not to comply with one of the reporting or cooperation obligations.

299.4 Conspires or agrees with any other person or persons to commit one of the substantive offences or not to comply with one of the reporting or cooperation obligations.

Vicarious liability

The TACP should impose vicarious liability on a player for an offence committed by a Related Person of the Player if the Player knew or should reasonably have known, but did not report, that the Related Person might commit that offence

300. The current vicarious liability rule holds players liable for the conduct of Related Persons only when a player also committed an offence in his or her own right[128]. Specifically, the current TACP rule makes players responsible for any TACP offence committed by a Related Person if (a) the player had knowledge of the offence but failed, pursuant to his reporting obligation, to report the offence or (b) the player assisted in the commission of the offence. It does not permit the TIU to hold players vicariously liable for misconduct in circumstances where the player did not participate in the TACP offence or had no knowledge of the offence.

301. In the present view of the Panel, however, imposing vicarious liability on players for TACP offences by Related Persons would likely have a significant effect in driving down prohibited behaviour:

301.1 To prevent the possibility of being held liable for the misconduct of others, the player would have to make sure to tell Related Persons not to act contrary to the prohibitions and would be slow to give accreditation to someone whom the player suspected might act contrary to the prohibitions.

301.2 The player would be more careful in what inside information he or she disclosed to individuals within the player's inner circle.

301.3 The player would be unable, because of the vicarious liability rule, to use family members or associates to bet for him or her in an effort to avoid liability by saying that he or she was unaware of the activity.

301.4 Related Persons would be less likely to violate the TACP when they know that the consequences of their misconduct could result not only in a sanction imposed on them – but also a sanction on the player.

302. On the other hand, the Panel recognises that to make a player suffer the same consequences as if he or she had violated the TACP rule breached by the Related Person might result in imposition of liability on the player out of proportion to the degree of fault involved. A player may have no effective control over the actions of some of those covered within the definition of Related Persons. While a player could reasonably be expected to exert control over his or her support team, including his or her coaches, trainers, therapists, and physicians, it is less reasonable to expect him or her to have control over the actions of associates or someone previously provided with accreditation.

303. Recognising that the correct balance must be struck, in the Panel's present view, a player should be held vicariously liable for the TACP offences of the player's Related Persons (a) where a Related Person commits an offence under the rules (b) in any circumstances where the player knew or reasonably should have known, but did not report, that the Related Person might commit such an offence. If those two elements are met, the player may be treated as, and charged with, committing the same offence and sanctioned as if he or she had committed the same offence.

304. This balance, in the Panel's view, should incentivise players to take steps to discourage misconduct by their Related Persons and to take action to stop such misconduct when they believe it might occur, while still limiting liability to instances in which the player knew or ought to have known that absent their interference their Related Persons might violate the TACP. A player should not be liable if he or she can show that he or she took sufficient steps to protect against an offence being committed or had no actual or constructive knowledge that an offence might be committed. Moreover, expanding this rule in this way should encourage players to exercise greater caution in their selection and interactions with their Related Persons. It should also more effectively deter Related Persons from committing integrity offences, as their misconduct would jeopardise the professional standing, finances, and reputation of the related player.

128 TACP (2018), Section E.1.

305. As with the other TACP violations described above, the level of appropriate sanctions and the use of disciplinary prosecutorial discretion should turn on the circumstances of the case. For example, the fact that a player actually knew of the offence and acquiesced in it, or the fact that a player assisted in the commission of the offence, should militate in favour of a greater likelihood of prosecution and harsher sanctions than if the evidence indicates that the player had no reason to suspect that his or her Related Persons would engage in misconduct. In addition, if effective action can be taken under the TACP against the Related Person in question, then there is arguably less reason to fix the player with liability as well. For example, if a coach breached the rules and could be suspended or effectively excluded from coaching, there would be less reason to impose a sanction for the coach's misconduct on the player.

306. Moreover, out of fairness, if the TIU seeks to hold a player vicariously liable for disciplinary offences committed by Related Persons, the player should be included as a necessary party in the disciplinary proceeding against the Related Person. It would be unfair to impose liability against a player without giving them the benefit of the full quasi-judicial process.

Joint and several liability

The TACP should impose joint and several liability on a Player for fines and other financial penalties incurred by his or her Related Persons

307. In addition to holding the player vicariously liable for Related Persons' offences, the TACP should in the Panel's present view also allow the player to be held jointly and severally liable for fines and restitution or other consequences imposed on the player's Related Persons. While the TIU may have no recourse to recover a fine imposed against a Related Person who never expressly agreed to be bound by the TACP, the TIU could seek to recover such a fine from the player. The player, with a stronger relationship with the Related Person, could then seek indemnity from the Related Person. In circumstances where the Related Person's involvement in the sport and ability to commit a TACP offence is due to the player's participation, it is fair, in the Panel's view, to hold the player jointly and severally liable for the financial consequences of the offence. Again, this rule should encourage players to discourage misconduct by their Related Persons and to take action to stop such misconduct when they believe it might occur.

308. As with vicarious liability, the TIU should have broad discretion over whether it should seek to impose joint and several liability against a player for a TACP offence by a Related Person, which should turn on the circumstances of the case. Moreover, if the TIU seeks to hold a player jointly and severally liable for a fine or restitution order imposed on a Related Person, the player should be included as a necessary party in the disciplinary proceedings against the Related Person.

Illustrative examples in the TACP

Examples of permissible and impermissible conduct should be included in the TACP to help educate Covered Persons about their obligations

309. Player interviews indicate that that players are often uncertain about the nature and extent of the prohibitions and obligations in the TACP.

310. In order to more effectively educate Covered Persons on their obligations under the TACP, the TACP should be more accessible and understandable, clearly explaining what Covered Persons must and must not do under the rules and the consequences of non-compliance.

311. To achieve this objective, the TACP should provide examples that illustrate the application of the TACP's prohibitions and obligations, particularly on the margins of prohibited and permitted conduct. Such examples could be contained in the body of the redrafted rules or in guidance to accompany them. These examples could be similar to the World Anti-Doping Agency Code, adopted in the TADP, which provides examples and explanations of the application of the anti-doping rules. Similar examples are also provided in some parts of the International Governing Bodies' handbooks.

312. For example, while the TACP currently prohibits players from being sponsored by betting operators and prohibits Covered Persons from being employed or otherwise engaged by betting operators, additional explanation and examples that provide guidance on what type of conduct is expressly prohibited would be beneficial. While Covered Persons should be prohibited from being employed and otherwise engaged by betting operators, the principal vice is sponsorship arrangements for players or others, and the rules should make that clear.

(2) IMPROVEMENTS IN THE TIU'S INVESTIGATIVE PROCESSES

With a betting expert in place, the TIU should standardise the process for collecting betting data, collect all reasonably available betting data, including both betting information and bettor information, and use betting data to inform investigations

313. As noted in Section B of this Chapter, since its inception, the TIU has not made sufficient use of betting data to focus its investigations. Betting data can, at times, be distinctive and compelling in making out a breach of integrity (for example, when repeated, unusual betting patterns clearly reveal spot-fixes), and they can prove when a match has been contrived[129]. While the TIU currently seeks to obtain bettor information in relation to betting alerts from betting operators to identify personal connections or links between the bettors and the players, it does not regularly analyse betting information for the purposes of identifying patterns of operation by bettors or players and developing evidence of these patterns for evidence in disciplinary proceedings. In the Panel's view, it should make greater use of betting information.

314. With the engagement of a betting expert and the expansion or clarification of the TACP's anti-contrivance rule, the TIU should use betting data analysis to develop proactive, targeted investigations; to analyse and understand betting data; to work more closely with betting operators to obtain the necessary data; and to give evidence in disciplinary proceedings regarding the significance of betting data.

315. That said, the Panel does not presently consider that the TIU should acquire the technology, experience or staff to detect suspicious betting patterns by monitoring the betting markets itself. The Panel presently considers that the TIU's primary focus should be on better analysing and pursuing the betting alerts in respect of such suspicious patterns provided by betting operators. The TIU can efficiently rely on the betting operators to provide suspicious betting alerts, and it is unnecessary to attempt to duplicate the betting operators' significant capabilities.

316. Nonetheless, as recommended in Section A above, any betting operators that acquire live scoring data from the International Governing Bodies should be required, pursuant to their memoranda of understanding with the TIU, to monitor their markets to detect suspicious betting and to provide notice of suspicious betting alerts and accompanying data to the TIU. Amongst other things, the TIU should, in consultation with the International Governing Bodies and in connection with their data sales agreements, develop standard protocols governing what information betting operators are expected to provide upon a request from the TIU for betting information.

317. Also, following the establishment of the new TIU governance structure[130], the TIU should revisit whether purchasing betting integrity services would provide additional benefits that are not otherwise efficiently obtainable. Such services may well pick up suspicious betting not noticed by an individual betting operator since the services operate across the betting markets. Integrity units of other sports appear to consider that the service is useful, although that may be due to the fact that those sports have more limited integrity units.[131] Disciplinary convictions have been obtained in other sports on the basis of such evidence.

129 CAS 2017/A/5173 (Joseph Odartei Lamptey v. FIFA), (finding that the undisputed *"deviation from the expected, ordinary movements in the odds on 'overs' in the Match"* demonstrated that bettors had foreknowledge of the result); CAS 2016/A/4650 (Klubi Sportiv Skenderbeu v. UEFA), (finding that suspicious betting patterns were "convincing evidence" that football club was *"at the very least indirectly involved in match fixing activities").*

130 As described in Section A.

131 Chapter 5.

The TIU should develop defined standard processes to direct the collection, classification, storage, and access of information

318. In the present view of the Panel, the absence of defined standard processes for the TIU's investigations means that the TIU's investigatory approach has been inconsistent, opportunities may have been missed, and there is insufficient clarity in the tennis community and amongst betting operators as to what information is expected to be provided to the TIU. To increase consistency and transparency, the TIU should adopt standard protocols related to the collection, classification, storage, and access of information.

319. First, to make the process for reporting suspicions or knowledge about TACP offences clearer, and to encourage individuals to report such suspicions or knowledge, the TIU should adopt a formal protocol that, to the extent possible, makes clear how the TIU will treat information provided to it in such reports. The protocol should explain the avenues through which individuals can report suspicions or knowledge about TACP offences; the collection, evaluation, and action that the TIU will take based on the reported information; and the communications that the TIU will provide to the reporter to explain that the TIU has received the information and generally what it is doing or plans to do with the information. This protocol should, in addition to setting a standard process for the TIU, seek to reassure individuals that everything that is reported will be kept confidential, subject to the player's obligation to assist in the TIU's investigations or prosecutions, and the possibility that what is reported may be used in disciplinary proceedings or may have to be shared with law enforcement agencies. The protocol should explain how the TIU will endeavour to protect the identity of the reporter of information to the extent possible.

320. Second, the TIU should adopt a protocol for the reporting of betting alerts that lets betting operators know what is expected from them and endeavours to make the information reported by betting operators more consistent. This second recommendation for protocols is designed, in part, to address the TIU's concern that different betting operators provide different information in their betting alerts, with some providing information on what types of bets were placed, in what amounts, at what odds, and precisely when, but others not providing all of that information. Moreover, some betting operators do not provide information that allows the TIU to match the suspicious betting to events on court, limiting the TIU's ability to assess whether the betting suggests prior knowledge of the outcome. Similarly, different betting operators provide different information in relation to bettor details, such as identity, location, whether the account was new or old, what the maximum on the account was for the type of bet, and what the bettor's previous approach to betting has been. Some betting operators are also reluctant to provide the identity and location of bettors, which are crucial to establishing a corrupt link between the player or other person and the bettor. And some betting operators report at different times, with some providing pre-match betting alerts – which are helpful for disruption – and others not.

321. This reporting protocol should be incorporated into the TIU's MoUs. It should, at a minimum: (a) require betting operators to monitor their markets to detect suspicious betting patterns; (b) define the standards for when the betting operators should report suspicious betting patterns; (c) define what information the TIU expects betting operators to report with a betting alert; and (d) define what information the TIU will request from betting operators as part of their standard requests for additional information.

322. Third, the TIU should have a protocol setting out the standard steps to take when the TIU receives information from tournament officials, including confirming the receipt of the information, following up with the tournament officials, requesting information from betting operators related to the information, and inquiring about any unusual betting patterns related to the information. Match and tournament officials will ordinarily be a reliable and useful source of such information. Alerts received from them should be treated seriously and treated consistently.

323. Fourth, protocols for the storage and analysis of intelligence would better ensure that information is appropriately logged and effectively used. The TIU should develop standards for when information should be stored for intelligence purposes or used to open an investigative case, and then for when investigative cases support initiating disciplinary proceedings or justify closing the matter, which could also help guide appropriate investigative decisions. Specifically:

    323.1 There should be a protocol setting out the steps that the TIU should take, and the standards it should apply, in classifying cases.

    323.2 Where a decision is taken not to carry out an investigation in respect of a betting alert, the reasons for that decision should be recorded. Such a decision should be approved by an individual within the TIU with the requisite authority.

