
Sopot Investigation, the Environmental Review and the Decision to Introduce a New System

Independent
Review
of Integrity
in Tennis

08

Chapter 08

1. This Chapter deals with the Sopot Investigation, which took place between 2007 and 2008; the 2008 Environmental Review; and the later decision in 2008 to introduce a new system for the protection of integrity in the sport from the beginning of 2009. The Panel examines below the ATP's response to the August 2007 Sopot Match between Martin Vassallo Arguello and Nikolay Davydenko, and to the Sopot Report in relation to it¹; the International Governing Bodies' commissioning of the Environmental Review and the development of uniform integrity rules²; the ATP's response in 2008 to intelligence arising out of the Sopot Report and the Environmental Review³; and the International Governing Bodies' decision to introduce the new system with effect from 1 January 2009⁴.
2. Pursuant to the Terms of Reference, the Panel addresses whether investigations and enforcement actions related to the Sopot Investigation, the Environmental Review, and the decision to introduce a new system for the protection of integrity were effective and appropriate. As set out in Chapter 1⁵ it is not the Panel's role in this Independent Review to determine whether past actions did or did not satisfy any legality standard, and it should not be taken as doing so. Rather the Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present⁶ opinion as to the effectiveness and appropriateness of relevant actions at the time, based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also as set out in Chapter 1⁷, on occasion it is not possible or appropriate to seek to resolve apparent factual conflicts in the witness evidence.
3. In relation to the principal criticism in the media, the Panel has not seen evidence demonstrating that any decisions taken by the International Governing Bodies in relation to the Sopot Investigation, the Environmental Review and the introduction of a new system were taken in order to cover up past breaches of integrity or to protect players under suspicion. Indeed, the ATP's and the other International Governing Bodies' responses to the Sopot Investigation and Environmental Review, which led to the creation of the TIU and TACP, were effective and appropriate efforts at the time to improve the sport's ability to combat breaches of integrity. Nonetheless, in the Panel's view, following the Environmental Review, the International Governing Bodies should have coupled the creation of the TIU and TACP with an evaluation of what could be done to address aspects of the organisation of tennis and the player incentive structure that contribute to breaches of integrity.

Q 8.1 Are there other matters of factual investigation or evaluation in relation to the approach of the ATP to the Sopot Investigation, or the approach of the International Governing Bodies to the Environmental Review, or the ATP's response to intelligence arising out of them, or the International Governing Bodies' decision to introduce a new system, that are relevant to the Independent Review of Tennis and that should be addressed in the body of the Final Report, and if so which, and why?

Q 8.2 Are there any aspects of the Independent Review Panel's provisional conclusions in relation to these matters incorrect, and if so which, and why?

¹ Section A below.

² Section B below.

³ Section C below.

⁴ Section D below.

⁵ Chapter 1, Section C.

⁶ Pending the consultation process between Interim and Final Reports.

⁷ Chapter 1, Section C.

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A THE ATP'S RESPONSE TO THE 2007 VASSALLO ARGUELLO V DAVYDENKO SOPOT MATCH AND TO THE 2008 SOPOT REPORT ON IT

4. In 2007 the ATP appointed independent investigators (the "Sopot Investigators"⁸) to conduct an investigation on its behalf into the second round match between Martin Vassallo Arguello and Nikolay Davydenko on 2 August 2007 in Sopot, Poland (the "Sopot Match")⁹. In 2008 the investigation (the "Sopot Investigation") concluded and a report was produced by the Sopot Investigators (the "Sopot Report")¹⁰. The Sopot Report concluded that it had *"been unable to find any evidence supporting the possibility of"* either player *"being involved in any corrupt practices surrounding"* the Sopot Match, and the ATP accordingly decided that there was no basis for disciplinary proceedings to be commenced against either player. The ATP rules and procedures that fell to be applied in the Sopot Investigation were criticised in the media in early 2016, but it was not suggested by the media in the light of the conclusions in the Sopot Report that disciplinary proceedings under the ATP rules ought to have been commenced against either player in respect of the Sopot Match¹¹.
5. The Independent Review Panel is not asked to reopen, nor can or does it reopen, the facts established by, or the conclusions of, the Sopot Investigators or the ATP in relation to the Sopot Match set out above. The questions for the Panel are rather whether the process adopted was effective, whether the rules were adequate, and whether appropriate decisions were made on receipt of the Sopot Report.

