



The Governance
Institute

The Future of Sports Governance Beyond Autonomy



May 2019

The Future of Sports Governance – Beyond Autonomy

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The Future of Sports Governance – Beyond Autonomy

Background

Now is a fitting time to take stock of governance in sport. In the past generation, the sector has changed – not quite beyond all recognition, but certainly to a degree that would have been almost unthinkable even a quarter of a century ago. Sport is big business. Unprecedented media exposure and, for some sports at least, transformative revenue streams have altered the sporting and governance landscapes. Yet some organisations have arguably failed to keep pace with the decline of the amateur participant and the rise of fully funded professionals – male and female – with challenging performance targets, both on the field of play and in the boardroom, operating in a global, often commercialised environment.

Alongside these shifts have emerged damaging scandals. Domestically, the UK has witnessed governance failures at some of its most high-profile and successful organisations.

In October 2016, an overhaul of governance in the UK publicly funded sport sector was heralded with the introduction of the Code for Sports Governance, compliance with which is now required in return for investment received through the arms-length agencies UK Sport and Sport England. Intended to protect public investment and establish a new ‘gold standard’ for sports governance, the Code has, for the first time in the UK, introduced mandatory compliance in governance. The result has been, and will be, to challenge those within the sector not just to revise their existing governance structures and practices, but in some cases to address their fundamental philosophy and approach to the way that sport is run; an approach that has traditionally centred, in many cases, on historical conventions and culture of self-regulation and autonomy.

This report assesses some of the key challenges facing national governing bodies (NGBs) as the organisations responsible for the domestic governance and regulation of general matters within their sport, recognising and developing talent, encouraging participation and representing their sport internationally. Focusing predominantly on the sports recognisable at Olympic or Paralympic Games and major international competitions, it explores the factors that we believe have eroded or rendered no longer tenable or appropriate self-regulation and autonomy for the sports sector. We will also highlight a number of future challenges facing the sector more widely, which might contribute further to the need for external involvement in the governance of sporting organisations.

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Is sport a special governance case?

Some within sport claim that it is unlike other sectors of the economy. But in governance terms, is it really so different? And do those differences give sport legitimate grounds to claim self-regulation with limited or no external intervention, particularly when some disciplines are heavily funded from the public purse?

High ideals

Sport is undoubtedly unique. It occupies a special place in the hearts and minds of millions of individuals across the country. It has the power to inspire people from all generations to get active. Around 23% of the population over the age of 16 actively participated in sporting activities in the year to May 2016.¹ Physical activity is calculated to contribute £39 billion to the economy each year.² Almost 75 million people attended professional sports events in the UK in 2017.³ Millions more engaged from their living rooms or in communal spaces.

Because sport can be such a force for good, the argument goes that it should sit above national politics and be left to spread the good works it delivers. It should be treated differently from other big business because it is about more than making money.

Whether the argument for this splendid isolation that sport claims for itself has been made persuasively is another matter. Are not other sectors and industries considered similarly unique by those on the inside? At its most strident, the contrary position could be staked out by two questions: Do you deal with money? Do you deal with people? Almost always the answer to both these questions is in the affirmative. Why, then, the call for special status?

1 *Sporting participation in England*, House of Commons briefing paper, CBP 8181, December 2017, p. 5.

2 *Sporting Future: A New Strategy for an Active Nation*, HM Government, December 2015, p. 58.

3 www2.deloitte.com/uk/en/pages/press-releases/articles/almost-75m-tickets-sold-for-uk-sports-events-in-2017.html

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As the power and presence of sport has grown, evidence remains of both chronic and acute problems of greed, system and process breakdowns, and of ethical and moral culture found wanting, both internationally and closer to home.⁴ This has prompted questions as to whether the governance models adopted by many sports bodies are suited for the role they play and the environment in which they operate.

The introduction of the new Code for Sports Governance, and its requirement for mandatory compliance, is a bold move, representing definitively the end of autonomy, at least for funded organisations in the UK, and the introduction in its place of ‘earned autonomy’. Indeed, there are elements of ‘supported autonomy’, where funding, control and accountability are aligned and are located in a single place, close to the front line. Under supported autonomy, institutions are to be equipped for success, building a system responsive to need and performance. Crucially, under this model, autonomy is earned and lost according to success, with high-performing leaders and institutions extending their influence in a bid to drive up standards. Such a Darwinian application seems in some ways apt for the sports sector (the competitive elite element of it at least, though perhaps not that which views sport as for all).⁵ In any case, the autonomy would seem to be conditional, rather than absolute.

Role of the state

Historically, outside intervention in the internal operations of sports bodies has been vigorously resisted, often by organisations whose associational roots lie in nineteenth- and early twentieth-century liberalism. There are elements in the sector which to this day remain wary of what the founder of the modern Olympic movement, Pierre de Coubertin, referred to as the ‘huge, blurred face of that dangerous creature known as the state’.⁶



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4 Final Report by the Independent Governance Committee to the Executive Committee of FIFA, April 2014, p. 6.

5 See, for example, the Department for Education, *Educational Excellence Everywhere*, March 2016, pp. 4, 8–10, 34, 72–3.

6 Quoted in A. Geeraert, *The EU in International Sports Governance: A Principal-Agent Perspective on EU Control of FIFA and UEFA*, Palgrave Macmillan UK, 2016, p. 7.