    323.3 It would be appropriate for the CEO of the TIU to set targets for when certain investigatory steps should ordinarily be carried out. These targets will allow the CEO of the TIU to monitor the workload of the TIU and make informed decisions about resource levels.

    323.4 There should be a periodic audit of the TIU's investigation files to ensure that cases are being appropriately managed. The TIU should have a regular process for reviewing the status of open cases to determine whether remaining investigative steps warrant greater priority and expeditious completion.

With access to a tennis expert, the TIU should make greater use of match footage to inform its investigations and interviews

324. Just as the TIU has been overly sceptical of the value of an internal betting expert, so too in the present view of the Panel it has been overly sceptical of the value of an internal tennis expert. As recommended in Section B of this Chapter, the TIU should have a tennis expert to analyse on court behaviour and tennis data independently. The TIU's tennis expert should be able to liaise with event officials to obtain the necessary tennis data, to assist in the TIU's investigations and evaluation of disciplinary prosecutorial decisions, and to give evidence in disciplinary proceedings as to the significance of on-court play and tennis data.

325. With a tennis expert, the TIU should make greater use of match footage to identify peculiarities in players' performances which, when evaluated in connection with betting data and other information, could be used to prove corrupt conduct. Reviewing match footage with players during their interviews could also help investigators focus their interviews to obtain more meaningful information.

The TIU should promptly clear its backlog of investigations

326. Due in part to resource deficiencies, the TIU has a considerable backlog of open investigative matters.[132] Some of these matters may not require any further action, but those cases should be appropriately classified as such. Others many warrant significant development. In the Panel's view, the TIU must clear this backlog of cases and implement the correct procedures and appropriate resources to deal with ongoing work.

327. The TIU's available resources should improve with the increase in the TIU's staffing, recommended above. Standard investigative and information collection protocols should also help expedite the process of clearing open cases.

328. For cases where investigatory steps are required, however, the TIU should put a strategy in place to identify what those steps should be and to project a timetable for that work to be undertaken. It is possible that this work will require the TIU to add temporary resources.

132 Chapter 10, Part 2, Section C.

All existing data including data pre-dating 2013 should be uploaded to the TIU's database

329. Data and information predating 2013 has not been uploaded to the TIU's intelligence database. Although it may be several years old, that data should be used to inform, at least, the development of future investigations. The TIU should in the Panel's view promptly ensure that all of this information has been incorporated into its intelligence database, giving due consideration to any restrictions imposed by applicable laws, especially data protection laws.

The TIU should use intelligence effectively to guide investigations and other initiatives, disrupt suspected breaches of integrity, and prioritise its allocation of resources

330. The TIU has a rich source of information available to it about potential causes of corruption in tennis. In addition to evidence from prior investigations and data from betting alerts, it has numerous reports from the tennis community about suspected breaches of integrity.

331. The TIU should, as a matter of practice, use this intelligence more effectively to identify players, other persons, and events that present the greatest risks to tennis integrity and to focus its investigative work in those targeted areas. Improved use of its intelligence should also permit the TIU to more effectively prevent suspected wrongdoing, including through the deployment of disruption techniques and, where permissible, integrity-testing. A robust system for collecting and exploiting its available intelligence should greatly facilitate the TIU's efficient use and allocation of its resources.

(3) MODIFICATIONS TO DISCIPLINARY PROCEDURES

332. In the view of the Panel, the TACP's existing disciplinary procedures afford insufficient discretion to the disciplinary prosecutor and are costly and time consuming. This hinders the TIU's ability to pursue misconduct, particularly less serious integrity offences. To accompany recommended changes to the TACP's obligations and prohibitions, the Panel makes the following recommendations to provide the TIU with greater enforcement flexibility while reducing, to the extent possible, the cost and time required to enforce the integrity rules. The recommendations are designed to enhance the TIU's ability to police and prosecute TACP breaches while also ensuring that disciplinary procedures are fair and efficient.

Standard and discretion as to the commencement of disciplinary proceedings

The TIU should have discretion in deciding whether to charge, in light not only of whether the standard of a realistic prospect of success is met, but also of whether bringing a charge would best serve the overall goal of promoting the integrity of tennis

333. The TACP currently entrusts charging decisions to the PTIOs, creating an apparent conflict of interest because the PTIOs are also officers of the International Governing Bodies. While the Panel has not seen evidence that the PTIOs have allowed this conflict to influence their charging decisions, the dual roles of the PTIOs could give rise to a perception that they might be influenced by the interests of the International Governing Bodies in exercising their judgment on whether to pursue disciplinary actions. The TACP also purports to limit the discretion of the PTIOs, by requiring them to *"refer the matter and send the evidence to the AHO"* if they *"conclude… that a Corruption Offence may have been committed"*[133]. Both the apparent conflict of interest and this lack of discretion should be eliminated from how charging decisions are made under the TACP.

133 TACP (2018), Section F.4.

334. Instead, in the Panel's view, the TACP should be amended to place responsibility for disciplinary prosecutorial decisions in the hands of the TIU itself[134]. The test to be applied by the TIU in deciding whether to pursue an enforcement proceeding should have two limbs. First, the TIU should only bring a charge of a breach of the TACP by a Covered Person where there is sufficient evidence to provide a realistic prospect of success on the charge. Second, if that first requirement is satisfied, when making disciplinary prosecutorial decisions, the TIU should also take into account whether bringing the charge serves the best interests of protecting tennis integrity, in the particular circumstances of each case[135]. In the Panel's view, placing charging authority in the independent TIU will promote confidence in the disciplinary process, and affording the TIU such discretion will promote appropriately tailored enforcement decisions based on the circumstances of each case.

335. As an independent body, the TIU should be afforded broad discretion, covering decision-making authority over all of its prosecutorial decisions, including:

335.1 Which charges to initiate against a Covered Person, depending on the circumstances. For example, the TIU should be able to decide whether the facts warrant charging a player with contriving the result of a match for betting or other corrupt purposes, with the lesser offence of simply contriving the result of a match for reasons unrelated to betting or corruption, or with both of those offences in the alternative.

335.2 Whether to adopt an alternative approach to the disposition of a case in particular circumstances, such as through a plea bargain or a warning or reprimand, where available under the rules.

335.3 Whether to charge a person for a minor offence in circumstances where, although technically there might be such an offence, countervailing reasons justify not pursuing it. In light of the totality of the facts, including the seriousness and circumstances of an offence, the quality of the proof, the individual's history, and the best interests of tennis, the TIU should be able to conclude that initiating a charge against a Covered Person would be a waste of TIU resources or that bringing a charge would not best serve the overall goal of promoting the integrity of tennis.

335.4 Whether charges are appropriate in light of a Covered Person's significant cooperation or reporting of integrity offences by others. For example, if a Covered Person committed a more minor offence, but was pivotal in providing information related to offences by others, the TIU should be able, in its discretion, to choose not to pursue disciplinary sanctions based on the minor offence.

335.5 Whether to seek to hold a player vicariously liable or jointly and severally liable for offences committed by the player's Related Person.

336. The exercise of the TIU's prosecutorial discretion should be subject to oversight not only by its Chief Executive Officer, but also by the Supervisory Board. The SB should exercise its supervisory authority to require the TIU to provide information and explanations for the TIU's conduct of its investigations and exercise of its prosecutorial decision-making. The TIU's exercise of discretion should be subject to review in an independent annual audit, discussed below.

134 This differs to the approach adopted by the IAAF in its 2017 introduction of the Athletics Integrity Unit system, where an 'Integrity Review Panel' appointed by the AIU Board decides whether the IAAF should prosecute or appeal an alleged breach of integrity rules (see 'IAAF Athletics Integrity Unit Rules' paragraph 14). The AIU Board is appointed by the IAAF Congress, and the AIU does not have distinct legal personality. In the view of the Panel, the recommendations that it makes to ensure the independence of the TIU, its Supervisory Board and its Chief Executive Officer described in Section B above, preclude the need for such a panel in the context of tennis.

135 The two-part test of whether there is sufficient evidence to provide a realistic prospect of conviction, and the public interest, is similar to approaches commonly employed by criminal prosecution authorities. See, for example, the approach of the Crown Prosecution Service in the United Kingdom:available at https://www.cps.gov.uk/publication/code-crown-prosecutors [accessed 9 April 2018]. Prosecuting authorities in the United States, Australia and elsewhere follow a similar approach.

Streamlined disciplinary procedures

The TACP should permit streamlined disciplinary procedures consistent with ensuring fair and impartial adjudication

337. Currently, the length of time required to resolve disciplinary charges and the costs that disciplinary proceedings impose (on both the TIU and the Covered Person) are inflated by the length of written and oral first instance proceedings before the AHO coupled with the ability of Covered Persons and the PTIOs to appeal a conviction or any sanction imposed by the AHO to the Court of Arbitration for Sport (*"CAS"*), which under its rules hears the matter de novo[136]. Covered Persons, or the PTIOs, can effectively force full litigation of disciplinary charges twice – once before an AHO and then again before CAS – with extensive written and oral stages before each. This may not only have a chilling effect on the decision to prosecute in the first place, but may also result in difficulty ensuring the attendance of witnesses on the second occasion, putting in peril a fair outcome.[137] CAS acts almost entirely[138] as if it were the first instance, and only, tribunal. The evidence must be heard again, and the case proven again, or for the first time, on the basis of it. Parties are also frequently allowed to rely on arguments that were not presented to the first instance tribunal, which encourages gamesmanship and allows Covered Persons to treat proceedings before the AHO as a trial run.

338. In the Panel's present view, the time, costs and other burdens of TACP procedures should be addressed, while simultaneously ensuring that they are fair and impartial. The Panel presently sees two potential solutions, which are set out below for purposes of consultation. Whichever set of procedures are adopted, they will have to be carried out in a way that affords any Covered Person a fair and proportionate opportunity to defend against the charges while still permitting a prompt and cost-effective resolution; in other words, the set of procedures that is selected must afford the Covered Person due process, including the right to an independent and impartial determination of his or her rights.

A single-stage procedure before an independent and impartial arbitrator, with no appeal

339. The most straightforward way to address the procedural difficulties under the current system would be to replace the two-stage procedure described above with a single-stage procedure. In the Panel's present view, speed, cost-effectiveness, and fairness could be achieved if the TIU were to bring all disciplinary matters before a single independent arbitral body. This would involve eliminating the current appeal to CAS.

340. Under this approach, a single-stage proceeding would resolve all disciplinary matters through arbitration subject only to mandatory supervision by the national court of its seat. The arbitral tribunal would have to be selected for each matter by a process that ensured its independence from the TIU, the SB, and the International Governing Bodies. In selecting arbitrators, the sport would make use of an established and suitable arbitral institution. To ensure effective proceedings, and to avoid national court intervention, (1) legal aid would be provided to Covered Persons in appropriate circumstances, as described below; and (2) systems would be established for interim measures to be directed, even before the arbitral tribunal is constituted.

341. In the Panel's present view, because it would be the single and only proceeding, the arbitral panel should comprise a full panel of three independent and impartial arbitrators for disciplinary matters involving allegations of serious offences under the TACP. For other less serious alleged offences, however, the Panel considers that speedy, cost-effective, and procedurally fair proceedings could be achieved with expedited proceedings before a single independent and impartial arbitrator.

136 CAS Code of Sports-related Arbitration 2017, Appeal Procedure, Article R57 paragraph 1: "The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance….". The 2017 Code is available on the CAS website at: http://www.tas-cas.org/fileadmin/user_upload/Code_2017_FINAL__en_.pdf [accessed 9 April 2018].

137 Chapter 10, Part 3, Section C.

138 CAS Code of Sports-related Arbitration 2017, Appeal Procedure, Article R57 paragraph 3, added in 2013: *"The Panel has discretion to exclude evidence presented by the parties if it was available to them, or could reasonably have been discovered by them before the challenged decision was rendered…"*. Further, although CAS has power to substitute whatever sanction it considers appropriate, in practice it will take into account the sanction imposed at first instance and be reluctant to overturn it without good cause. For example, see CAS 2014/A/3467 (Guillermo Olaso de la Rica v. Tennis Integrity Unit), paragraph 121.

342. The Panel presently considers that single-arbitrator decisions would be appropriate for less serious forms of alleged misconduct that do not involve corrupt behaviour – such as failing to comply with a reporting obligation or endorsing a betting operator. While the Covered Person would have no right to demand that such alleged offences be adjudicated by a full arbitral panel of three hearing officers, there would be a cap on the potential sanction that could be imposed through single-arbitrator proceedings – such as a limited period of suspension measured in weeks and a limited level of fine.[139] More serious offences would in the normal course be subject to resolution by a three-arbitrator panel by default, but could by agreement between the Covered Person and the TIU, exercising its discretion in the best interests of safeguarding tennis integrity, be resolved by a single-arbitrator proceeding with the same cap on the possible sanction.

343. Under the current TACP disciplinary procedure, there are provisions covering the notice of charge, the written response of the person charged, the setting of the subsequent procedure at the discretion of the AHO, the filing of briefs and lists of witness, requests for documents, the possibility of the AHO ordering further investigation, the conduct of the hearing, and the burden and standard of proof and other evidential matters. In the Panel's present view, this procedure should be modified as follows:

343.1 The TIU should be able to commence a proceeding by serving a notice of charge on the Covered Person. This notice should set out, among other things, the essential facts relied on by the TIU, although as recommended in paragraph 372 below, the TIU should be able subsequently to introduce and to rely on evidence of those facts not identified in that notice, and to apply to the hearing officer(s) for permission to amend the charge.