(1) THE 2007 VASSALLO ARGUELLO V DAVYDENKO MATCH IN SOPOT

The Sopot event

6. The Orange Prokom Open Tournament in Sopot, Poland was in 2007 an ATP International (now known as a World Tour 250) tournament¹². The event was played outdoors on clay, the main singles draw was 32 players and the total prize money was \$500,000. The main draw commenced on Monday 30 July 2007, with the singles final taking place on Sunday 5 August 2007.

Position of the Sopot event in the calendar

7. The Sopot event's position in the calendar in 2007 was immediately before the last three tournaments of the ATP's North American hard-court swing leading into the US Open:
 - 7.1 The Sopot event was immediately before the 6-12 August Rogers Cup in Montreal, Canada¹³. In 2007 Davydenko played in Montreal after Sopot, reaching the quarter-finals.
 - 7.2 That was followed by the 13-19 August Cincinnati Masters¹⁴. In 2007 Davydenko played in Cincinnati, reaching the semi-finals.

⁸ The individuals comprising the Sopot Investigators are described more fully at paragraph 36.

⁹ Martin Vassallo Arguello (ARG, 87) v Nikolay Davydenko (RUS, 4), ATP International (now known as an ATP World Tour 250), second round, Sopot Poland, 02/08/07, 2-6, 6-3, 2-1 ret. There is a description of the match and initial stages of the Sopot Investigation in the ESPN broadcast Outside the Lines 10 February 2008 available at (<http://www.espn.co.uk/sports/tennis/news/story?id=3235411>) [accessed 9 April 2018]. The players' names are not redacted in the light of the extent of the prior publication of them.

¹⁰ ATP, 'Investigation into suspicious betting - the Orange Prokom Open Tournament, Sopot, Poland, 2 August 2007, Nikolay Davydenko v Martin Vassallo Arguello' (as redacted), Appendix: Key Documents.

¹¹ On 17-18 January 2016, BuzzFeed News and the BBC published 'The Tennis Racket', the product of a joint investigation. The principal criticism made so far as the ATP's response to the Sopot Match itself is concerned (as opposed to the ATP's response to intelligence arising out of the Sopot Investigation and the Environmental Review, dealt with in Section C below) was that the ATP rules and procedures that fell to be applied during the Sopot Investigation, were inadequate. It was not however suggested that the conclusions in the Sopot Report were wrong, or that notwithstanding the conclusions in the Report, disciplinary proceedings under the ATP rules ought to have been commenced against either player in respect of the match.

¹² Chapter 2, Section D describes the different levels of ATP events.

¹³ An ATP Masters Series event played on hard courts with a main singles draw of 56 and total prize money of \$2.45 million.

¹⁴ An ATP Masters Series event played on hard courts with a main singles draw of 56 and total prize money of \$2.45 million.

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- 7.3 That was followed by the 20-26 August Pilot Pen Tennis event in New Haven, USA¹⁵. In 2007 Davydenko played in New Haven, reaching the third round.
- 7.4 The US Open started on 27 August¹⁶. In 2007 Davydenko played in the US Open, reaching the semi-finals, in which he lost to the eventual winner Roger Federer.
8. At the same time as the Sopot event, players also could have chosen to play instead on hard courts in North America. In the same week, 30 July to 5 August, the Legg Mason Tennis Classic took place in Washington DC¹⁷.
9. In the weeks before the Sopot event, players also had the choice of playing on clay in Europe, or on hard courts in North America. Davydenko had chosen the former:
 - 9.1 The week immediately before Sopot, 23-29 July, was the Croatia Open in Umag¹⁸. Davydenko was the second seed, but he lost in the first round 6-2, 2-6, 6-3 to an unseeded player.
 - 9.2 Two weeks before Sopot, 16-22 July, was the Priority Telecom Open in Amersfoort Netherlands¹⁹. Davydenko was the first seed, but he lost 4-6, 6-1, 6-1 in the first round to a wildcard player.
 - 9.3 Three weeks before Sopot, 9-15 July, was the Suisse Open in Gstaad²⁰. Davydenko was the first seed, but he lost 3-6, 6-4, 7-5 in the first round to an unseeded player.
 - 9.4 Before that, at Wimbledon on 25 June to 8 July, Davydenko had been seeded sixth and had reached the fourth round, losing to the tenth seed after losing tie breakers in each of the first two sets.