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Yet the importance that successive governments have attached to the sporting sector for all of the above reasons – as well as for the more intangible benefits of prestige, national pride or even, dare one say, political opportunism – is reflected in the investment made from the public coffers. The UK central government committed £6.25 billion to staging the London 2012 Olympic and Paralympic Games, with a further £2 billion coming from the National Lottery.⁷ In the four years prior to the Rio Games, over £1 billion of Exchequer and Lottery funds was invested in elite and grassroots sport in the UK, via UK Sport and Sport England.

Sport is also being increasingly employed as a domestic policy tool. The Government's *Sporting Future: A New Strategy for an Active Nation*, published in December 2015, drew attention to the power of sport and physical activity 'to transform people's wellbeing and create a fitter, healthier and happier nation'⁸ and to the role they play in supporting a range of policy priorities in health, education, criminal justice and economic development.

Using sport in this way makes sense. However, organisations that were once simply loose associations (almost exclusively of men) are now being called upon to help in areas in which they could never have envisaged being involved: from tackling medical and societal trends and forming part of social prescribing,⁹ to encouraging community cohesion and economic stimulation.

This has given rise to an almost inevitable conflict. On the one hand, the sport sector and its individual organisations are being asked to fulfil more roles and contribute to wider objectives – and are in many cases being provided with significant sums of public money to do so. At the same time, elements within the sector remain insular and protective of its autonomy and continue to argue for special status.

⁷ *London 2012 Olympic and Paralympic Games* – Quarterly Report, Department for Culture, Media and Sport, October 2012, p. 16.

⁸ *Sporting Future: A New Strategy for an Active Nation*, p. 9.

⁹ The NHS intends to use 1,000 'link workers' to handle 900,000 patient appointments a year by 2020–21 through community activities, exercise groups, art classes and other schemes to help reduce GP workloads.

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 *Sport is a social expression – not a business like any other – and fulfils a unique social, educational and cultural role which benefits society as a whole.*

UEFA et al

The sector's justification for exemption from state intervention is contained in the very widening of the scope of its purpose. Those who make claims for the autonomy of sport have often been no strangers to aggrandising the role it plays – the lofty vision contained in the IOC's Fundamental Principles of Olympism is a prime example.¹⁰ The United Nations, which recognises the 'independence and autonomy of sport', has also affirmed its potential to 'foster intercultural dialogue, peace and development' and ability to promote 'cooperation, solidarity, social inclusion and cohesion, gender equality and health at the local, national and international levels'.¹¹ A statement released by a group of European sport federations in 2006 encapsulated the standpoint succinctly, confidently asserting that: 'sport is a social expression – not a business like any other – and fulfils a unique social, educational and cultural role which benefits society as a whole'.¹²

But does this – and should it – qualify sport for special treatment?

High revenues

Sports take money in the form of ticket sales, merchandising, public grants or commercial deals in return for the product they supply. Although advocates for the autonomy of sport contend that it is not an economic activity like any other, it is nevertheless an economic activity. In a new world of sponsorship, media and licensing rights, big money changes hands, and jobs, livelihoods and investments can all hinge on the performance of sports and their governing organisations.

It is difficult to see how the idea of autonomy suits this 21st century context. It is, after all, a concept with its roots in the Victorian spirit of the gentleman amateur, rather than the era of the Premier League, multi-million pound partnerships, multi-billion pound TV deals and internet broadcasting.

10 Most effusively in 'Fundamental Principles of Olympism 1 and 2', *Olympic Charter*, International Olympic Committee, September 2015, p. 13.

11 United Nations Resolution A/RES/65/1, October 2010, paragraph 67; 'Sport as a means to promote education, health development and peace', October 2014, A/69/L.5, paragraph 8.

12 Common statement by UEFA, FIBA Europe, the EHF, the IIHF and the CEV, 20 September 2006, quoted in J-L Chappelet, *Autonomy in Sport in Europe*, Council of Europe Publishing, 2010, p. 96.

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European considerations – qualified autonomy?

At the European level, autonomy has been in part preserved by deference to what has been called the ‘specificity of sport’ – that is, the inherent characteristics of the sector that set it apart from other economic and social activities and justify accommodation by, or even exclusion from, European law. This special treatment has been established through decisions and publications of the European Commission and the rulings of the European Court of Justice. Article 165(1) of the Treaty on the Functioning of the European Union acknowledges the ‘specific nature of sport, its structures based on voluntary activity and its social and educational function’, even when areas of European law are being applied to sport. For example, domestic football leagues may impose transfer windows that would otherwise contravene workers’ rights to seek alternative employment, in order to maintain the regularity of sporting competitions.¹³

Yet even where a special case is made for sport, conditions have usually been attached. UEFA’s former long-standing president, Lennart Johansson, though calling for governments and regulators to respect the specificity of sport, acknowledged that ‘to earn this autonomy sports bodies must provide good governance, work for the good of all stakeholders and adopt measures to promote competition on the field of play’.¹⁴ The current IOC President, Thomas Bach, has referred to ‘responsible autonomy’, whereby sport exercises its independence in accordance with the rules of good governance.¹⁵

The European Commission White Paper on Sport in 2007 only went so far as to say that: Governance is *mainly* the responsibility of sports governing bodies and, to some extent, the Member States and social partners ... Most challenges can be addressed through self-regulation respectful of good governance principles.¹⁶

13 Other examples include the composition of national teams, separate competitions for male and female participants, the need to ensure uncertainty of outcome and competitive balance between clubs taking part in the same competition.

14 Quoted in Chappelet, *Autonomy of Sport in Europe*, p. 99.

15 T. Bach, *Statement on the occasion of the adoption of the resolution ‘Building a peaceful and better world through sport and the Olympic ideal’*, 68th Session of the UN General Assembly, New York, 6 November 2013.