343.2 The Covered Person should be required to respond to the notice to deny or admit the charges within a short timescale. Any challenge to the jurisdiction should be identified in the response to the notice of charge. The Covered Person should also be able to identify whether he or she wishes to make submissions as to sanction.

343.3 Arbitrator(s) should then be appointed. The arbitrator(s) should immediately set the schedule for the proceedings.

343.4 The TIU should then file its prosecution brief within a short timescale. In the Panel's view, the Covered Person cannot reasonably be expected to file his or her brief first, when all that he or she has received at that point is the notice of charge. The TIU's brief should set out its factual and legal arguments on the charge and append any statements of witnesses whose evidence it relies on, and any documents it relies on. At this time, the TIU should also make any requests for information or documents. The TIU should be able to apply to the arbitrator(s) at this point or subsequently for permission to amend the charge to add allegations that were not reasonably discoverable by it when it filed its brief.

343.5 Next, the Covered Person should serve his or her response brief, again within a short timescale, making his or her factual and legal arguments based on (a) witness statements and any relevant documents; (b) any requests for information or documents; and (c) a response to the TIU's requests.

343.6 By default, there should be no further rounds of written submissions, but the TIU and the Covered Person should be able thereafter to apply to the arbitrator(s) for permission to serve a reply submission if the arbitrator considers it to be required.

343.7 By default, matters that qualify for resolution by a single arbitrator, as set forth above, should be decided on the papers. The TIU and the Covered Person should however be able to apply to the arbitrator for there to be a hearing, and the arbitrator should be authorized to hold a hearing if considered appropriate. Other charges should be capable of being dealt with on the papers only by mutual agreement.

139 The Panel invites input on consultation regarding the appropriate matters to be handled by single arbitrators and the appropriate caps on sanctions for such matters.

343.8 The hearing should be held within a short timescale. Witnesses should be capable of being heard by video link or by telephone.

343.9 In the Panel's view, the timescale for these steps should be accelerated relative to the timescale under the existing disciplinary procedure, while ensuring that Covered Persons are given sufficient, but not excessive, time to prepare their defences. It also seems to the Panel that the timescale in cases eligible for resolution by a single arbitrator should generally be faster than for more serious cases.

344. Eliminating the right of appeal may be said to eliminate procedural protections, but the two-stage procedure currently in place arguably provides only illusory protections because either side can *"appeal"* the decision from the first instance proceeding to a second, de novo proceeding. The second stage thus replaces the first, rather than providing a second layer of protection. In the Panel's present view, procedural fairness can be safeguarded so long as the first and single disciplinary proceeding is held before an independent and impartial tribunal, and the system affords a fair and proportionate opportunity for a Covered Person to defend the charges (including with the provision of legal aid and interim measures to be directed, even before the arbitral tribunal is constituted).

345. This proposal is similar to the enforcement procedures recently adopted by the PGA Tour for Members and Players of the PGA Tour. Under those new procedures, following a determination by the PGA Commissioner that a Member or Player has committed an integrity violation, that person has the right to a single arbitral proceeding administered by the American Arbitration Association[140].

Alternatively, a two-stage procedure for all offences, preserving the appeal to CAS, but permitting expedited proceedings for less serious offences

346. An alternative approach would preserve appeals to CAS, where legal aid is already afforded in appropriate cases under the CAS rules, and provide for a single independent and impartial arbitrator in all first-instance proceedings. This approach would not only streamline all procedures (as described above), but also would allow for expedited proceedings (also as described above), including decisions on the papers by default, for cases involving less serious charges.

347. This approach would improve on the current system by permitting faster and more cost-effective proceedings and by requiring first-instance proceedings to be conducted by an independent and impartial arbitrator. If this approach is selected, the changed system would need to be established in a way that ensures CAS's willingness to accept jurisdiction.

348. In the Panel's present view, while this alternative approach would improve on the current system, it would remain subject to the unnecessary duplication of process inherent in CAS appeals without a sufficiently offsetting, or any, gain in procedural protection given the de novo nature of CAS appeals. Nevertheless, the Panel understands that some may take a different view of the importance of retaining the appeal to CAS[141], and the Panel looks forward to input on consultation. The Panel also considered the further alternative of a two-stage procedure for more serious cases and a single-stage procedure for less serious cases, or where agreed between the parties, but the Panel presently considers that such an approach would be unlikely to achieve the intended benefits[142].

140 'PGA Tour Integrity Program Manual', paragraph 9, Effective January 1, 2018.

141 As addressed in Chapter 5 Section A, the IOC contemplates in broad terms the existence of an appeal, and other sports such as athletics and football retain an appeal to CAS in the context of integrity issues.

142 The only cases that would definitely fall under the summary procedure would be less serious ones carrying lesser sanctions, which would be unlikely to be appealed in any event. Such cases would be more effectively dealt with through expedited proceedings, or through the alternative dispositions addressed in the next sub-section. It is unclear how often it would be agreed between the parties that a more serious case should be dealt with in a summary procedure, and the choice might be regarded as an invidious one. Further, such agreements might be regarded as allowing more serious cases inappropriately to be dealt with under a procedure that involved lesser sanctions.

Choice of Applicable Law

349. In connection with the above-described recommended changes, consideration should be given to the law to govern matters of enforcement and interpretation under the new TACP. The current TACP selects Florida law, but there may be a more appropriate body of applicable law. Selecting an established body of law from a particular jurisdiction provides a certain degree of clarity and predictability. On the other hand, adopting general principles of law would reflect the international nature and breadth of tennis. In selecting the applicable law, careful consideration should be given to the following issues:

349.1 The legal seat of the new TIU. In selecting the new legal seat, the governing bodies will have also to assess if the body of law of that jurisdiction (i) is suitable to disputes arising in connection with the TACP; and (ii) could effectively provide adequate clarity and predictability;

349.2 The value of enlisting a pool of truly internationally diverse and qualified arbitrators from various parts of the world. If a single body of law were to govern matters of enforcement and interpretation under the TACP, that could impact the potential diversity of the arbitrator pool;

349.3 Covered Persons' right to appoint counsel of their choice/trust. Selecting a single body of applicable law could limit Covered Persons' ability to select their counsel of choice.

Alternative dispositions

The TIU should, where appropriate, be able to dispose of cases using alternative low-cost and quickly-deployed mechanisms such as plea agreements, cooperation agreements and informal warnings

350. In the present view of the Panel, the TIU should have the discretion to employ additional low-cost and quickly deployed tools for sanctioning Covered Persons for misconduct, without the need for a full disciplinary process. In assessing whether, and which, such mechanisms should be recommended, it is again necessary for the TIU to weigh, in addition to saving time and costs, such additional factors as (a) the interests of the Covered Person, which may be served by alternative dispositions; (b) the need to deal with a matter appropriately and not to under-sanction; and (c) the value of transparency in ensuring that a proper approach is, and can be seen to be, taken.

Plea agreements

351. The Panel presently considers that *"plea agreements"* allow for quick and cost-efficient resolution of disciplinary charges, and so the TIU should be able to enter into them:

351.1 In the Panel's present view, it is consistent with the broader discretion to be given to the TIU, that it should be permitted to negotiate plea agreements with Covered Persons. Such an agreement would involve a Covered Person pleading guilty to a particular offence, in return for the TIU accepting before the hearing officer that a particular level of sanction should be imposed in relation to that offence.

351.2 However, first, for the reasons addressed above, it does not seem to the Panel that such plea agreements can be confidential. Rather, they should be published as part of the announcement of the disciplinary conviction and sanction.

351.3 Second, such agreements should in the view of the Panel be subject to oversight by the SB.

351.4 Moreover, third, they should be subject to review and approval by the hearing officer at the point of sanctioning. The hearing officer should, however, afford substantial deference to such agreements, declining to apply them only in extraordinary circumstances.

Cooperation agreements

352. Similarly, in the Panel's present view, the TIU should be able to enter into *"cooperation agreements"* with Covered Persons:

352.1 Under such agreements, a Covered Person would provide evidence and assistance in relation to breaches of integrity by others, in return for the TIU recommending to the hearing officer a reduced level of sanction in relation to the Covered Person's offence. Such agreements are an important tool to enable investigators to pursue more serious charges against other, more culpable, offenders.

352.2 It seems to the Panel that there may be circumstances in which it might not be appropriate to publish that there had been such an agreement (and that such agreements will generally require confidentiality during while the Covered Person's cooperation is continuing), but in the normal course there should be publication of the fact of the agreement following the imposition of the Covered Person's sanction (upon completion of his or her cooperation), though not necessarily of the details of the assistance provided.

352.3 Such agreements would fall to be supervised in the same way as plea agreements by the SB and the hearing officer at the point of sanctioning, and should also be subject to generous deference by hearing officers.

Informal reprimands and warnings without disciplinary proceedings

353. The evidence suggests to the Panel that there have been occasions where the inability to deal quickly and informally with a possible minor breach has led to the PTIOs failing to commence disciplinary proceedings at all, even when warranted under the TACP.[143] More recently, formal disciplinary proceedings have been brought in similar circumstances, but the PTIOs have suggested to the AHO that the case be dealt with by way of warning. While that is preferable to no action being taken at all, it does involve commencing and progressing proceedings. Unlike such formal disciplinary proceedings, informal admonitions by the TIU would allow for the quick correction of inadvertent or minor misconduct without undue expense. Covered Persons occasionally commit minor breaches for which the TIU has unequivocal evidence, but which nonetheless do not warrant the expense and time of disciplinary proceedings.

354. Consistent with the reallocation of disciplinary prosecutorial discretion, the TIU should, in the present view of the Panel, have the authority to issue reprimands and warnings, without the need for disciplinary proceedings, where (a) the Covered Person accepts the reprimand and warning in writing; and (b) the TIU concludes that the use of a reprimand and warning, instead of charges, serves the best interests of safeguarding the integrity of tennis in all the circumstances of the case.

355. In addition, all reprimands and warnings should be public. Making reprimands and warnings public serves both an educational and a deterrent purpose.

356. Finally, prior reprimands and warnings could be considered at the sentencing stage in subsequent proceedings involving the Covered Person.

143 Chapter 10, Part 2, Section C.

Arbitrators

Disciplinary proceedings should be adjudicated by one or more impartial arbitrators who are independent of the sport and are drawn from an internationally diverse pool, with the possibility where appropriate of appointment from outside the pool and independent arbitrators

357. As already noted in paragraphs [insert] above, in the Panel's view, arbitrators should be selected through an independent process, to ensure that preliminary suspensions and disciplinary proceedings are decided fairly and impartially and to increase the appearance of fairness in the disciplinary hearing processes. The present system of selection of AHOs by the TIB unnecessarily inserts an apparent conflict of interest into the disciplinary hearing process. To ensure that all disciplinary proceedings are decided by a process that is, and can clearly be seen as, fair and impartial, arbitrators should be selected for each matter through a process that that ensures their independence from the TIU, the SB, and the International Governing Bodies.

358. It seems to the Panel that arbitrators would be a pool of qualified and independent lawyers, from various parts of the world, and could be selected by well-regarded arbitral institutions, which would retain the possibility where appropriate of appointing from outside the pool.

359. The Panel invites input on consultation as to the appointment process, as well as in relation to the required qualifications for arbitrators, but the Panel currently envisages that they should be lawyers who satisfy the same independence test as members of the SB.

Provisional suspension

It should be more straightforward for the TIU to obtain, in the first instance without notice, a provisional suspension of a Covered Person suspected of committing a breach of integrity pending disciplinary proceedings, or for a failure to assist or cooperate

360. There is typically considerable delay between the initial detection of a potential breach, possibly through a suspicious betting alert or a confidential tip that the TACP has been violated, and the ultimate sanctioning of a player or other Covered Person for the breach. Absent a provisional suspension, a Covered Person may continue to participate in and profit from professional tennis events during the time taken to investigate and amass sufficient evidence to commence disciplinary proceedings, as well as the time taken up by the disciplinary proceedings and appeal of any conviction or sanction.

361. The TACP allows the PTIOs to seek provisional suspensions of Covered Persons from participation in professional tennis events. The PTIOs may seek a provisional suspension from an AHO, before or after initiation of disciplinary proceedings, but currently only if the PTIO determines that three criteria are established: *"(i) there is a substantial likelihood that the Covered Person has committed a Corruption Offence punishable by permanent ineligibility; (ii) in the absence of a provisional suspension, the integrity of tennis would be seriously undermined; and (iii) the harm resulting from the absence of a provisional suspension outweighs the hardship of the provisional suspension on the Covered Person"*[144].

144 TACP (2018), Section D.3.a.ii. Until 2017, the application could be made on after a matter had been substantively referred to an AHO for disciplinary proceedings, or after the PTIOs initiated disciplinary charges against the Covered Person. As of 2017, PTIOs can apply for disciplinary sanctions at any time.