Davydenko's commitment to play at the 2007 Sopot event

10. The year before, in 2006, Davydenko had won the Sopot event. As the 2006 winner, he was under a contractual obligation to defend his win in 2007²¹.
11. Consistent with the practice amongst all or most other leading players, Davydenko had agreed to an appearance fee to play in the Sopot event²². That fee is confidential as between the tournament and the player, and it is unknown what its amount or its terms were. The contemporaneous documents suggest that the fee was payable incrementally on progress through the tournament²³.

Davydenko's injury position coming into the Sopot event

12. Some six months before the Sopot Match, in the week commencing 8 January 2007, Davydenko had played in, but had retired injured from, the Medibank International in Sydney, Australia²⁴. That was the last event in the ATP swing leading into the Australian Open, which took place over 15 to 28 January²². Davydenko was the second seed in Sydney, but in the second round he lost the first set 4-6 and then retired injured. He was subsequently diagnosed with "*a possible right fibular stress fracture*"²⁵. Following his retirement from the Sydney tournament, Davydenko commented to the press that

¹⁵ An ATP International (now known as an ATP World Tour 250) tournament played on hard courts with a main singles draw of 48 and total prize money of \$675,000.

¹⁶ A Grand Slam tournament played on hard courts with a main singles draw of 128 and total prize money of \$8.84 million.

¹⁷ An ATP International (now known as an ATP World Tour 250).

¹⁸ An ATP International (now known as an ATP World Tour 250) tournament played on clay with a main singles draw of 32 and total prize money \$416,000. Davydenko chose the Umag event over the higher level ATP International Gold (now known as an ATP World Tour 500), Austrian Open in Kitzbuhel, which was the same week.

¹⁹ An ATP International (now known as an ATP World Tour 250) tournament played on clay with a main singles draw of 32 and total prize money \$416,000. Davydenko chose the Amersfoort event over the higher level ATP International Gold (now known as an ATP World Tour 500) Mercedes Cup in Stuttgart, Germany, which was the same week.

²⁰ An ATP International (now known as an ATP World Tour 250) tournament played on clay with a main singles draw of 32 and total prize money \$416,000.

²¹ Sopot Report, page 8, paragraph 34.

²² Sopot Report, page 8, paragraphs 34 and 36.

²³ Sopot Report, page 8, paragraph 34.

²⁴ An ATP International (now known as an ATP World Tour 250) tournament played on hard courts with a main singles draw of 24 and total prize money of \$436,000.

²⁵ Sopot Report, page 10, paragraph 52.

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nobody cared about small events, for which he was subsequently fined \$10,000 by the ATP²⁶. Davydenko went on to play the next week in the Australian Open, at which he was the third seed. He reached the quarter-finals, losing in five sets.

13. Davydenko then played in 11 ATP events²⁷ (including five Masters) and the French Open (in which he reached the semi-finals, losing to Roger Federer) without any report of injury²⁸. At the Gerry Weber Open in Halle (11 June to 17 June)²⁹, he consulted with the tournament doctor for an injury to his knee and Achilles tendon³⁰ and then went out in the second round. He reached the quarter-finals at Wimbledon, at which he had some minor treatment and saw the physiotherapist on court³¹, and then played Gstaad, Amersfoort and Umag before Sopot. There was no report of an injury, although he had a stomach complaint in Amersfoort³².

The first round of the 2007 Sopot event

14. As defending winner at the Sopot event and ranked 4 in the world, Davydenko was the first seed for the 2007 event, and the clear favourite to win it³³.
15. In the first round of the event Vassallo Arguello won his match in three sets, having lost the first set³⁴. Davydenko won his match in straight sets³⁵. 20 minutes before his first round match, Davydenko asked the ATP physiotherapist, Christian Swier, to tape his left big toe³⁶, as he reported having had trouble with it. The tournament doctor later recorded that the onset of the injury was during practice on 30 July³⁷. The physiotherapist could see no visible signs of an injury, but when he pressed the underside of the toe, the player said it was sore. According to Davydenko, the injury became a little worse during the first round match³⁸. Davydenko stated that he had told "*other players he had a slight injury but did not know how much it would affect his second round match*"³⁹ and had also told his wife Irina and his brother Eduard⁴⁰.