16 Commission of the European Communities, *White Paper on Sport*, COM(2007) 391, s. 4.1, p. 13 (italics added).

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It acknowledged that commercialisation, pressures on public spending, increasing numbers of participants and stagnation in the number of voluntary workers present new challenges, and the emergence of new stakeholders – participants outside the organised disciplines and professional sports clubs – pose new questions for governance, democracy and representation of interests within the sport movement.¹⁷

Surely these changes have only accelerated in the subsequent decade.

In December 2017, the Parliamentary Assembly of the Council of Europe passed a draft resolution that upheld the principle of autonomy, but it also asserted that the sports movement ‘cannot be left to resolve its failures alone. It needs to accept to take on board new stakeholders to embrace the necessary reforms’.¹⁸

This position was developed in December 2018, when the Council’s Committee of Ministers acknowledged that the legitimacy and autonomy of the sport movement depends on upholding the highest principles of ethical behaviour and good governance, and that public authorities have a role in promoting the implementation of sound practice. Their suggested measures ought to raise few eyebrows among those who advocate improved governance.

These reasons, along with other factors discussed below, lead us to the view that sports bodies have outgrown the traditional model of autonomy. This has been replaced by one where accountability and pressures are increasingly felt in a network rather than vertically and self-owned, and where national sporting bodies operate in conjunction with a range of stakeholders and must, like any organisation, justify their position by demonstrating sound governance and principled leadership.

¹⁷ *Ibid.*, s. 4, p. 12.

¹⁸ *Working towards a framework for modern sports governance*, Council of Europe, 4 December 2017, Draft resolution paragraph 2, p. 1.

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The Code of Sports Governance

With the many different forms that governing bodies take – private companies, companies listed in the UK and abroad, shareholder and membership structures, and some which are unique to sport – it is unsurprising that governance arrangements are not uniform. Governing bodies also fulfil multiple roles and sustain pressure from several directions. They are at once custodians of the sport, membership bodies, employers, property rights holders, commercial partners and play a host of other roles, each of which brings its own responsibilities and challenges.

Following the publication of its sporting strategy, and amid several high-profile governance failures, the UK government and its funding agencies, UK Sport and Sport England, developed a code of governance for sports bodies.

The Code aims to transfer and adapt good governance practice from other sectors in order to develop a framework for high-performing boards in the sports world. The transformative aspect of this code, however, is that for those bodies seeking, or in receipt of, taxpayers' or National Lottery money, there is no deviation from its principles and the requirements specified in individual funding agreements. The first mandatory governance code in the UK – an approach termed 'comply or else' – is a bold move.

The Code's reception among NGBs has been mixed. While some have openly welcomed the development, others have seen their memberships kick against what is felt to be an attack on their autonomy. Some have objected that particular provisions – such as the requirement for 25% appointed independent non-executive directors – are a surrender of control over their sport to 'outsiders' who lack intimate knowledge of its circumstances. The rate of implementation, fears of a box-ticking mentality, pressure on resources, and a perceived emphasis on diversity over board skills and sports knowledge feature prominently among the objections.¹⁹



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¹⁹ *The Code for Sports Governance: evidence from the sport sector*, Birkbeck Sport Business Centre and Moore Stephens, December 2018.

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 *Does the Code represent a proportionate response to the governance challenges facing UK sports bodies? And what might its implementation mean for them?*

Despite the complaints, all but one of the summer sport NGBs funded by UK Sport, for example, had met or agreed compliance requirements by the end of October 2017. For some bodies, compliance necessitated organisational changes following internal discussions and dialogue with voting members. One of these, Table Tennis England, saw its funding suspended after a negative vote by its membership at an AGM. The funding was reinstated following a successful reform proposal put to an extraordinary general meeting.

The result is that the sector in the UK now has a formal agreement that public money will only be made available in return for specified governance standards being met. Funding will be suspended pending compliance and, failing that being achieved, withdrawn.

But does the Code represent a proportionate response to the governance challenges facing UK sports bodies? And what might its implementation mean for them?

Implications of adoption

The principles and recommendations in the Code will be familiar to governance experts and may seem uncontroversial. Some aspects deal with operational detail and others are more ambitious, stretching the sector beyond current practices towards more recognisably modern governance arrangements. Their adoption will not be frictionless.

To take one example, there is nothing unusual, when compared with other codes, in the first principle that an organisation be led by a board that is collectively responsible for its long-term success and is exclusively vested with the power to lead it. Indeed, from the perspective of good governance practice, it can be argued that this is long overdue in the sector. However, asserting the dominance of the board of directors over membership councils represents a fundamental change for some NGBs. The mandatory nature of the Code and the threat of funding withdrawal has meant that some organisations have agreed to reduce the powers of councils with little consideration. Interestingly, this shift in the locus of primacy comes at a time when other sectors are seeking to offer a more prominent role in decision making and accountability to wider stakeholder groups, including shareholders and members.²⁰ Some even advocate devolving decision making to those most affected by it.²¹

²⁰ See, for example, the UK Corporate Governance Code, Principle 1.

²¹ *The Story of Our Times: shifting power, bridging divides, transforming society*, Civil Society Futures, November 2018.

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While a direct line of accountability is always welcomed by stakeholders – and the Code addresses those notable examples where the council has captured a sport or where wider interests have been held to ransom by small but powerful or entrenched cliques operating in a manner inconsistent with principles of good governance – it must be for the organisation and its membership to define the way it operates. Ultimately, the proposal represents a challenge to the rights of the membership, with knock-on effects for the sport's legitimacy in the eyes of members, players and officials – the grassroots of an organisation. Accountability seems now to be upwards and external rather than to clubs and members. In other sectors, such an affront to an organisation's independence would be vigorously protested. It is perhaps a sign of some sports' dependence on public money that few challenges were raised to such a proposal. This in turn prompts questions as to their ongoing sustainability, as any organisation would be unwise to build a business model that relies so heavily on a single income stream.