362. The current procedure for application for a provisional suspension[145] requires the PTIOs to notify the Covered Person of the application in advance, though the TACP permits the TIU to rule a player ineligible to compete for failure to comply with a TIU or AHO request for information[146]. Following notice, the Covered Person has an opportunity to make submissions in response to the application, and the AHO then determines whether to impose the provisional suspension. A Covered Person subject to a provisional suspension can apply to an AHO to lift the provisional suspension if a hearing on the relevant charges is not commenced within 60 days from the date on which the Covered Person requested such hearing. There is no right to appeal a provisional suspension.

363. In the Panel's present view, the current procedure is inadequate to address the nature and extent of the problem now faced. The threshold for a provisional suspension (a *"substantial likelihood"* of an offence) is arguably unclear and risks being too high, and the process does not generally provide for any procedure allowing an urgent application and immediate imposition of a provisional suspension not on notice for conduct in violation of the TACP. Moreover, there is no provision that permits the TIU to seek a provisional suspension when there are related, ongoing criminal investigations or proceedings that justify the TIU's delaying its pursuit of disciplinary proceedings under the TACP.

364. To resolve these inadequacies, the TIU should be able, in the exercise of its discretion, to apply for a provisional suspension from a hearing officer. The hearing officer should grant the request for a provisional suspension where the TIU shows (a) that there is a realistic prospect of success on a charge that a Covered Person has breached the TACP – the same standard for issuing a charge; and (b) that, balancing the interests of the individual and the sport, it is appropriate that the Covered Person should not play or participate pending the outcome of the disciplinary proceedings or other pending event.

365. The TIU should be able in cases of urgency to apply to a hearing officer for a provisional suspension without notice, before or after disciplinary proceedings have been initiated, after which the Covered Person should be able to apply to a hearing officer to lift the provisional suspension. If a provisional suspension is granted, the materials justifying the provisional suspension should be very promptly provided to the Covered Person.

366. So as to protect Covered Persons against unwarranted and indefinite suspension, provisional suspensions should be limited in duration. Every 90 days, the Covered Person should have the right to challenge the continuation of the provisional suspension. A hearing officer should grant extensions of the provisional suspension, not to exceed 90 days, if the TIU shows that the above two elements remain satisfied, and that the TIU is acting diligently and appropriately in pursuing the matter. Provisional suspensions that are not challenge shall automatically continue for another 90-day period.

367. In cases that do not involve urgency, the TIU should also be able to obtain a provisional suspension against a Covered Person through a proceeding that gives notice to the Covered Person before imposition of the provisional suspension. The same provisions for limiting the duration of suspensions on notice should apply.

145 TACP (2018), Section D.3.a.ii.

146 TACP (2018), Section F.2.d.

368. The Panel presently considers that the procedure described above strikes the right balance between a Covered Person's interest in continuing to participate in professional tennis, particularly in light of the possibility that he or she may ultimately be found not guilty of a breach of integrity, and the interests of tennis integrity in removing corrupt individuals from the sport as quickly as possible.

368.1 A provisional suspension does not reflect guilt, but rather only that there is sufficient evidence to warrant a charge. Further, the ability to play or participate in tennis is a privilege that can and should be withdrawn when appropriate circumstances so warrant. Given the significance and urgency of cases, the TIU should be able to obtain an immediate suspension. But at the same time, the TIU should not be able to impose a provisional suspension on its own; rather, independent hearing officers should have authority over the issuance of such suspensions.

368.2 Moreover, the rule should not impose a requirement that limits the imposition of a provisional suspension to where the TIU can actually show that a player or other Covered Person has committed a TACP offence. At the same time, the rule should not allow the TIU to obtain suspensions recklessly. Accordingly, the TIU should be able to obtain a provisional suspension when there is sufficient evidence to pursue a disciplinary charge, not only where the evidence more likely than not shows that a breach of integrity was committed.

369. In the view of the Panel, if there is sufficient evidence to assert a disciplinary charge against a Covered Person, particularly for a more serious offence that could carry with it a multi-year suspension, the TIU should generally seek a provision suspension. That said, the TIU should take into account the totality of the circumstances in exercising its discretion, including, among other factors, the sufficiency of the evidence, the severity of the charge, prior suspected misconduct, and the proportionality of the effect on the Covered Person.

370. A further amendment should, in the view of the Panel, be made to the current provisional suspension procedure. Currently, a provisional suspension is only available if the suspected offence could be punishable by *"permanent ineligibility."* This should be modified to allow the TIU to seek a provisional suspension for any serious offence. The purpose of a provisional suspension – to remove suspected corrupt individuals from the sport – is still served by suspending a Covered Person subject to a multi-year suspension. Moreover, in such circumstances, it remains unlikely that the provisional suspension will ultimately preclude the Covered Person from participating in tennis for longer than the sanction ultimately imposed on the Covered Person if he or she is found guilty of the charged offence.

371. Also, so as to facilitate the imposition of provisional suspensions while encouraging the TIU's cooperation with law enforcement, the fact of a pending criminal investigation or prosecution against a Covered Person for betting, match-fixing, or any other corruption offence should provide prima facie evidence that an TACP violation has likely been committed and should weigh heavily in favour of the Covered Person's provisional suspension. Pending criminal matters should be afforded greater weight if they have progressed to formal charges or, even more, a conviction.

372. Separately, it seems to the Panel that the TIU should also continue to be able to obtain a provisional suspension of a Covered Person from participating in tennis upon the TIU showing to a hearing officer that the Covered Person failed to assist by refusing to comply with a TIU request for an interview, a request for information, or a request for an electronic or communication devise. Such suspension should last until the failure by the Covered Person has been rectified. A Covered Person should have the right to challenge such a suspension before a hearing officer, who should apply the same standards as if the provisional suspension had been sought from the hearing officer.

Removal of evidentiary limits

Evidence obtained by the TIU after the initiation of disciplinary proceedings should be admissible

373. In certain AHO proceedings, it appears that the TACP has been construed as limiting the use of evidence obtained after the initiation of those proceedings. The perception of this limitation has led the TIU to delay commencing disciplinary proceedings until it has identified all of the evidence that it believes it could use against the Covered Person. Such a delay is unnecessary and should be addressed.

374. While the Panel understands that a justification for this limitation lies in ensuring fairness to the Covered Person charged with an offence under the TACP – in that it ensures the Covered Person receives notice of all the evidence against him or her from the outset – the Panel considers this evidentiary limit should be eliminated because it restricts the TIU's pursuit of timely charges and goes further than is necessary to protect the Covered Person. In the Panel's present view, so long as the later-obtained evidence relates to an existing charge, the TIU should be able to provide sufficient notice to the Covered Person of the evidence or information after the charge such that the Covered Person can fairly respond to, and defend against, such evidence or information.

375. Modifying this rule should encourage the TIU to pursue disciplinary charges and provisional suspensions for serious misconduct that it can prove without undue delay, even when the TIU expects that it can develop further evidence in support of those charges.

Closure of investigations after three years

Absent good cause, the TIU should be required to close investigations within 3 years, with notification to the Covered Person being investigated

376. Covered Persons do not as a matter of practice receive notice of the results of the TIU's investigations involving them or when such investigations have been closed.

377. In the present view of the Panel, while there should be no obligation on the TIU to notify individuals who are under investigation, so as to promote the progression and resolution of investigations, and in fairness to any Covered Person implicated in an investigation, a deadline should be imposed on the TIU to close cases and to notify interested parties when cases have been closed.

378. A good cause exception should apply to this deadline (and should be disclosed in any such notification), allowing continued or reopened investigations where compelling circumstances warrant, including upon the discovery of new information warranting further investigation.

Legal aid

Legal aid should be provided to Covered Persons in appropriate circumstances

379. Under the current disciplinary system, no legal aid is available at the first instance proceeding to any Covered Person. Moreover, each party bears their own costs of legal representation, with no possibility of costs award. Accordingly, even though Covered Persons who are subject to disciplinary proceedings are not exposed to a costs award against them, they equally have no possibility of the recovery of costs if they are acquitted. This situation creates the risk that those without funds may not seek to fight a disciplinary charge when perhaps they should, and if they do fight, may not have sufficient legal assistance to ensure that they take all the points available to them. This makes it difficult for AHOs to ensure consistency of treatment, however much they endeavour to do so.

380. CAS, however, grants legal aid to any person whose *"income and assets are not sufficient to allow her/him to cover the costs of proceedings, without drawing on that part of her/his assets necessary to support her/him and her/his family."* However, *"legal aid will be refused if it is obvious that the applicant's claim or grounds of defence have no legal basis. Furthermore, legal aid will be refused if it is obvious that the claim or grounds of defence are frivolous or vexatious"*[147].

381. As described above, in the present view of the Panel, it is important that legal aid be available, where appropriate, at least at the final de novo stage of disciplinary proceedings under the TACP. Accordingly, as further described above, the Panel considers that a single-stage arbitral proceeding, if adopted, should provide a legal aid system similar to the one provided by CAS. An important concern here is that if there is no possibility of legal aid from one source or another for Covered Persons who cannot afford to hire a suitable lawyer, Covered Persons could attempt to challenge the arbitration agreement in state courts.

382. Moreover, in the Panel's present view, legal aid should be funded by the relevant International Governing Body, or the national federation of the player, and by not the TIU itself. The ATP and WTA each represent the interests of the players in their membership while national federations do the same for their players. If a Covered Person needs assistance, they can persuade the relevant body of their financial need and the merits of their case. Plainly some national federations have much less money than others: how to deal with that situation would be a matter for agreement between all the national federations through their composite body, the ITF.

Discretion as to sanction and Sanctioning Guidelines

Hearing officers should be afforded broad discretion to set sanctions pursuant to Sanctioning Guidelines, but they should also be required to include in their findings the reasons for any sanctions they impose

383. The current sanction provisions in the TACP allow for the same maximum fine ($250,000) for all offences[148], and then broadly divide those offences into two classes, which are different for players and for other Covered Persons. For players, the first, less serious, class of offence carries up to three years' ineligibility, and the second, more serious class of offence, up to permanent ineligibility[149]. For other Covered Persons, the first class carries a minimum one-year non-accreditation, and the second up to permanent non-accreditation[150]. The appropriate sanction below the maximum (or above any minimum) is left to the discretion of the AHO[151].

384. The TACP provides no starting-point sanction for the various types of offences within the classes. Nor do its provisions

147 Guidelines on Legal Aid before the Court of Arbitration for Sport (2013, as amended in 2016), Article 5.

148 TACP (2018), Section H.1.a.i in respect of players, and H 1.b.i in respect of Related Persons or Tournament Support Personnel. Also Chapter 10, Part 1, Section B.

149 Under TACP (2018), Section H.1.a.ii, if a player bets on tennis, solicits or facilitates betting by others, accepts reward for accreditation, or is employed by a betting operator, he or she may be suspended for up to three years. For all other offences, he or she may be suspended for up to life under 2017 TACP Section H 1.a.ii.

150 Under TACP (2018), Section H.1.b.ii, Related Persons and Tournament Support Personnel are subject to a minimum of one year's non-accreditation for betting on tennis, soliciting or facilitating betting by others, or providing reward to Tennis Support Personnel for information or benefit. For all other offences, they are subject to permanent non-accreditation.

151 TACP (2018), Section H.1, first sentence.

give an indication of where the sanction should be set below the maximum or above the minimum, or how it should be calculated and what should be taken into account for purposes of mitigation and aggravation. Moreover, the provisions do not provide for suspended sanctions, restitution, or other alternative punishment. Finally, without publication of the reasons for the sanctions imposed by the AHOs, there is little guidance as to how sanctions should be set and no basis for ensuring consistency in sanctioning.

385. In the Panel's view, the current sanctioning provisions should be revised to provide greater guidance and to promote greater consistency.

386. The Panel agrees with the current broad approach that the rules should confer discretion on the hearing officer to set the appropriate sanction in each case, rather than setting standard mandatory sanctions for each offence. Mandatory sanctions are, by definition, not tailored to the circumstances of each case, and such sanctions may face challenges from Covered Persons based on arguments that the sanctions are not proportionate or fair. Equally mandatory sanctions may, by capping the amount of the sanction, unnecessarily limit the sanctions sought by the TIU when the circumstances warrant a higher sanction.

387. Even the setting of mandatory minimum and maximum sanctions, and allowing discretion to apply in between, risks raising these problems. In the Panel's present view, setting mandatory minimum and maximum sanctions should be avoided for this reason. That said, the Panel understands the counter argument that it is only through the setting of mandatory minimum bans for significant periods that serious misconduct can be deterred, and that it is only through the setting of mandatory maximum sanctions that wholly disproportionate sentences can be avoided. An example of the belief in the deterrent effect of a mandatory minimum sanction is the TIU's suggestion that, in order to deter players from refusing to provide access to mobile telephones and other electronic storage devices, a mandatory minimum sanction of ineligibility for five years should exist. External commentators have likewise suggested that there should be mandatory minimum sanctions for serious misconduct like match-fixing.[152] While the Panel understands the reasoning behind these suggestions, and agrees that substantial sanctions may be appropriate in given cases involving such actions, this approach does risk the imposition of disproportionate sanctions. In the Panel's present view, it is preferable to grant broad discretion to independent hearing officers, to provide guidance for the use of that discretion, and to allow them to tailor sanctions based on the circumstances.