The match

16. At the time of their second round match, Vassallo Arguello was ranked 87 in the world, and Davydenko 4⁴¹. As defending winner of the event, the first seed, and a top 10 player ranked 83 places above Vassallo Arguello, Davydenko was the clear favourite to progress.
17. The Sopot Match took place on Thursday 2 August 2007⁴². That meant that the winner would play a quarter-final match

²⁶ Sopot Report, page 25, paragraph 163.

²⁷ Sopot Report, page 10, paragraph 53. The events were: the Open 13 in Marseille, France (ATP International, now an ATP World Tour 250); the ABN AMRO in Rotterdam, Netherlands (ATP International Series Gold, now known as an ATP World Tour 500); the Barclays Dubai (ATP International Series Gold, now known as an ATP World Tour 500); Pacific Life Open in Indian Wells, USA (ATP Masters, now known as an ATP World Tour Masters 1000); the Sony Ericsson Open in Miami, USA (ATP Masters, now known as an ATP World Tour Masters 1000); Monte Carlo (ATP Masters, now known as an ATP World Tour Masters 1000); the Barcelona Open, Spain (ATP International Series Gold, now known as an ATP World Tour 500); the Estoril Open, Portugal (ATP International, now known as an ATP World Tour 250); The Internazionali BNL d'Italia in Rome (ATP Masters, now known as an ATP World Tour Masters 1000); Hamburg, Germany (ATP Masters, since reclassified as an ATP World Tour 500); Hypo Group in Poertschach, Austria (ATP International – the final edition of this tournament was held in 2008); the French Open (Grand Slam).

²⁸ Sopot Report, pages 10 to 11, paragraphs 53 to 54.

²⁹ An ATP International (now an ATP World Tour 250).

³⁰ Sopot Report, page 11, paragraph 55.

³¹ Sopot Report, page 11, paragraph 56.

³² Sopot Report, page 11, paragraph 58.

³³ Sopot Report, page 3, paragraph 3.

³⁴ Vassallo Arguello beat qualifier Maximo Gonzalez (ARG) on Tuesday 31 July 2007 2-6, 6-3, 6-2.

³⁵ Davydenko beat Andrei Pavel (ROM) 6-3, 6-4.

³⁶ Sopot Report, page 8, paragraph 39.

³⁷ Sopot Report, pages 9, 10 and 13, paragraphs 46 and 68.

³⁸ Sopot Report, page 13, paragraph 68.

³⁹ Sopot Report, page 13, paragraph 69.

⁴⁰ Sopot Report, page 14, paragraph 72.

⁴¹ Sopot Report, page 3, paragraph 2.

⁴² Sopot Report, pages 3 to 4, paragraph 7.

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on Friday 3 August; and, if he progressed, a semi-final on Saturday 4 August; and, if he progressed further, the final on Sunday 5 August. As described above, the Montreal event began on Monday 6 August, although Davydenko in 2007 received a bye into the second round in Montreal, in common with the other top 8 seeds, and first played on the following Wednesday.