The key will be in finding the optimal balance between the rightful independence of the board and providing channels for meaningful engagement with stakeholders.

The speed of change seen in publicly funded NGBs since the Code came into effect has been taken to indicate a triumph. This is true up to a point. However, the true mark of success will be in the implementation of long-term, sustainable change, borne out of cultural maturity rather than an immediate response to the financial sword of Damocles. While a mandatory code armed with powerful cash levers can certainly set in train positive governance developments, there remains a legitimate concern that it risks undermining a genuine culture of good practice, even embedding a tick-box mentality. This need not be the case, but negative inducements such as funding withdrawal must be balanced with the promotion and incentivisation of good practice and, crucially, the support needed to implement these. We must be mindful of where some sports organisations were starting from in governance terms. Progress towards more robust, modern arrangements is hugely welcome. However, a further struggle will be to ensure that attitudes and mindsets keep pace.



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Do national governing bodies for sports have the freedom to accept the money and any attached conditions or not? Ultimately, yes, although it may prove to be a Hobson's choice as rejection of adherence or failure to comply with the Code entails forfeiture of public money.

If the money from UK Sport or Sport England is the only deal on the table, then NGBs face a stark choice, testing to breaking point what price is placed on autonomy. Given the rate of compliance, however, the sector's choice appears to have been made.

Diversity

The Code's provisions relating to board diversity received a mixed reaction. In setting a target figure for gender representation only, an opportunity was missed to address the problem more widely. While the Code acknowledges that diversity 'is still an issue and requires sustainable change',²² it should have called much more strongly for leadership representation more reflective of the population at large.

Of 68 sports boards, including NGBs, surveyed by Sporting Equals in 2016, the black, Asian and minority ethnic (BAME) community – which comprises 14% of the UK population and 18% of sports participants – was represented by one chair and one CEO. Twenty-six board members across these organisations translates as just 4% of the 600 available positions – half the rate achieved by FTSE 100 companies, themselves underperforming in this area.²³ With projections suggesting that by the middle of the century 38% of sports participants will come from a BAME background, such underrepresentation will only worsen unless the sector makes a serious attempt to have its leadership better reflect the community it serves.

Persons who identified as disabled had a place on only 27% of sports boards and represented just 3% of board members across participating organisations, according to research carried out by Moore Stephens with Birkbeck, University of London.²⁴

²² Code for Sports Governance, p. 4.

²³ *A Report into the Ethnic Diversity of UK Boards*, The Parker Review Committee, October 2017, p. 7. Sport England announced funding in 2018 to identify and develop BAME candidates for sports boards.

²⁴ *The State of Sports Governance: Are you leading or lagging?* Birkbeck Sport Business Centre and Moore Stephens, March 2018.

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Code compliance requires a minimum of 30% of board positions to be occupied by each gender. As a one-off adjustment, it is true that the present imbalance at the top of organisations can be to some degree positively impacted. Research conducted by Women in Sport in 2017, however, pointed to persistent structural and systemic problems lurking behind the headline statistics, including the medium and long-term effectiveness of the tactic of bringing in women from outside sport to fill independent roles, and the lack of attention paid to developing a pipeline of more representative, board-ready candidates.

Targets can be met in the short term by, for example, reducing the overall size of the board or by parachuting in talent from other areas of the economy – and there are cross-sectoral benefits in doing so. But they remain vulnerable to the charge of promoting tokenism. And for sports bodies to effect long-term change, to create their own pathways, presents a different challenge, necessitating a shift away from the perception of leadership as the preserve of men, coupled with the provision of support and encouragement for women leaders and defined routes of progression to senior management positions.²⁵ Compliance with gender targets should not be achieved solely by appointing new non-executive directors, but by identifying and nurturing executive talent where it is found.

The gender imbalance at the top of sports organisations cannot be divorced from the disparities felt throughout the sector. Inequality of salaries, investment and media coverage, collectively demonstrated by the total absence of female athletes from the top 100 of the Forbes sport rich list – for the first time since 2010 – all point to a sharply delineated two-tiered landscape.

The goal must be the attainment of parity – of opportunity and of reward – so that the experiences of those involved in sport is equal. The white, male hegemony at the helm of sport in this country is beginning to be challenged, but much progress remains to be made.

Yet the future ahead of sports bodies is also a non-binary one. It is one where competition, participation, facilities, representation, and a host of other considerations must take into account greater fluidity and nuance of gender issues. Much of this is emerging and responses to it are untested, yet the challenges and opportunities presented will exercise the minds of sport's leadership.



The goal must be the attainment of parity – of opportunity and of reward – so that the experiences of those involved in sport is equal.

²⁵ Women in Sport, *Beyond 30%: Female Leadership in Sport*, February 2017.

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Good governance maintains that effective boards consist of those prepared to challenge orthodoxies and propose new approaches and diverse ways of thinking. For example, most sports organisations are likely to find that much will be gained by engaging with those outside of the core supporter base, not just those that follow it closely. Understanding what attracts participation and spectators, as well as what they dislike, is imperative in developing strategies that strengthen a sport's ongoing sustainability.

We maintain that the issues facing sport can only benefit from the flexibility that wider engagement and diversity throughout organisations – including at the top – provides.