388. In the Panel's present view, instead of setting minimum and maximum sanctions, the TACP should provide guidance to hearing officers through Sanctioning Guidelines. A Sanctioning Guidelines section in the TACP should identify the appropriate recommended starting point or range for the sanctions for each offence. If a range is identified, where on the range the starting point for sanctions falls should depend on the circumstances of the case: the more egregious the breach, the higher the starting point. The Sanctioning Guidelines should then provide factors relevant to mitigation and aggravation from that starting point. While the hearing officers should be able to take into account any appropriate mitigating or aggravating factors, the Panel's view is that:

    388.1 Factors relevant to mitigation should generally include (a) a low degree of fault; (b) youth and lack of experience; (c) a good prior disciplinary record; (d) prompt admission; (e) absence of benefit as a result of the offence; (f) absence of substantial effect on the outcome of a match; (g) absence of substantial adverse effect on other players, officials, or other tennis participants; (h) other sanction imposed by another body for the same offence based on the same facts; and (i) the provision of substantial assistance.

    388.2 Factors relevant to aggravation should include: (a) a high degree of fault; (b) the commission of prior breaches of integrity; (c) receipt of benefit as a result of the offence; (d) substantial effect on the outcome of a match; (e) substantial adverse effect on other players, officials, or other tennis participants; (f) combination with others to commit the offence; (f) failure to preserve evidence or to assist or to cooperate (notwithstanding that this may

152 Kevin Carpenter, 'Match-Fixing – The Biggest Threat to Sport in the 21st Century?' (ISLR, 2012), available at: file://lspfs02/lsphome$/nr.Cambise.Heron/Downloads/K%20Carpenter%20ISLR%20Match-fixing%20Article.pdf [accessed 9 April 2018].

amount to a separate offence); and (g) failure to report (notwithstanding that this may amount to a separate offence).

389. While Sanctioning Guidelines should provide greater consistency in sanctioning, these guidelines alone will not provide information on how they have in fact been applied. To provide greater clarity on sanctioning, hearing officers should in the Panel's view be required to explain in their written decisions the reasons for the sanctions imposed, and these written reasons should be published, subject to suitable redaction as determined by the hearing officer.

Restitutionary and other consequence of breach

There should be further consequences of breach beyond sanctions and suspensions

390. Currently, sanctions imposed by AHOs upon a finding of an offence under the TACP are limited to any combination of a fine up to $250k; an amount equal to the value of any winnings or other amounts received by the Covered Person in connection with the offence; a ban from participating in any event organised or sanctioned by any International Governing Body for a defined period; and a suspension of credentials and access to any event organised, sanctioned, or recognised by any International Governing Body for a defined period.

391. These sanctions and suspensions, however, do not give the hearing officers the ability fully to deprive the Covered Person of all benefit gained from any wrongdoing, to afford some redress to those injured by wrongdoing, and to prevent future breaches. The TACP should expand the tools available to hearing officers to do so. Accordingly, the permitted consequences that can be ordered should be expanded also to include, to the extent not already covered: (a) forfeiture of prize money; (b) forfeiture of ranking points; and (c) forfeiture of appearance fees. The hearing officer should also be able (d) to order that a Covered Person who violated the TACP take additional integrity training or assist in the integrity training or education of others and (e) to limit the Covered Person's ability to obtain accreditation or registration for others.

(4) ENHANCED TRANSPARENCY

392. The Panel has considered whether the TIU's investigative and enforcement processes suffer from a lack of sufficient transparency. Transparency allows the public to understand the TIU's work, how and why the TIU reaches decisions, and whether the TIU is fulfilling its mandate. Transparency can inspire confidence in the fairness of the investigative and disciplinary processes of the TIU, and it can encourage compliance and cooperation with these processes. Transparency does not, however, require revealing the identities of persons when there are good grounds to keep those identities confidential. Nor does transparency require the disclosure of the TIU's techniques or actions when doing so could adversely affect the TIU's ability to address the problems faced.

393. The TIU does not now publicise any information about its investigations or proceedings unless and until a disciplinary proceeding has resulted in a sanction against a Covered Person. The TIU states that it keeps its investigations confidential and provides public notification only once a sanction is imposed because it considers confidentiality in its work and the information it obtains to be paramount.

394. In the Panel's view, the TIU's approach is overly cautious. In the view of the Panel, the TIU's practices have resulted in a public perception that the TIU is overly secretive, undermining confidence in the TIU's operations. A moderate liberalisation of its standard practices could provide significant benefit. Since the commencement of the Review, the TIU has taken a number of steps in this direction, but some more remain to be taken.[153]

395. There are a number of ways in which in the Panel's present view the TIU should increase the transparency of its investigative and enforcement processes. This subsection addresses those recommendations.

153 Chapter 12, Section A.

The TIU should publicise the resolution of disciplinary proceedings, regardless of result

396. As to the transparency of the TIU's disciplinary actions, the main alternatives are to publish the initiation of proceedings and then subsequently their outcome, whether there is a conviction or acquittal, or to maintain confidentiality in the initiation of proceedings, and only to publish their outcome, again whether there is a conviction or acquittal. There are competing considerations that weigh in favour of each alternative.

397. On the one hand, the publication of both charges and outcomes would increase transparency significantly, and would mirror the position in relation to most criminal proceedings. On the other hand, the perception of secrecy does not justify a change in approach that would be unfair to Covered Persons, or jeopardise the effective fight against match-fixing. The publication of the initiation of proceedings might cause unfair reputational, and financial, harm to a Covered Person who is later acquitted.

398. In the Panel's present view, the same arguments do not, however, apply to the publication of the result, regardless of outcome. Whether there has been a conviction or acquittal, the reasons for the decision are important and should be known to all Covered Persons and the public as a whole. Where there has been an acquittal, the reputation of the Covered Person can be protected through suitable redaction or by a summary of the reasons for decision being produced.

399. Publishing information about the results of the ensuing disciplinary proceedings, subjects the TIU's actions to public scrutiny, thereby protecting players and the sport, while also promoting public education about Covered Persons' obligations under the TACP, thereby helping to deter potential misconduct.

400. Moreover, the TIU should publish information about reprimands and warnings and about plea agreements with Covered Persons. Doing so would also increase transparency, educate Covered Persons, and provide a deterrent effect.

401. The TIU should similarly publish information about any appeal of a hearing officer's decisions. These publications should educate Covered Persons concerning how the TACP is applied in practice.

The TIU should regularly publish detailed information about betting alerts

402. Starting in 2016, the TIU began publishing high-level information about betting alerts it received, in its quarterly and annual reports. This information allows tennis stakeholders and the public to monitor one important metric of potential integrity concerns.

403. While the TIU should be commended for this increase in transparency, in the Panel's view, the TIU should provide the public with additional details about the betting alerts it receives to increase understanding of the potential threats to tennis. In addition to what it currently provides, the TIU should publish, at least, a breakdown of betting alerts by the specific tournament levels and the numbers (but not the identities) of players who are subject to multiple betting alerts. Moreover, the TIU should provide this information in a way that allows comparisons over time.

(5) CHANGES TO FACILITATE MORE EFFECTIVE ENFORCEMENT OR COOPERATION WITH NATIONAL FEDERATIONS, LAW ENFORCEMENT AGENCIES AND OTHER THIRD PARTIES

404. As summarised in prior Chapters, the TIU's has had, at times, strained relationships with national federations, law enforcement agencies, and others in the tennis community. This subsection makes recommendations to help improve those relationships and facilitate more effective enforcement and cooperation.

Establishment of regional TIU officers and delegates

The TIU needs regional officers to establish closer relationships with local stakeholders, including national federations, law enforcement agencies, regulators, and officials, and the TIU should be able to delegate some tasks to officials or national federation officers

405. The centralisation of the TIU in London ignores that tennis is an international sport played by professionals all over the world. Indeed, the TIU's investigatory staff consists almost entirely of individuals with backgrounds in British law enforcement. Although some members of the TIU's current staff are reported to be fluent in various languages, including English, Spanish, Portuguese, Greek, and Gujarati, the TIU's staff lacks fluency in many other languages common in tennis. Without fluency in various languages and without officers stationed outside of London, it is more difficult for the TIU to develop relationships with national federations and local players, officials, regulators, and law enforcement agencies.

406. In the present view of the Panel, the TIU needs regional officers, with greater legal, geographic, linguistic, and cultural diversity, to facilitate stronger working relationships with local stakeholders. A more localised TIU presence through regional officers will improve the collection of intelligence and the reporting of integrity issues from local stakeholders and Covered Persons, who are often uncomfortable reporting such information to unknown individuals located thousands of miles away at the TIU.

407. Regional officers will also improve the TIU's coordination with local federations, law enforcement authorities and regulators. In this respect, the TIU should primarily take into account that several countries have signed and begun to implement (even if not yet ratified) Article 13 of the Council of Europe Macolin Convention by establishing national platforms where law enforcement agencies, local sports federations, and betting operators and regulators can exchange intelligence, and coordinate their efforts, investigations, and legal proceedings to fight the manipulation of sports competition. The TIU, though its regional officers, should engage with those national platforms to more effectively gather and share intelligence.

408. Further it seems to the Panel that there are a number of tasks, such as preliminary on-site interviews, that the TIU should be able to delegate to an official at the event or a national federation officer with responsibility for integrity.

Relationships with law enforcement

The TIU should develop cooperative relatiosnships with law enforcement agencies, pursuing provisional suspensions and, where possible, disciplinary proceedings in parallel with coordinated law enforcement efforts

409. The TIU's mission of safeguarding integrity in tennis would in the view of the Panel benefit from improved coordination with law enforcement authorities around the world, who could help bring to justice the most serious corruptors in the sport. Unfortunately, it appears to the Panel that the TIU's current coordination efforts with some law enforcement entities have been strained.[154]

410. In addition, while the interaction between the TIU and law enforcement agencies has been largely ad hoc, the TIU's investigators have seemingly defaulted to the position that criminal investigations should always, or almost always, have priority over disciplinary proceedings. As a result, the TIU generally has not pursued disciplinary investigations or proceedings when there is a criminal investigation or proceeding underway, even in circumstances where, in the view of the Panel, that might not be the best approach, including because of the time likely to elapse before the criminal matter could be resolved or because of the more limited range of behaviours that could be charged in criminal proceedings.

154 Chapter 10, Part 2, Section D.

411. The TIU should reconsider how cooperation should take place with national law enforcement agencies. Because the TIU's new regional officers should have a greater understanding of local cultures and legal frameworks, the TIU should rely on them to inform the TIU's decisions on when and how to cooperate.

412. The TIU should also reconsider how, and when, it cooperates with national law enforcement agencies. The Panel recognises the utility in securing criminal convictions of those involved in breaches of integrity where possible, not least because of the added deterrent effect of such convictions. The Panel also recognises that law enforcement agencies generally enjoy greater investigatory powers than the TIU. On the other hand, disciplinary proceedings are of different nature from criminal ones – involving, among other things, different standards of proof and length of procedures – and the *"automatic"* primacy of the latter proceedings over the former, or excessive deference of the TIU toward criminal investigations, can lead to potential or actual disciplinary impunity, and certainly misunderstandings on the part of the public and national federations.

413. In light of the above, the TIU should in the view of the Panel decide on a case-by-case basis whether or not cooperation with law enforcement agencies is desirable, and whether criminal investigations or proceedings should take primacy (in other words, whether disciplinary investigations or proceedings need to be suspended until criminal investigations or proceedings are concluded), taking into account all circumstances that might be relevant in effectively and promptly protecting the sport's integrity. These circumstances include the potential benefits of using criminal procedures and sanctions in a given case; the likelihood that the law enforcement agency will pursue criminal proceedings; the expected time within which the parallel criminal proceedings would be commenced and completed; the availability of provisional suspensions to safeguard tennis during ongoing criminal proceedings; and the risk that following a provisional suspension, the defendant might be acquitted on the criminal charges and argue that he or she had been wrongly excluded from the sport. The TIU should formalise the consideration of the relevant factors with an internal guidance document for its investigators. The TIU should also give consideration to the views of its regional officers as to when it might be counterproductive for the TIU to cooperate with local law enforcement agencies or to give primacy to criminal over disciplinary investigations or proceedings.

414. Where appropriate the TIU should, however, pursue provisional suspensions and, if possible, disciplinary proceedings in parallel with law enforcement proceedings against Covered Persons in order to prevent such persons from continuing to participate in, and further compromise the integrity of, professional tennis.

Cooperation between the TIU and national federations

The TIU should implement measures to improve the TIU's engagement with national federations

415. Evidence received by the Panel suggests that the TIU has a poor relationship with some national federations, at least in part based on their perception that it is unwilling to share information with them. While such national governing bodies consider that they have, as a general matter, cooperated and given information relevant to integrity offences, they report that they do not know how the TIU treats this information and believe the TIU is unnecessarily secretive. The TIU, for its part, reports that it does not provide all information to national federations because it believes such information should be maintained in confidence by the TIU.