18. As reported by the Sopot Report, which was prepared by the Sopot Investigators hired by the ATP after the match, shortly before the second round match at the Sopot event was due to start, Davydenko saw the ATP physiotherapist, Christian Swier, in the treatment room and asked for the same protection for his left toe as he had had before his first round match, and also for treatment to his left ankle. The physiotherapist was disappointed that the player had only come in immediately before the match was to start. He taped the toe and ankle⁴³. According to the player, *"many people saw his injury being taped before the second round match"*⁴⁴.
19. The match commenced at 14.03. At 14.09, six minutes into the match, the Betfair integrity team notified Gayle Bradshaw of their concern about the betting pattern that they had seen in relation to the match⁴⁵. As described below, the betting pattern had actually started to become evident some time before the match started. Gayle Bradshaw contacted the ATP player services manager, Giorgio Di Palermo, who contacted the ATP tournament supervisor, Carlos Sanches. They went to watch the match, arriving at the beginning of the second set⁴⁶.
20. Davydenko won the first set 6-2. According to the chair umpire, Mohamed Lahyani, Davydenko was playing well in the first set, not making errors and hitting some good winners, and looked likely to win easily⁴⁷.
21. At 0-1 down in the second set, Davydenko asked to see the physiotherapist at the next changeover. The umpire reported that he had seen no sign of injury up to that point, and he asked why. The player said he had an ankle problem⁴⁸. At 1-2 down, Davydenko had a three-minute medical time out, and the physiotherapist came on. Davydenko told him that the back of his left ankle and the toe on his left foot were painful⁴⁹. The physiotherapist noted the toe looked more *"irritated"* than it had before the match, and treated his ankle⁵⁰. At 2-3 down, Davydenko received a 1-minute changeover treatment from the physiotherapist on his ankle, at which time he said the toe was still causing him pain. According to Davydenko, he indicated to an acquaintance Wojek Fitbak in the crowd that he was injured⁵¹. At 2-5 down, Davydenko received a second 1-minute changeover treatment from the physiotherapist, and on this occasion Davydenko told the physiotherapist that he was *"considering to retire"* and said *"what's the point of staying on, the hard court season is coming up"*⁵². According to Davydenko, *"at 3-5 down... he could not move well and it was obvious to see... he also indicated to his wife in the crowd that he intended to retire"*⁵³. Davydenko lost the second set 3-6. According to the umpire, Davydenko was not moving as freely in the second set, and he was making some good shots but missing some easy ones⁵⁴.
22. Between the second and the third set, just before the umpire was going to call time, Davydenko asked for the physiotherapist again. The umpire told him he had already had the permissible time out and two changeover treatments for his ankle. Davydenko told the umpire the problem was now with his toe. The umpire told the player he would have to wait for the next changeover⁵⁵. The umpire told the tournament supervisor by radio that the player wanted further treatment. The umpire also stated it was up to the physiotherapist whether there could be a second medical time out,

⁴³ Sopot Report, pages 8 and 9, paragraph 40.

⁴⁴ Sopot Report, page 13, paragraph 69.

⁴⁵ Sopot Report, page 3, paragraph 5.

⁴⁶ Sopot Report, pages 3, 4, 6 and 7, paragraphs 7, 20, 21 and 26.

⁴⁷ Sopot Report, page 4, paragraph 13.

⁴⁸ Sopot Report, page 5, paragraph 14.

⁴⁹ Sopot Report, page 9, paragraph 41.

⁵⁰ Sopot Report, pages 5, 6, 9, 13 and 14, paragraphs 14, 21, 41 and 70.

⁵¹ Sopot Report, page 14, paragraph 71.

⁵² Sopot Report, pages 5, 6 and 9, paragraphs 14, 21 and 42.

⁵³ Sopot Report, page 14, paragraph 71.

⁵⁴ Sopot Report, page 5, paragraph 14.

⁵⁵ Sopot Report, pages 5 and 6, paragraphs 15 and 22.

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as the umpire had not seen an incident that could have led to an injury⁵⁶. With Davydenko down 0-1 in the third set the physiotherapist decided to give a medical time out for the player's toe⁵⁷. The player told the physiotherapist he was *"really considering retiring"*. The physiotherapist attempted to persuade the player to continue to play as he was the defending champion and to play on *"would not cause him long-term problems"*. The physiotherapist is reported as stating that the player then asked something that the physiotherapist considered strange: *"Is this a medical reason to retire?"*, to which the physiotherapist responded that he thought it was a medical reason⁵⁸. At 1-2 down, the physiotherapist came on again for one minute⁵⁹. When he left, the player remained in his chair. The player told the umpire he could not continue⁶⁰.