Addressing behaviour

Inequitable representation of a range of minority groups has played at least a contributing role in some of the darkest and most deep-seated cultural issues that continue to plague sport in this country. While these no doubt in part reflect wider societal prejudices, we need to ask what unpalatable assumptions and attitudes still remain in the sector?

In the past two Parliaments, the Digital, Culture, Media and Sport Committee has undertaken inquiries into football governance (three times), racism in football, doping, homophobia, and match-fixing in tennis. Allegations of bullying, sexism, sexual abuse, homophobia, discrimination and racism in some of the most successful or well-known NGBs have raised serious questions about the culture within our sports, leading to the Duty of Care review by Baroness Tanni Grey-Thompson, as well as the Independent Review into the culture of the World Class Programme at British Cycling. The latest police figures indicate that nearly 2,800 incidents have been reported of sexual abuse at football clubs at all levels and the independent Review into Child Sexual Abuse Allegations within the sport continues. Football just happens to be the most high-profile example of such abuse. These issues are of course confined neither to the UK nor to the sports sector.

It would be serious enough if ill-considered and anachronistic attitudes about gender, ethnicity, sexuality or disability, or the inappropriate treatment of people, only robbed organisations of credibility and competitive advantage. They are, more pertinently, much more damaging to the victims and are deeply wrong on a human level.

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Too little in the Code for Sports Governance addresses this issue. While this is regrettable, it is not a fatal omission. It is recognised in other sectors that adherence to codes and regulation can play only a limited role in shaping behaviour. In the long term, successful change lies in nurturing a positive, forward-thinking and inclusive culture, which sets at its core principles of integrity, respect and equality.

The challenge for those who lead NGBs is to determine the culture they want for their organisation and to embed it throughout. How this is achieved and where the appropriate support will come from is an important discussion for the sector.²⁶

Successful change lies in nurturing a positive, forward-thinking and inclusive culture, which sets at its core principles of integrity, respect and equality.

It is also appropriate to ask to what extent – if any – are some alleged incidents the consequence of a single-minded and at times brutal pursuit of success. Elite sport is not necessarily a comfortable environment, but organisations have obligations regarding the well-being of participants. A key question is that proposed by Baroness Tanni Grey-Thompson in her duty-of-care review: what are we as a nation prepared to accept in terms of the balance between welfare and winning?²⁷

At a time of success for British sport in terms of medals, championships and profile, this raises challenging questions about whether the current balance between welfare and winning is right and what we are prepared to accept as a nation.

Baroness Tanni Grey-Thompson

²⁶ This issue is discussed in more depth in the ICSA report *Organisational culture in sport – assessing and improving attitudes and behaviour*, May 2018.

²⁷ Baroness Tanni Grey-Thompson, *Duty of Care in Sport: Independent Report to Government*, April 2017, p. 4.

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This question stems from a wider one: what is sport for? We have seen the broadening of the range of roles that the sector is asked to play. But at the participatory level, what value is placed on outcome? Would the public settle for fewer Olympic medals, for example, in return for greater assurances about the underlying culture and behaviour within sports organisations? The sector faces the challenge going forward of making this determination, or ensuring that the choice is not a binary one.

UK Sport's response to its recent consultation on elite funding suggests at least some shift in future direction, widening the range of programmes invested in (for example, through the newly-introduced 'Aspiration Fund'), a seeming relaxation of the controversial 'no compromise' policy, and providing additional support for athletes during and post-career. A failure to support popular participation sports while investing heavily in inaccessible disciplines, financial cliff edges for disappointing performers, and the creation of questionable cultures and messages of what sport stands for were high among objections to the previously adopted approach. However, the principal objective for funding post-Tokyo remains the same: the pursuit of sporting success, predominantly at Olympic and Paralympic Games.

Legislation and collaboration

Another factor that has eroded the autonomy of sport bodies is the legal and regulatory landscape: one area where national and supra-national governments intervene more directly in the conduct of organisations than they do through financial leveraging or exhortations to behave a certain way.²⁸ Sport is no more above the law of society than any other sector: it may exhibit unique traits, but it does not operate in a bubble. Legislation covering anti-money laundering, fraud or bribery, alongside safeguarding, public safety, financial accountability and adherence to company and charity law, have all impacted on governing bodies.

²⁸ A. Bennett, K. Carpenter and R. Wilson, *Sports Governance*, ICSA 2018, p. 10.

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European case law, most notably the *Meca-Medina* judgement of 2006, which established that sporting rules do not automatically fall outside European law, has established the primacy of EU law over sports federations. Key judgements such as the Bosman case of 1995, concerning freedom of workers' movement; the Kolpak ruling, extending the EU right to work to citizens of countries with trade treaties with EU states; and the adoption of human rights legislation, have all had a profound impact on sport.

The traditional autonomy enjoyed by sports organisations has experienced further incursions through serious threats to sporting integrity faced both domestically and internationally. The transnational nature of doping, financial irregularity and match- or spot-fixing, requires solutions that stretch beyond the individual NGB and national legislation. Multilateral cooperation and compliance with agencies from the World Anti-Doping Agency (WADA) to international law enforcement are indispensable to tackling corruption and preserving trust and legitimacy. Ever greater vigilance will be required as the stakes rise and as transgressions grow in their sophistication, from chemical and mechanical doping, to organised crime-backed financial corruption, to gene editing.

The EU Sports Ministers Council agreed in May 2016 that cross-border threats to sporting integrity can be addressed more effectively through increased cooperation between member states and strengthened dialogue with the sports movement. The EU Expert Group on Good Governance has also warned that sporting bodies are no longer able to deal with the threat and challenges to sporting integrity alone and require the assistance of regulators, national governments, other state institutions and law enforcement agencies, alongside appropriately structured relationships with betting operators.²⁹ The autonomy of sports bodies was more susceptible than ever before, it said, with interventions from the courts, state actors, commercial interests and European agencies all more likely.