416. Regional officers could help to liaise and build relationships with national federations due to their better understanding of the cultural, linguistic, and legal framework within which those federations operate. The regional officers would also be in a better position to advise on whether cooperation with a national integrity unit or a national federation should be established through an official protocol or on a case-by-case basis.

417. Parallel with the creation of regional officers, in the view of the Panel, the ITF should also require each of the national federations to designate a formal liaison to the TIU. This person should act as a point of contact with the TIU and its regional officers and as a resource for assisting in the TIU's greater local outreach and coordination, including its delivery of educational programs to players and others in the international tennis community. This liaison could also, where appropriate, otherwise act as a delegate for the TIU.

418. The TIU and national federations also have an imprecise delineation of their respective jurisdictions. The TACP covers the actions of Covered Persons at the identified levels of the professional sport. In addition, however, there are players playing at the national level, and many national federations have their own integrity rules. In most instances, a national federation may confine itself to matches and players at the national level, allowing the TIU to deal with all matters that fall under the TACP, even involving the national federation's players or taking place at an event on its soil. However, in some instances, in particular in countries that have national legislation that requires national governing bodies to investigate misconduct by its players, such as in Italy, national federations are legally required to conduct their own investigations

and disciplinary proceedings in parallel to similar investigations or proceedings by the TIU. Sanctions imposed by certain national federations in these circumstances may only apply in their respective jurisdictions. As a result, players banned by a national federation from playing in that federation's jurisdiction for violating the federation's anti-corruption rules may not be banned from participating in tennis events in other jurisdictions absent action by the TIU or the International Governing Bodies.

419. It seems to the Panel to be preferable that the TIU should be able to deal with all matters that fall under the TACP without any limitation as a result of action taken by national federations. While in the first place this might be best achieved by a rule requiring national federations not to begin their own proceedings but instead to stay such proceedings in these circumstances, it appears that this may not always be possible. Of course, in deciding whether and how to pursue charges, the TIU and the national federations should take into account the decisions reached by other enforcement bodies on the same matter. In the Panel's present view, however, it should be made clear that any sanction imposed at national level is without prejudice to the susceptibility of the Covered Person to separate sanction under the TACP. Furthermore, in order to address the situation where a player is banned from participating in tennis by a national federation for violating the federation's anti-corruption rules but able to continue to participate in tennis events in another jurisdiction, it seems to the Panel that the rules should be changed so that disciplinary decisions taken at the national level should form a basis for a provisional suspension of at least the same order at the international level pending the resolution of the TACP proceedings, absent unusual circumstances.

Coordination with other sports

The TIU should attempt to work with other sports on integrity issues

420. Gambling-related corruption is a challenge facing many sports beyond tennis, and the TIU should attempt to join forces with other sport regulators who are grappling with this issue. For example, the PGA Tour is launching an integrity program to *"protect our competition from betting-related issues"* that will take effect on January 1, 2018.[155] In the past year, UEFA consolidated its integrity, anti-doping, and disciplinary units into one entity, while its President remarked that match-fixing was *"a disease that attacks football's very core"*[156]. And officials in other professional leagues, including cricket and baseball, have expressed concerns about the looming threat of match-fixing and corruption to the integrity of their sports[157].

421. Despite differences among professional sports, they share a common interest in effectively combatting all integrity threats, especially match-fixing, which strikes at the heart of legitimate competition. They also face similar challenges in effectively policing against betting-related breaches of integrity. The TIU should endeavour to work with other sports on integrity issues in order, among other things, to share information about potential corruptors, to exchange knowledge about effective strategies and tactics, and to identify best practices.

155 Dylan Dethier, PGA Tour to launch Integrity Program to 'protect' tournaments from gambling issues, Golf (Sept. 19, 2017), available at: http://www.golf.com/tour-news/2017/09/19/tour-launch-integrity-program-combat-gambling-issues [accessed 9 April 2018].

156 Press Release, 'Zero tolerance for match-fixing' UEFA Integrity, (28 February 2017), available at: https://www.uefa.com/insideuefa/protecting-the-game/integrity/news/newsid=2445511.html [accessed 9 April 2018].

157 Peter Rolfe, 'Big Bash League prepared for a corruption threat: Cricket Australia integrity unit head' (Herald Sun, 2 December 2016), available at: http://www.heraldsun.com.au/news/big-bash-league-corruption-scandal-imminent-cricket-australia-integrity-unit-head/news-story/885be995ed81290db9fd6584881ed4d9 [accessed 9 April 2018] (quoting the head of Cricket Australia's integrity unit as believing a corruption scandal is *"imminent"* and that *"[s]omething big in Australian cricket is just around the corner and we're just preparing ourselves as well as we can for the day it comes"*); Sneha Shankar, 'Major League Baseball Hires Sport Integrity Monitor to Investigate Suspicious Gambling Activity' (International Business Times, 12 November 2015), available at: http://www.ibtimes.com/major-league-baseball-hires-sport-integrity-monitor-investigate-suspicious-gambling-2180881 [accessed 9 April 2018] (quoting the MLB's chief legal officer as stating that MLB was hiring an integrity unit from *"an abundance of caution"*).

E POTENTIAL IMPROVEMENTS TO INTERNATIONAL AND NATIONAL LEGISLATIVE AND REGULATORY PROTECTION

422. Finally, the Panel evaluates the adequacy of current international and national legislative and regulatory protection of the public and sports against breaches of integrity by those involved in the sport, and by those who seek to corrupt them.

423. This is a significantly different evaluative exercise to that undertaken in the remainder of this chapter above, because the discussion above addresses matters that could either be directly changed by the International Governing Bodies, or at least significantly influenced by them. These matters can therefore be made the subject of recommendations by the Panel to the International Governing Bodies, which can be implemented by them. In contrast, while the International Governing Bodies can lobby for change in relation to international and national legislative and regulatory protection, such change is ultimately outside their control, and in the hands of governments and regulators. The Panel cannot therefore make recommendations in this context, but it can only identify weaknesses and suggest areas that it considers could profitably be developed.

424. In doing so, the Panel examines the adequacy of national and international legislation and the application of criminal law by law enforcement agencies.

425. The Panel then addresses the adequacy of national gambling regulators' rules and enforcement by those national gambling regulators.

426. There are to a greater or a lesser degree inadequacies and areas for development in all of these contexts, not least in the light of the recent growth in the scale of the problem. The current level of international and national legislative and regulatory protection, with some exceptions, is as a whole inadequate to deal with the nature and extent of the problem now faced.

427. Governments and regulators are urged to make the developments identified in this chapter.

(1) ADEQUACY OF NATIONAL AND INTERNATIONAL LEGISLATION

428. Perhaps the greatest deterrent to involvement in match-fixing and related behaviours is the threat of criminal prosecution, conviction and sanction. Yet it is evident, in the Panel's view, that this does not occur frequently enough to amount to an effective deterrent. The first element in explaining why that is the current position involves the inadequacy of national and international legislation.

National Criminal Law

429. Different countries deal with match-fixing (to the extent they deal with it at all) under different types of criminal offence, such as fraud, private corruption or provisions specific to manipulation of sports results.[158] Non-specific offences are often not entirely sufficient to cover match-fixing and the various behaviours related to it. Some countries, such as Switzerland, appear to accept that their current legislation could be improved and have set about amending it. In other countries, such as Egypt, the legislative framework does not seem to allow the prosecution of match-fixing or related behaviours at all, yet no amendments are being considered. Where there is no criminal offence specific to manipulation of sports results, it is likely to be harder to bring the facts of a case within the requirements of the offence and so to secure a conviction, and consequently there are likely to be fewer attempts to do so.

430. It presently seems to the Panel that matters would be improved if national legal systems that do not already have offences specific to manipulation of sports results were to introduce them.

158 Chapter 5, Section A.

431. In addition to difficulty in bringing match-fixing or related behaviours within the wording of a non-specific criminal offence, the prerequisites for the prosecution of such offences may also raise difficulties in the way of successful prosecution in respect of match-fixing and related behaviours. These include, in some jurisdictions, the requirement that a criminal complaint be made, a financial threshold for prosecution, and short windows of opportunity under statutes of limitation. Such requirements vary from one country to another and determine the ability, or affect the willingness, of national criminal law enforcement agencies to investigate and prosecute. While such difficulties arise out of provisions often firmly established across a particular jurisdiction's criminal law system, and so are unlikely to be changeable, matters would be improved if the difficulties were minimised to the extent possible in the context of match-fixing and related behaviours.

432. The Panel suggests that the tennis International Governing Bodies consider approaching States, at the national level through the relevant national federations, to promote the introduction of specific offences at the national level and the minimisation of difficulties stranding in the way of appropriate criminal prosecutions.

433. The requirements of particular jurisdictions may also have an impact on the availability of mutual legal assistance. Prosecution authorities in one country that are actively seeking to investigate may be unable to secure required mutual legal assistance from other countries if such mutual assistance is provided on the basis of bilateral treaties that fail to include specific sports manipulation offences in their lists of covered offences. In the light of the transnational nature of many cases involving match-fixing or related behaviours, varying national criminal laws and approaches may lead to complications in investigating and prosecuting suspects, and in certain cases may even lead to impunity.

International Criminal Law

434. International criminal law may help to overcome this complexity or potential impunity by requiring States to adapt their legislative criminal law systems to introduce specific offences and by creating a basis for international cooperation[159].

435. The only international instrument that deals specifically with match-fixing and related behaviours is the Macolin Convention. Among other things, that convention expressly addresses match-fixing; encourages signatory countries to adopt criminal laws that sanction match-fixing in their jurisdictions and to promote the exchange of information among their betting regulators concerning illegal, irregular, or suspicious betting activities; and urges signatory countries to encourage their national sports organisations to prohibit betting or misuse of inside information by participants in sports.

436. The other instruments of international criminal law that might potentially assist in the context of match-fixing and related behaviours are few in number (principally UNCAC and the UNODC/Palermo Convention) and are not primarily designed for that purpose. Even UNCAC, which covers private corruption, does not render such private corruption a compulsory offence, and it is uncertain whether match-fixing would be considered as falling within such private corruption, because whether professional tennis falls within the category of commercial activities is open to differing interpretations.

437. In the Panel's present view, the Macolin Convention provides a useful framework for States to update their criminal law systems and to deal more efficiently with match-fixing at the national level and, perhaps more importantly, at the international level. It addresses both the introduction of specific offences and effective procedures, including international cooperation.

438. A fully operating Macolin Convention holds the promise of greatly assisting in the fight against corruption and match-fixing in sport. Its geographical scope, while not global, would be wide enough to have a significant impact, since it would comprise all Western European and Eurasian members of the Council of Europe (including Armenia, Azerbaijan, Georgia, Russia, Turkey and Ukraine) and would be open for signature by non-European countries of great importance for tennis (such as Australia and the USA) and others (including Belarus, Israel, Japan, Kazakhstan, Mexico and Morocco).

439. It therefore seems to the Panel that matters would be improved if the convention were in full operation.

159 Chapter 5, Section C.

440. However, the Macolin Convention has, to date, only been ratified by three countries – Norway, Portugal, and Ukraine. Five additional ratifications, including from at least three member states of the Council of Europe, must be deposited before the Convention enters into force[160]. The Panel understands from the European Commission[161] that the current delay in ratification and so implementation arises because the EU (or at least the European Council) at present considers that for the EU itself to ratify the convention, the unanimous agreement of all EU member states is required. Further, EU member states are apparently not supposed to ratify the convention by themselves, although Portugal has already done so. The Panel understands that there is not such unanimity because, in particular, Malta is concerned that ratification of the convention might limit the ability of betting operators located in Malta to deliver betting services throughout Europe. The Panel understands from the European Commission that Malta has a particular concern about the definition of illegal betting in the convention[162].

441. With that in mind, the Panel presently suggests that the International Governing Bodies of tennis consider approaching States, at the international level (Council of Europe and European Council) through the respective international federations (ITF, ATP and WTA) and at national level through the relevant national federations, to promote the signature and ratification of the Macolin Convention (and, indeed, where applicable other conventions or international instruments that can be of use in the fight against match-fixing). To be more effective in that regard, the Panel suggests that the tennis International Governing Bodies coordinate with other international and national sports authorities, such as in particular those of football, to convey the importance attached to the ratification of the convention by all sports.

442. It appears to the Panel that steps need to be taken at the state level to resolve the impasse regarding Malta's opposition. It would be useful for States to understand better the position of Malta regarding the Macolin Convention and to seek to reach agreement that would allow Malta to withdraw its opposition to ratification by the EU.

443. Although this impasse exists, and in the nature of such international relations make take some time to resolve, the Panel also understands that approximately 12 EU member states, and Norway, have in fact set about implementing the creation of the national platforms provided for in Article 13 of the Macolin Convention[163]. Furthermore, on the recommendation of the Council of Europe, the coordinators of the platforms of these countries created in July 2016, and meet as, the Group of Copenhagen (Network of National Platforms)[164]. It therefore seems to the Panel that even pending the ratification of the Macolin Convention, States can take a number of steps contemplated under it. In particular, they can provide for specific offences in their criminal law systems, they can create a national platform, and they can commence cooperation. The Panel suggests that at the same time as encouraging States to sign and ratify the convention, where they can, the tennis International Governing Bodies and the international authorities of other sports should also encourage equivalent development of national criminal systems and creation of national platforms by States that are not yet able formally to ratify.