23. The player received treatment from the physiotherapist after the match. He declined the x-ray suggested by the tournament doctor, Wojciech Makarewicz, and *"appeared to just want to leave the tournament area"*⁶¹. The doctor recorded the player's account of the injury being that *"the date of the onset... was 30 July 2007 and had started during practice, was ok to play, aggravated during match play"*. The doctor's diagnosis was tendinitis of the flexor hallucis, and he recommended ultrasound, medication and manual therapy. The physiotherapist and the doctor signed the ATP medical certificate.
24. The Sopot Investigators asked those who saw the match whether there was anything in the way that Davydenko had played to suggest that he had sought deliberately to lose. The umpire is reported as stating *"that in his opinion Davydenko did not show any sign of tanking during the match... if he did tank the match he did it in a professional way and with style"*⁶². The supervisor is recorded as stating that Davydenko *"played some good points but there were others where he did not force himself 100% and in normal circumstances he could have played better"*⁶³. The player services manager is reported as stating that *"it was strange to see Davydenko playing all return games in a very relaxed way and never getting close to break point. Davydenko's effort in the Vassallo Arguello service games were not his best tennis. The shots were not as powerful or deep as he would expect... It was not possible to see the nature or extent of Davydenko's injury... sometimes it seemed like Davydenko had no major issue...Davydenko was not concentrating on the match... Davydenko never has good results after Wimbledon"*⁶⁴.
25. The tournament director is reported as stating that Davydenko played well in the first set, but *"as the second set progressed, Davydenko became slower and slower and was not finishing his shots. He appeared to have trouble running and was not forcing points"*. The tournament director thought the player retired due to the injury in his foot that he had seen treated. He did not believe that the player would either be involved in corrupt practices, or *"have deliberately foregone the bonuses due to him for reaching the later rounds of the competition"*⁶⁵. The match was subsequently watched by Todd Martin, a former tennis professional, who saw nothing untoward, concluding that *"when Davydenko injured himself... the match turned and he appeared not to be able to put up too much of a fight"*.

⁵⁶ Sopot Report, pages 5 and 6, paragraphs 15 and 22.

⁵⁷ Sopot Report, pages 5 and 6, paragraphs 15 and 22.

⁵⁸ Sopot Report, pages 5 and 9, paragraphs 15 and 43.

⁵⁹ Sopot Report, pages 5 and 6, paragraphs 15 and 22.

⁶⁰ Sopot Report, page 5, paragraph 15.

⁶¹ Sopot Report, page 9, paragraph 44.

⁶² Sopot Report, page 5, paragraph 18.

⁶³ Sopot Report, page 6, paragraph 23.

⁶⁴ Sopot Report, pages 6 to 7, paragraphs 26 to 27.

⁶⁵ Sopot Report, pages 7 to 8, paragraphs 33 to 34.

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The suspicious betting pattern

26. The suspicious betting pattern in relation to the Sopot Match was regarded by the Sopot Investigators as extreme in a number of ways, as explained by Mark Phillips, one of the Sopot Investigators. First, as to amount: Bets totalling £3.6 million were placed by connected Russian accounts on Betfair⁶⁶, and the total betting on the match was ten times the amount that would be normal for a match of that level⁶⁷.
27. Second, as to when and at what odds bets were placed:
 - 27.1 Before the match started, approximately £1 million had been bet backing Vassallo Arguello to such an extent that at the start, the number 4 ranked player in the world and defending champion had gone out from favourite at odds of 1.20⁶⁸ (which the Sopot Investigators considered to be the true odds) to underdog at odds of 2.44⁶⁹, and the number 87 ranked player in the world had become the favourite.
 - 27.2 During the match, money continued to be placed on Vassallo Arguello to win and Davydenko to lose, even after Davydenko won the first set. At that point, true odds on Davydenko would in the view of the Sopot Investigators have been 1.08: instead they were 2.28. When Vassallo Arguello broke serve in the second set, one might according to the Sopot Investigators have expected the true odds on Davydenko to lengthen slightly to 1.12: instead they leapt to 3.75. By the time Davydenko lost the second set, the odds on him had gone out to 6.00⁷⁰.
28. Third, as to the extent of the connections between the bettors placing the surprising bets: There were nine Russian accounts, which were established to be linked through computer sharing⁷¹, and eight of those accounts were based in a specific area of Moscow⁷².
29. The patterns led Mark Phillips to conclude that the betting was carried out at odds “*completely disproportionate to each player’s actual chance of winning*”⁷³, and all else being equal, that the “*Russian accounts knew that Davydenko was going to lose the match*”⁷⁴.
30. Davydenko subsequently denied that any approach had been made to him, his family or support team; that he knew the bettors; or that he “*tanked*” at the Sopot event⁷⁵.

Betfair’s decision to void bets

31. Immediately after the Sopot Match finished, at 15.57, Betfair made a unilateral decision without consulting the ATP to suspend settlement of all bets on the match, pending an internal investigation. The following morning Betfair voided all bets. This was the first time that the exchange had ever done so. The explanation given to the Sopot Investigators for that decision was that “*the betting movements (especially that in play) were perverse compared with what was actually happening in the match and those moving the market (the large Russian accounts) were heavily connected, mainly through computer sharing*”⁷⁶.