The response outwith formal bodies of national and trans-national governments also recognises the need for cross-boundary cooperation. The Sport Integrity Global Alliance (SIGA), for example, seeks collaboration between the sport sector, governments, academia, sponsors, rights holders and other international stakeholders, in order to address problems of integrity and governance. It has adopted the view that fixing the current system is not the solution. Rather, it believes, the industry must 'commit to moving beyond old structures towards a new and truly independent system of governance and integrity'.³⁰ Independent from what or whom, however, is not clear.

²⁹ EU Expert Group on Good Governance, *'Principles of good governance in sport'*, September 2013, p. 3.

³⁰ Sport Integrity Global Alliance, frequently asked questions: 'Why is there a need for SIGA?' at: siga-sport.net/faqs

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Funding and commercial development

Diversification of income streams is important for all types of organisation, and for those baulking at the requirements of the Code – or unsuccessful under the present investment model – the only alternative is to seek significant funding from other sources. Irrespective of compliance with the Code, this may become a more prevalent issue as the government and funding bodies seek to increase the percentage contribution of funded organisations' income from non-public investment.³¹

This will present a series of challenges, more akin to those currently faced by non-publicly funded clubs and leagues both at home and internationally.

For financially lucrative sports, there is a commercial value that sponsors and other partners will be keen to take advantage of. There are, however, risks to both sides.

Due diligence is a normal part of business practice, and commercial partners will want to ensure that sports bodies are appropriately governed. Adequate governance structures, integrity, cultural considerations, transparency and accountability ought to be key components of any potential deal with a sports governing body. The risks of being associated with a less than well-governed organisation can impact on a sponsor's reputation. Organisations and individual athletes have seen first-hand the effect that negative headlines and failings of governance or integrity can have on sponsorship. At a time when levels of confidence and trust in business are low, it is a bold or foolhardy company that hitches itself to a malfunctioning governing body.

The Council of Europe recently suggested that corporate partners include good governance clauses in their sponsorship contracts.³² ICSA believes a code for sponsors and commercial partners, similar to the Financial Reporting Council's UK Stewardship Code, may be beneficial for all parties in driving sustainable cultural change, and will be exploring the feasibility and appropriateness of such a specific code in the future.

³¹ *Sporting Future: First Annual Report*, HM Government, February 2017, pp. 24–25.

³² *Working towards a framework for modern sports governance*, Council of Europe, 4 December 2017, Draft resolution paragraph 15, p. 2.

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Similarly, an NGB should carry out its own due diligence before signing up with a corporate partner. Society and sport have moved a long way from viewing tobacco industry sponsorship, for example, and sporting prowess as suitable bedfellows. But how much longer before opinion comes down against fast-food producers, or the betting industry – a collaboration which, notwithstanding the safeguards in place, jars in the light of integrity lapses? In 2017, the Football Association decided to end all partnerships with betting companies. The nine Premier League clubs with gambling industry logos emblazoned on their shirts seemingly feel differently.

Is the sector's governance suitably robust to rebuff the advances of those whose products and ethics undermine those espoused by the sport? Or, will NGBs find themselves compromising their principles in order to seal a big-money deal?

Such developments will force sports bodies to make difficult decisions about the sources of their revenue, and to consider how far commercial partnerships reflect or might change the character of their organisation. This will be an opportunity to set any non-negotiables and stake out a position from which they will operate, but it will also represent externally imposed pressures to further test their self-determination.

One advantage of NGBs is that they tend to have a monopoly of supply for the sport, which means that a premium can be attracted for the right product. However, there is a wide choice of sports for consumers, broadcasters and other commercial partners, which will increase as the rise of e-sports and rebooted formats continues. All sports, therefore, must raise the profile of their game in order to attract attention, but gaining new customers through modernisation and entrepreneurialism may at the same time risk driving off traditional supporters. Sponsors' expectations are also shifting. It is no longer enough to secure simple visibility at venues or on shirts; they increasingly want the ability to engage with a sport's audience more directly.

These issues present the boards of sports organisations with complex decisions, raising the question of whether their current composition is appropriate to deal with them. While ex-players and athletes bring essential insights into the nuts and bolts of their sport, this should not automatically trump the experience and insight of the objective individual with the professional skills and knowledge to help ensure the financial and commercial future of the activity, nor override the benefits of diverse boards exercising courageous and independent thinking and robust decision making.

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The tone from the top

Setting the tone from the top is a fundamental principle of good governance. Yet, internationally, sports federations have been beset by high-profile governance failures, providing compelling evidence that their governance structures are inadequate for the challenges they face. They have seen reputation-damaging scandals and, in some cases, potential criminal wrongdoing. At a national, regional and local level, it can be difficult for organisations to do the right thing and work ethically and transparently when the culture being demonstrated at the top falls far short of acceptable. And it is only when they in turn practice ethical behaviour that they can have the credibility to enforce that among their participants.