444. In similar vein, it presently seems to the Panel that the tennis International Governing Bodies and other international sports authorities should at the same time consider advocating, and discussing with States, the characterisation of match-fixing as *"private corruption"*, so far as those States that have implemented this offence in their system are concerned, or preferably the implementation of a specific offence or offences of sports event manipulation into national criminal laws. The Panel notes that the use of private corruption to address match-fixing and related behaviours is unlikely to be as effective or efficient as the use of a specific offence, because the constituents that must be proved to establish corruption are likely more demanding than for a specific offence.

160 The Panel understands that Switzerland has announced publicly that it will ratify the Convention.

161 Statement of George Paterson (Directorate General for Education and Culture).

162 Chapter 5.

163 Statement of George Paterson (Directorate General for Education and Culture).

164 'Europol hosts a meeting of the group of Copenhagen to increase synergies in the fight against sports manipulation' (5 July 2017, available at: https://www.europol.europa.eu/newsroom/news/europol-hosts-meeting-of-group-of-copenhagen-to-increase-synergies-in-fight-against-sports-manipulation [accessed 9 April 2018].

445. Due regard must also be paid to the fact that some international treaties on mutual legal assistance may not allow for assistance in cases involving match-fixing when (a) the State to which the request is made does not itself prosecute such acts, either as such or under any type of offence under which the acts could fall; or when (b) bilateral treaties listing their covered offences do not expressly mention match-fixing, and match-fixing does not fall under any of the expressly mentioned offences (for example, organised crime, fraud, private corruption, or money laundering).

446. While the International Governing Bodies and the TIU cannot dictate the approach of national and international legal regimes to match-fixing and other related integrity threats to tennis, as noted above, they do have certain options open to them if legal safeguards cannot be assured. Among other things, restrictions could be placed on the supply of live scoring data for betting purposes in respect of tournaments or events in States that do not offer a safe environment in terms of appropriate criminal legislation, properly enforced, and preparedness to cooperate internationally, and the sales of live scoring data could be discontinued to betting operators located in such States. In the worst cases, it would be open to the international tennis governing bodies not to sanction international tournaments organised in States that lack adequate legal protections, and where match-fixing is widespread and remains unaddressed by the authorities.

(2) APPLICATION OF CRIMINAL LAW BY NATIONAL LAW ENFORCEMENT AGENCIES

Greater Preparedness to Investigate and Prosecute

447. It is not enough that there be appropriate national criminal laws, and appropriate international cooperation structures, in place. In addition, national law enforcement agencies must be prepared, and keen, to utilise those laws and structures to investigate match-fixing and related behaviours, and to bring criminal prosecutions. Also, the courts must be prepared to impose commensurate sanctions when there are successful proceedings. While it is correct, as set out above, that at present the legislation in many countries is inadequate, it seems to the Panel that, with some notable exceptions, national law enforcement agencies are not doing enough presently to apply the tools that they already have, and that when the courts do sanction players for match-fixing, they have failed to take into account the seriousness of the conduct.[165]

448. It presently seems to the Panel that matters would be improved if national law enforcement agencies were more prepared to investigate and bring criminal prosecutions in respect of match-fixing and related behaviours.

449. To this end, the Panel suggests that the tennis International Governing Bodies consider approaching States, at the national level through the relevant national federations, to encourage the investigation and criminal prosecution of those involved in match-fixing.

450. The Panel appreciates that there may be jurisdictional difficulties. In many if not most cases, match-fixing will concern multiple jurisdictions and actors. A player may come from one country, the match may be in another, and the betting may involve bettors in a third country with an operator in a fourth country. In such situations, it may not be clear whether, and how, a particular law enforcement agency can investigate and bring proceedings, or which of a number of law enforcement agencies should do so, when informed of an alleged match-fixing incident. This is even more the case when players have left the country in which the suspected match took place, as if often the case in tennis. In that common situation, an investigation would require prompt and decisive coordination between States. States are usually slow so to cooperate, in the light of obstacles such as the prerequisite in certain legal systems that there be a treaty in place before cooperation is permitted, differing criminal laws among States, the lack of resources in many countries, and problems of communication (particularly language barriers).

165 For example, though CAS upheld a ban of seven years and a fine of USD$35,000 in relation to Australian player, Nick Lindahl's, involvement in match-fixing, in the related criminal proceedings in Australia, Lindahl was convicted of using corrupt conduct information but only fined AUD$1,000.

451. It is also understandable that at least in certain countries, the offence of match-fixing is not a priority. For example, the Panel was told by a prosecutor in Egypt that due to the problematic legislative framework in the country, but especially due to the largely overburdened enforcement authorities, which obviously give priority to more serious offences, including terrorism, it is unlikely that match-fixing cases will be prosecuted. It may therefore be that other countries with jurisdiction, although perhaps not as a result of the match taking place there, should be prepared to act.

452. The jurisdictional difficulties mean that it is not a surprise that the instances of active criminal investigations and prosecutions in tennis, such as those in Italy, Spain and Australia[166], largely involved local actors acting locally, as opposed to international actors acting internationally.

453. With the differences in ability and preparedness to proceed, and the jurisdictional difficulties, in mind, the international tennis governing bodies may wish to consider carefully examining the law enforcement framework of a country, before sanctioning a tournament to take place there. It seems to the Panel that an effective mechanism for encouraging national law enforcement agencies to be more prepared to investigate and bring criminal prosecutions in respect of match-fixing and related behaviours would be to raise the prospect of preventing, or limiting the number of, sanctioned events in a particular country. For instance, if there were a country where intelligence and/or data revealed a particularly high incidence of suspected integrity concerns, it might be possible to condition the sanctioning of further events on assurance from authorities, for example at the level of Sports or Justice or Interior Ministries, that match-fixing cases will be pursued adequately, perhaps with the assistance of, and cooperation with, law enforcement authorities.

Greater Use of Existing Cooperative Structures

454. It also seems to the Panel that matters would be improved if national law enforcement agencies took full advantage of such cooperative structures as presently exist, not only among law enforcement agencies, but also between law enforcement agencies and the relevant sport.

455. To this end, the Panel suggests that the tennis International Governing Bodies consider approaching states, at the national level through the relevant national federations, to encourage this.

456. In particular, it seems to the Panel that sports authorities and law enforcement agencies should keep one another informed, cooperate with one another and coordinate their actions within existing frameworks such as the INTERPOL Match-Fixing Task Force ("IMFTF") and EUROJUST/Europol joint investigation teams ("JIT"), as described in Chapter 5. Initiatives equivalent to INTERPOL's SOGA (a code-named tactical operation short for Soccer Gambling) should also be promoted in the field of tennis.

457. In many countries, law enforcement agencies may possess little knowledge of a sport, its practices and its constraints. Accordingly, it is of paramount importance that the TIU and the national federations appropriately share information, cooperate, and coordinate with law enforcement. To the extent that the internal laws (codes of criminal procedure, data protection laws and so on) of countries limit the exchange of information and intelligence between the police and prosecutors, on one hand, and private actors such as national sports organisations and foreign private actors such as the TIU, on the other hand, any available steps to maximise the permissible extent of cooperation should be taken. For example, the very nature of law enforcement investigations makes it unlikely that law enforcement authorities will provide intelligence to private bodies, unless they are absolutely confident that it would not adversely affect an ongoing investigation and that no unauthorised use would be made of such intelligence. Accordingly, the TIU and the integrity officers of the national federations must develop close relationships, and build trust, with local law enforcement authorities. This requires a deep understanding of the local legal and cultural framework and, often, the relevant law enforcement personnel.

166 For Italy, see the unsuccessful prosecutions of Potito Starace and Daniele Bracciali, available at: http://www.ansa.it/emiliaromagna/notizie/2018/01/09/assolti-a-cremona-bracciali-e-starace_dd5a1317-e4dc-49e9-b80b-da3287e2008c.html [accessed 9 April 2018]. For Spain, see 'Operation Futures', available at: http://www.marca.com/en/more-sports/2016/12/01/5840124d22601d7c7b8b4598.html [accessed 9 April 2018]. For Australia, see the prosecution of Nick Lindahl in Australia , available at: http://www.abc.net.au/news/2016-04-18/tennis-player-sentenced-over-toowoomba-match-fixing/7334146 [accessed 9 April 2018] and the ongoing case against Isaac Frot, available at: http://www.abc.net.au/news/2017-06-14/queensland-police-charge-tennis-player-with-match-fixing/8618430 [accessed 9 April 2018].

(3) ADEQUACY OF NATIONAL GAMBLING REGULATORY RULES AND ENFORCEMENT BY NATIONAL GAMBLING REGULATORS

458. The taking of bets by betting operators is an essential element in almost all match-fixing and related behaviours: Without the opportunity to profit from cheating at betting, there is very rarely an incentive to fix.

459. Also essential are the actions of betting operators in assisting a sport, or law enforcement authorities, in detecting and acting against match-fixing and related behaviours. In these circumstances, the rules regulating the actions of betting operators, and the extent to which they are enforced at the national level, play (or should play) an integral role in controlling both the extent to which betting markets attractive to fixers are offered in the first place as well as the degree to which assistance in tackling the problem is provided.

Fragmented and inconsistent regulatory environment

460. However, the worldwide regulatory framework for gambling is very fragmented.[167] Local social issues dictate how gambling is regulated, or even permitted, in any given jurisdiction and there is little consistency among jurisdictions. The proliferation of online betting has materially exacerbated this issue.

461. As summarised by two industry experts, *"[T]he internet has…transformed sports betting from a cash-based activity that was largely bound by physical proximity and therefore the local laws of the relevant jurisdiction, to a borderless market that connects operators with customers regardless of their location"*[168].

462. While a national gambling regulator's rules (and related enforcement measures) may be adequate, they are often undermined by the fact that individuals based in that jurisdiction can bet *"illegally"*[169] online with betting operators that are either not subject to those rules or are able to circumvent them easily by being based elsewhere. To address this, the Panel has set out below some examples of regulatory good practices that, in its present view, should be implemented by as many jurisdictions as possible.

463. However, the Panel recognises that the implementation of consistent national regulation across all jurisdictions will be extremely difficult, if not impossible, to achieve. It is therefore mindful that any recommendations must not be so onerous so as to result in betting demand being channeled into those jurisdictions that do not implement the Panel's recommendations.

Examples of regulatory good practices

Effective reporting obligations and the provision of betting and bettor information

464. It is fundamental to safeguarding integrity in sport that betting markets are transparent. A report from a betting operator is one of the principle triggers for integrity-related investigations. Betting operators possess information about their betting markets and their customers that would greatly assist sports governing bodies (and dedicated integrity units like the TIU) through the prevention of corruption and the prosecution of those who have engaged in corrupt activities. The information derived from betting markets can evidence when bets were placed, in what amounts, and at what odds, and how that differed from what was to be expected. The bettor information demonstrates the usual activities of the relevant account, and the identity and contact details of the account holder. The combined provision of these two types of information can greatly facilitate integrity-related investigations.

465. It is common for national regulators to require a betting operator to report a crime when it has reasonable grounds to believe one has taken place. However, this obligation does not normally extend to providing such information to sports governing bodies.

167 Chapter 3, Section A.

168 Andrew Menz and David Skene, Match-Fixing in Sport – Comparative Studies from Australia, Japan, Korea and Beyond, Chapter 2 – Betting markets and the roles of private enterprise in combating match-fixing, page 19.

169 Distinctions between legal, illegal, regulated and unregulated betting are discussed in Chapter 3, Section A.

466. This issue is one that is relatively easy for a national regulator to address (subject to navigating any relevant data protection legislation). An obligation on a betting operator to provide certain information to a sports governing body is a matter for the betting operators and does not impose a significant day-to-day burden on a regulator. It is imperative that sports have access to this information, not just when they have reasonable grounds to believe their rules have been breached, but also when an operator reasonably suspects the same (when the sport might otherwise be unaware). Once introduced, the regulator's role would be limited to checking, from time to time, that the obligation is being observed and bringing enforcement action for instances of non-compliance.

467. An example of a national regulator addressing this issue is the Gambling Commission in the United Kingdom. It is a condition of being licensed in the United Kingdom that betting operators in certain circumstances provide relevant sports governing bodies with *"sufficient information to conduct an effective investigation"* if the licensee believes that there has been *"a breach of a rule on betting applied by that sport governing body"*.[170]

468. Absent an obligation from a national regulator, the TIU relies on a contractual obligation on betting operators to report certain information under the terms of memoranda of understanding[171]. To be effective, this approach requires a meaningful obligation on betting operators to enter into such memoranda of understanding (in the absence of a desire to do so of their own volition). Certain of the governing bodies seek to achieve this position indirectly; in the official live data agreement with IMG, for example, the ATP and the WTA require that any contract governing the onward sale of that data to a betting operator must contain an obligation on the betting operator to comply with the terms of a memorandum of understanding with the TIU. This mandatory contractual provision has compelled several betting operators to engage with the TIU[172].