The second iteration of the benchmarking tool, the *Sports Governance Observer* index, is instructive on this point. Despite the implementation of reforms in some international federations since the project was first undertaken in 2015, the recent findings – covering five prominent bodies – yield an average score of 38.4%, with deficiencies apparent in some areas of commonly accepted good governance, including strategic planning, formal strategies for stakeholder engagement, independent board members, reporting on corruption risk assessments and conflicts of interests, and board self-evaluation.³³

A parallel survey of national federations, undertaken for the first time, revealed significant variations in the performance of participating countries (disappointingly, the UK was not among them).³⁴ The category yielding the lowest overall score was that of societal responsibility, with cause for concern remaining around a number of issues, including gender equality policies, athlete rights and anti-match-fixing provision. Emerging from the report is the suggestion that while structural elements such as legal frameworks and specific governance policies play a role (and their effective implementation is not always well understood), performance on the measures seems to owe a significant amount to cultural factors. Instilling a cultural commitment to good practice is undoubtedly the way forward.



Instilling a cultural commitment to good practice is undoubtedly the way forward.

³³ A. Geeraert (ed.), *Sports Governance Observer 2018: An assessment of good governance in five international sports federations*, Play the Game, Danish Institute for Sports Studies, November 2018, pp. 23–25. The federations measured were: FIFA (football), FINA (swimming), the IAAF (athletics), the IHF (handball) and the ITF (tennis).

³⁴ A. Geeraert (ed.), *National Sports Governance Observer: Final report*, Play the Game, Danish Institute for Sports Studies, November 2018.

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Measuring a concept such as governance is difficult. However, benchmarking sports bodies' performance in this regard serves an important purpose by determining where progress has been made and by making it harder for organisations to ignore what is expected of them. Future expanded iterations of the project will be viewed eagerly.

Sustainability

Neither participants nor supporters can be taken for granted. Shorter game time, more exciting competitions and interactive engagement is demanded from consumers. The decline felt by golf clubs is one example of how society has changed, demonstrating the difficulties of retaining the traditional fee-paying member while attracting new blood. This is a further reason to test the model that sports bodies are unique and can therefore be governed only by people raised in their structures. A failure to expose the board to new thinking and experiences, to prompt innovative solutions, will risk bringing a sport's ongoing support, appeal and sustainability into question.

On the other hand, Premier League football has grown to become one of the country's most recognisable exports around the world, and its financial expansion continues apace. In 2015, it boasted the third highest revenue of any professional sports league in the world, trailing only the National Football League and Major League Baseball.³⁵ As the £5.1 billion TV rights deal signed in 2015 comes into effect, this financial muscle continues to develop. The League's continental counterparts, particularly those of Germany and Spain, have negotiated their own lucrative broadcast deals, and total European football market revenues topped \$25 billion in 2016/17.³⁶

Football is not a fair proxy for all sport, however, and few, if any, other disciplines have experienced change to the same degree. We cannot allow the Premier League's experience to completely colour our view and assume that all sport is awash with finance. That said, it is inarguable that the comparatively recent trend towards commercialised products, TV deals, and innovative, broadcast-friendly formats have left few of our established sports untouched.

³⁵ *The economic impact of the Premier League*, Ernst & Young LLP, 2015, p. 1.

³⁶ *Roar power: Annual Review of Football Finance 2018*, Deloitte Sports Business Group, July 2017, p. 8.

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Yet this new world is also in flux. Over the last few years, TV rights packages have grown exponentially, but the established model of broadcasting the full coverage of a match or competition seems to be already under threat. Fans' consumption of sport is evolving and the demand for interactivity, shorter-form and on-demand content is growing. The power of the main social media players has begun to make its presence felt and audience fragmentation may force a re-evaluation of the market.

At the same time as enormous rights deals are being signed, traditional broadcast outlets are witnessing declining viewing figures. The Premier League's record TV deal coincided with a 19% fall in Sky Sports audiences for live matches,³⁷ and comparable drops have been witnessed across US networks. This may owe something to a rise in content piracy, as well as to an abandonment of TV-based services. In a recent survey, only 2% of respondents aged 18–24 accessed sport entertainment through clips on social media, but 54% of this bracket admitted to regularly watching illegal streaming.³⁸ While the short form of consumption may have a long way to go to replace full-scale transmission, a significant portion of the audience is less willing to pay for either.

Also at play may be a potential decline in a preference for sport in favour of other forms of streamed entertainment – often more affordable. While broadcasters may target the disposable income of the higher age bracket for subscription, the Millennial and Generation Z age groups will be the audiences of the future and any turn-off among them might become a problem further down the line.

One thing seems clear – viewing habits are changing, and this could alter permanently the way sports events are broadcast, initiating changes to rights deals, advertising and other revenue streams.

These changes raise many questions. How many NGBs are equipped to deal with this shifting landscape and able to navigate these developments, benefiting from them to the fullest? Is it reasonable to expect that there is the appropriate commercial and digital experience in the boardroom, or sufficient audience engagement, to make these technological changes successfully?

Without a direct line to those at the forefront of these changing viewing habits, national sports organisations risk being outmanoeuvred by those more forward-thinking, flexible and entrepreneurial in their approach.

37 J. Glenday, 'Sky Sports suffers 19 per cent drop in Premier League audiences', *The Drum*, 17 October 2016. www.thedrum.com/news/2016/10/17/sky-sports-suffers-19-cent-drop-premier-league-audiences

38 P. MacInnes, 'More than half of young people watch illegal streams of live sports, study finds', *The Guardian*, 26 April 2017. www.theguardian.com/sport/2017/apr/25/illegal-streams-live-sports-sports-industry-group

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Capability

This leads us to the issue of capability. In order to continue to compete at the highest international levels and to protect resources to bring on the next generation of top-quality sportsmen and sportswomen, it is crucial that the boards of sports bodies are made up of the best and most appropriately experienced individuals. The sector is growing in complexity and size, and the burden of compliance is increasing, as is the sophistication of sport's global interconnectedness.