469. The effectiveness of this approach, however, remains limited by the willingness of the betting operator to observe the terms of the contractual agreement with the data supplier and, therefore, the memorandum of understanding. Betting operators may, for example, prefer not to observe the terms of the memorandum of understanding in certain circumstances to protect their own commercial interests.

470. It presently appears to the Panel that national regulators could reinforce, strengthen or (ideally) replace the contractual protections that sports governing bodies may currently rely upon with a regulatory obligation on those betting operators falling within their jurisdiction to enter into and abide by memoranda of understanding with relevant sports governing bodies. This could be achieved as part of licence requirements relating to the reporting of information. If national regulators set out more comprehensive reporting obligations, supported by statutory sanctions for non-compliance, the effectiveness of reporting may improve, which in turn would greatly assist sports governing bodies to address integrity issues within their respective sports.

471. Further, in the context of tennis, it is a considerable administrative exercise for the TIU to administer arrangements with all betting operators offering bets on tennis matches. If national regulators required reporting, then the TIU would not have to handle a great number of such individual agreements.

170 Section 88 of the Gambling Act 2005 and Licence Condition 15.1.2 (version dated January 2018). The relevant sport governing bodies listed in the Gambling Act (Part 3, Schedule 6 of the Gambling Act 2005) includes the Lawn Tennis Association. A Gambling Commission consultation document dated 9 November 2016 proposed that the TIU be added to the list of governing bodies in the Gambling Act. To date, the TIU has not been added. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567011/2016-11-09_OFFICIAL-_Schedule_6_consultation_for_publication_closing_8_Dec.pdf [accessed 9 April 2018].

171 Chapter 3, Section D.

172 Chapter 3, Section D.

Developing a consistent definition and approach to suspicious betting patterns

472. Whether reporting obligations are affected by national regulatory requirements (e.g. as part of licence conditions) or through an appropriate contractual commercial relationship between the sport and participants in the betting industry, possibly the greatest challenge is in defining suspicious betting activity and ensuring a consistent (and compliant) approach of operators to monitoring and reporting such activity.

473. There is no single, established definition of what constitutes an unusual betting pattern[173]. The process for determining whether to elevate *"unusual"* activity to *"suspicious"* also differs among betting operators.

474. By its very nature, monitoring and reporting of unusual or suspicious betting patterns is a subjective matter. Many factors need to be considered, including information that is commercially confidential. For many betting operators, the primary purpose of monitoring betting patterns is internal commercial risk management. The problem is that a betting operator may be willing to bear a greater level of risk than a sports governing body, for example, or the operator may not see risk where a sport governing body may identify suspicious activity with similar real-time access to the same data.

475. This is exacerbated by the view that a betting operator's interests may not always entirely align with those organisations responsible for protecting sport from breaches of integrity. Unless this gap is bridged through a combination of clear guidance (or prescription) and deep operational cooperation, a material number of suspicious activities could go undetected despite the potential availability of evidence in the form of betting data.

476. Reporting of suspicious activity is currently largely a matter of self-regulation, with no agreed methodology for assessment. It is inevitable that there will be an inconsistency of approach within each jurisdiction, let alone across different jurisdictions. The Panel is not aware of any jurisdiction in which operators are subject to an external audit of decisions to report, or not to report, unusual or suspicious activity, but such a step may be desirable. To ensure consistency (to the extent possible and at least at a national level), national regulators could adopt a more hands-on approach by implementing external audits, and seek to adopt an agreed methodology for assessments as to what is unusual/suspicious for purposes of reporting under the relevant licence conditions.

Greater powers for sports integrity units

477. The TIU, like most sports governing bodies or integrity units, is a private organisation that does not enjoy the same extensive powers afforded to law enforcement and other government agencies.

478. The TIU is not alone in facing this challenge. The recently-established Athletics Integrity Unit (AIU) will have similar limitations, as will other integrity units operating within sports governing bodies. There may need to be reliance on gambling regulators or on law enforcement agencies (sometimes with assistance from national or federal cross-sport integrity units) to assist with investigations into corrupt activity, or to pursue criminal investigations themselves.

479. In the Australian state of Victoria, its police force operates a sports integrity unit within its Intelligence and Covert Support Department.[174] While this unit enjoys the same extensive powers generally made available to the Victoria Police in the context of protecting the integrity of sport, it is still subject to the territoriality principle and so the application of its powers is limited to those entities and individuals that fall within its jurisdiction. In an effort to supplement its domestic powers, Victoria Police has recently signed a Letter of Agreement with the regulated sports betting operators' international integrity body ESSA. This agreement has been effective since January 2018 and has been in place for 2018 sporting events in Victoria, notably the 2018 Australian Open. An element of the partnership involves ESSA providing the Victoria Police real-time betting alerts on sporting events across Australia should any matches exhibit suspicious betting activity.[175]

173 Chapter 3, Section F.

174 In 2013, Victoria also introduced specific criminal offences related to match-fixing (see the Crimes Amendment Integrity in Sports Act 2013).

175 Victoria Police & essa Sports Betting Integrity, 'International Ties Strengthening in Fight Against Match-Fixing' (15 January 2018), available at: http://www.eu-ssa.org/wp-content/uploads/SIIU-ESSA-press-release-Jan-2018.pdf [accessed 9 April 2018].

480. Summarising the benefits of the agreement between Victoria Police and ESSA, Detective Superintendent Peter Brigham stated, *"[A] number of ESSA members facilitate betting on Victorian events, however have no presence within Australia. This means that police such as our Sporting Integrity Intelligence Unit investigators have limited ability to contact these betting agencies directly when making enquiries into suspicious betting activity on local sporting events. Given the real time aspect of the alerts, it gives our investigators the ability to act quickly and even attend the sporting event in question to immediately commence the investigation"*[176].

481. However, proving corruption can be a complex, time consuming and expensive exercise. Frequently, third party corruptors will not fall within a sports governing body's jurisdiction, meaning that they cannot be compelled to cooperate with a sport's investigation, nor will they be subject to any meaningful sanction that a sport could apply. Breaches of sports' anti-corruption rules will in many cases also amount to criminal activity, so in theory it is logical for law enforcement or government agencies to become involved in such investigations. However, there will be many competing demands on a state's limited resources, and sports corruption may not be a high priority for law enforcement when ranked against other issues of public concern.

482. This delicate balancing act presents an argument for a public/private partnership, combining the expertise, day-to-day management, and access to participants of a sport's governing body or integrity unit, with the greater investigative and prosecutorial powers, and resources, of a gambling regulator and/or law enforcement – for example, something that mirrors the Victoria Police/ESSA agreement, but with the governing body itself providing information to the law enforcement, rather than the third party betting organisation With an established commitment to sports integrity at a national policy level, supported by legislation, the engagement of domestic agencies then becomes a question of resources and priorities. Some matters will be appropriately dealt with by sports governing bodies, others may be criminal offences more appropriately dealt with by law enforcement, but the approach need not be binary.

483. A betting database

484. As stated above, historical and live betting data are key to the fight against corruption. There are currently attempts being made to collate this data from several different betting operators into one database.

485. If compiled and interrogated properly, such a database would be extremely valuable. It would allow a sports governing body immediate access to all raw betting data for the sport in question. This means that suspicious betting patterns could be identified more quickly and efficiently and with greater accuracy. The volume of data available for analysis be much more significant, as it would include bets placed with many betting operators. The compilation of that data by one person or organization should also lead to a more consistent analysis. And, importantly, delays in information transmission would be reduced, eliminating the need for information to be considered by one betting operator and then communicated for further review by the relevant sports governing body.

486. A significant obstacle to implementing such a database will be persuading betting operators to share commercially sensitive information. One organisation seeking to achieve this aim is Integrigator. As part of its model, Integrigator seeks to ensure that the betting data is encrypted and is only available to the relevant sports governing body (and not to the other participating betting operators or even Integrigator itself). However, betting operators are still reluctant to share the data. Integrigator currently operates in the Australian States of Victoria and New South Wales, where it can collect data from betting operators on horse racing because the betting operators are subject to greater statutory and regulatory control.

487. This degree of control does not exist in most jurisdictions. Absent such pressure, the Panel believes that a few betting operators will need to participate voluntarily for a consolidated betting database to gain momentum. Provided that their commercially sensitive betting data is adequately protected, such an approach should benefit them as it reduces the number of corrupt bets placed on fixed matches and, thereby, protects their revenue streams.

176 ibid.

488. An alternative would be for a national regulator to require pooling of the betting data. In Italy, SOGEI, an IT company appointed by Italy's regulator, Agenzia delle dogane e dei Monopoli ("ADM"), maintains a real-time record of every bet placed with Italy's licensed operators so that each can be recorded, monitored, validated and taxed. While the primary purpose is ensuring tax is paid, it demonstrates that such a system can be implemented with government support.

489. Two issues with such an approach should be noted. First, if the requirement to feed data into the database in a particular way limits the types of bets that can be offered or impacts innovation in other ways, then bettors may be encouraged to place their bets with betting operators who are not included in the database, undermining the regulator's ability to capture a large quantity of the relevant data. Second, while access to real-time data has benefits, such benefits will only be realised if there is organisational capacity, both in terms of staffing and skill-set, to effectively monitor vast amounts of data and act on any suspicious activity that is identified.

Restrictions on particular types of bet

490. The Panel has recommended that the supply of live data to a betting operator is subject to certain conditions that are set out in the contract between the relevant governing body and the data supplier or betting operator. One suggested condition is that each betting operator agrees not to offer markets on types of contingency that the TIU directs should not be offered (as the TIU may identify types of contingencies that give rise to particular integrity concerns).

491. A similar approach is adopted in France. Autorité de Régulation des Jeux en Ligne (ARJEL), the body that regulates online gambling, determines what types of bets are permitted for any given event (in consultation with the relevant sports governing body). Bets are permitted on the final result of a contest or on the result of phases during the contest. The following are not permitted: (i) bets not dependent on final or interim results or (ii) bets on aspects not related to sporting performance[177].

492. In deciding which events to include, ARJEL assesses the level of risk that a market will be manipulated. ARJEL believes that betting operators, who have their own commercial interests, should not be the body deciding whether a market should be offered. The results must, for example, be quantifiable[178]; bets on sports where subjective marking is involved are not permitted (such as gymnastics), as the results are susceptible to manipulation. Betting operators are prohibited from accepting bets on, among other things, certain rounds of Roland Garros, such as the junior tournament, the qualification stages and the first-round of the doubles competitions[179].

493. Provided that any limitations on the type of contingency that is offered are proportionate, and do not result in bets being channeled towards the illegal markets, the Panel considers this to be a useful tool in limiting the opportunity to spot bet, particularly in circumstances where integrity concerns are significant, and one that national regulators should consider implementing where appropriate.

(4) A SUPRANATIONAL BODY TO ADDRESS CORRUPTION IN SPORT?

494. For many sports, and for tennis in particular, the cross-border challenges are significant. In theory, these could be addressed at least in part by a supranational body ensuring a consistent and collaborative approach of regulators, betting operators and sports governing bodies.

495. Primarily, such a body would need to focus on the specific challenges that currently exist in sport, including ensuring a proactive approach by sports governing bodies to betting-related integrity issues, along with the reporting of suspicious betting activity by operators and, crucially, timely and extensive information sharing among all partners on a 24/7 basis. The body's remit might also extend to (not necessarily betting-related) corruption within sports governing bodies.

177 http://www.arjel.fr/-Supports-de-paris-.html [accessed 9 April 2018].

178 Asser Institute 'The Odds of Match Fixing' (January 2015), page 10, available at: http://www.asser.nl/media/2422/the-odds-of-matchfixing-report2015.pdf [accessed 9 April 2018].

179 Jean-Francois Vilotte, Supplementary Memo to the Interview of 13 July 2016 (25 July 2016), page 12.

496. Sports governing bodies might be wary of creating an anti-corruption entity that would apply a one-size-fits-all set of prohibitions across sports and countries, such as how the World Anti-Doping Agency ("WADA") operates. That would not necessarily be required, however. The principal objective of a supranational body focused on betting-related corruption might be to facilitate or require consistent sharing of information across betting, (all) sports, and law enforcement, and across jurisdictions. It could also enable coordination of investigations among relevant partners with complementary expertise, powers, and jurisdictional reach. It could even be granted powers itself to investigate and prosecute, if stakeholders were prepared to go that far.

497. In theory, much could be gained from a more cohesive global approach and the establishment of a single regulatory organisation, however extensive (or not) its remit may be. There would be many obstacles at well, not least establishing a universal anti-corruption code and dealing with data protection laws across different territories.

498. The need to dovetail gambling and sports regulation would also present challenges, but at the same time opportunities. The ability of sports bodies to promote more extensive legal, regulated and visible betting markets, with operators bound by sports integrity obligations, might be increased through the establishment or operation of a central body bridging gambling and sports regulation.

499. Despite its potential advantages, the prospects for a supranational body to address corruption in sport remain largely theoretical. Questions remain as to which body (or bodies) has the necessary motivation, access to funding, and political leverage to make this a reality, and whether there is a sufficient desire from relevant stakeholders to do so.