Sport has suffered from an image of so-called 'blazers' in its organisation, a soft marker of a sector stuck in the past, and of a preference for former players in the higher echelons of sport administration, regardless of their lack of experience in key areas such as governance, financial management or organisational leadership. Insiders, the argument in favour goes, are best placed to govern sports as only they can understand its spirit, ethos and values, as well as the technical aspects of each discipline. In fact, it can be argued just as persuasively that 'outsiders' in the decision-making process enable organisations to act in the best interests of their sport, to be responsive and agile. This is why independent and objective board members, able to provide perspective and constructive challenge, are recognised as a vital ingredient in effective governance.

Striking a balance between appointed directors and those elected from the membership is sensible. Nominated directors serve an important democratic function, but also run the risk that the best equipped individuals are not returned to the board. A pragmatic solution needs to be found, facilitating boards that represent the interests of appropriate stakeholders, combined with professional skills in management and leadership.

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Athlete representation is an area that might hold interesting developments in the future. It is perhaps striking that, despite the traditional prevalence of *former* participants in the administration of sport, engagement with those currently active – or their representative bodies – is an area where the sector has struggled. Yet, this interaction forms an important strand of organisations engaging effectively with one of their key stakeholders. This chimes with the Code for Sports Governance’s provision for structures to communicate elite athlete voices. It also fits in part with the UK Corporate Governance Code’s provision for companies to implement one or a combination of:

- directors appointed from the workforce;
- a formal workforce advisory panel; or
- a designated non-executive director.

How exact this fit is remains subject to the as yet unclarified employment status of funded athletes and a recognition that NGBs are also employers of a wider workforce than athletes alone. Section 172 of the Companies Act 2006 places a duty on board members to have regard to a broad range of factors and stakeholders, of which, in a sporting body, athletes would form just one group – albeit a crucial one. That point aside, initiatives well worth watching are being set in motion, which seek to place athlete interest at the heart of decision making, not just in NGBs, but also within wider contexts for sport, such as duty-of-care considerations, event-staging and drives to tackle integrity issues. Going forward, this could form a central issue of governance in the sector.

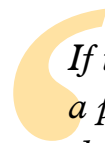
The Code’s requirement for fixed terms for board members is a useful prompt to ensure that the board is periodically reinvigorated with new ideas and personalities. However, it brings with it the possibility that talented, effective and knowledgeable directors are forced to move on. Will these individuals take up similar positions at other sporting bodies, thus creating a merry-go-round of NGB chairs and directors? The loss of talent might be lamentable on one view, but will a cohort of itinerant directors hinder efforts to improve the composition of sport’s leadership taken as a whole?

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Conclusions

The governance challenges facing sporting bodies are in some ways no different from those facing other sectors, but they feel special because of the history of sport in society. When we think of sport we think of it rising above politics, of being something quite apart from work and the everyday. But it is because of this feeling of uniqueness, of autonomy, that the governance arrangements in sport are still immature and often ill-suited to 21st century challenges.

The amateur in the higher echelons of sport has long since expired. The sporting experiences for top athletes and players today and those of a generation or two ago are worlds apart. The perception remains that those running sports have not necessarily kept pace with the change.



If the sector insists on occupying a privileged position in society, then it must continue to earn this, and to recognise that ... such status comes with an expectation of higher standards of conduct.

Even where directors of NGBs and local sporting entities are voluntary, it should not mean that they are amateur. The athlete seeks every opportunity to gain a competitive advantage, hopefully by ethical means, and that same drive for improvement is also appropriate for the boardroom. To effect such a change may require cultural evolution from within, and ongoing support from outside.

The Corinthian spirit should no longer be accepted as the gold standard in sports governance. A board must adopt skills, qualities, conduct and practices that are expected not just of multi-million pound entities but of organisations that seek to take young people and shape them into valued members of society. That involves professional attitudes, professional support and hard work. And if the sector insists on occupying a privileged position in society, then it must continue to earn this, and to recognise that, like the charitable sector, such status comes with an expectation of higher standards of conduct.

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Medal success, gleaming stadiums and wall-to-wall TV coverage (if not free-to-air) of a huge array of sports present a picture of a sector in health. Those who participate or work in sport, and those who simply follow it, however, should be under no illusion about the problems that still exist and the challenges that lie ahead. Nor should they be complacent about the barriers still in place. The deep-rooted attachment to notions of autonomy still holds some sway – although it may be significantly, perhaps fatally, weakened. Vested interests too may hamper attempts at change.

Yet if the barriers to change come from inside sport, then so too can the impetus for change. Fans and participants want well-run sports, for the present and for the future. NGBs themselves want to secure long-term financial viability, eradicate adverse behaviour and avoid damaging negative publicity – for a variety of reasons, some altruistic, some not. When these are coupled with commercial pressures and the financial leverage of the mandatory code, the path for improved governance in a sustainable manner becomes clearer and the outlook perhaps more hopeful.

Sport needs to be realistic about what can be achieved, and within what timescale. In a sector that was, in some respects, starting from further back, considerable progress has been made, but much remains to be done. Some of the key tests for the future may hinge on creating a proportionate and sustainable response to the challenges – those currently existing and those evolving – that the sector faces.



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ICSA: The Governance Institute

Saffron House
6–10 Kirby Street
London
EC1N 8TS

May 2019

ICSA: The Governance Institute

Saffron House
6–10 Kirby Street
London EC1N 8TS

Phone: 020 7580 4741
Email: info@icsa.org.uk
Web: www.icsa.org.uk

Twitter: [@ICSA_News](https://twitter.com/ICSA_News)



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