⁶⁶ Sopot Report, page 12, paragraph 62.

⁶⁷ Sopot Report, page 3, paragraph 3.

⁶⁸ Decimal odds allow a bettor to calculate how much money will be returned if their bet is successful, as opposed to fractional odds which allow a bettor to calculate how much money will be won. For example, a £1.00 bet on a contingency with odds of 1.20 would return £1.20 (i.e. the £1.00 staked plus profit on the bet of £0.20) whereas a £1.00 bet on odds of 2/1 would return £3.00 (i.e. the £1.00 staked plus profit on the bet of £2.00).

⁶⁹ Sopot Report, page 12, paragraph 62.

⁷⁰ Sopot Report, page 12, paragraph 62.

⁷¹ Computer sharing in this context means the ability to link different betting accounts to the same computer or IP address.

⁷² Sopot Report, pages 20 to 21, paragraphs 124 to 131.

⁷³ Sopot Report, page 12, paragraph 63.

⁷⁴ Sopot Report, page 12, paragraph 64.

⁷⁵ Sopot Report, page 14, paragraphs 75 to 77.

⁷⁶ Sopot Report, page 4, paragraphs 9 to 11.

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Events between Davydenko's 2 August Sopot retirement and 8 August match at Montreal

32. Davydenko saw his own doctor, Boris Buttner, in Koln on 3 August 2016. Dr Buttner diagnosed inflammation of the left foot flexor tendon and prescribed an injection of local anaesthetic Procain and Dexamethason⁷⁷, which Davydenko later erroneously described as a cortisone injection⁷⁸. Davydenko flew to Montreal on Saturday 4 August, enabling him to have more time for treatment on his foot and to get a shoe inlay fitted⁷⁹.
33. To play in the Montreal tournament in the week after he had retired through injury at Sopot, the ATP Rules required Davydenko to satisfy the Montreal tournament doctor Jacques Toueg that he was no longer suffering from the same injury. Davydenko was passed fit by the doctor on 8 August, and he played a second round match on Wednesday 8 August, a third round match on Thursday 9 August, and a quarter-final on Friday 10 August. Davydenko received treatment from the ATP physiotherapist on 7, 9 and 10 August. The physiotherapist taped his left foot and knee⁸⁰.

(2) THE INVESTIGATION INTO THE SOPOT MATCH

The decision to commission an investigation and report

34. Gayle Bradshaw gave evidence to the Independent Review Panel that it was clear from the outset that the ATP needed to bring in people with a great deal of expertise to work on the Sopot Investigation⁸¹. Mark Young similarly stated that “as soon as *Betfair* suspended its market it was clear that the match required investigating” but that “the ATP did not have the necessary experience to conduct the investigation on its own”⁸².
35. The ATP consulted the British Horseracing Association (“BHA”), as an organisation that had expertise and experience in investigating sports betting corruption. The ATP spoke with Paul Scotney of the BHA’s integrity unit, who in Mark Young’s words made “a positive impression”⁸³. The ATP felt confident in his recommendations of particular investigators to carry out the Sopot Investigation on behalf of the ATP.
36. The Sopot Investigation was conducted under the supervision of Mr Scotney, by Paul Beeby, John Gardner and Robert King of the BHA, with former detectives Albert Kirby and Dave Nutten. Mr Kirby was working at a specialist telecommunications firm, Forensic Technology Services (“FTS”). He told the Panel that his “role at FTS was to liaise with senior investigating officers responsible for major crime investigations in the north of England, to explain the specialist services that FTS provided and how those services could enhance an investigation.”⁸⁴ Mark Phillips of the BHA supported the Sopot Investigation by undertaking the specific role of analysing the betting on the match. Mr Phillips was described in the Sopot Report as having spent 20 years working in the betting industry, and the last three years working as a BHA betting investigator⁸⁵. The Panel refers to this group of individuals as the Sopot Investigators. The Sopot Investigators conducted their investigation on behalf of the ATP, and neither the BHA employees nor Mr Kirby or Mr Nutten were acting on behalf of the BHA, which had only recommended them to the ATP and did not itself play any role as an organisation in the investigation. On occasion, however, those interviewed by the Panel used the shorthand “the BHA” to describe the Sopot Investigators recommended by it. That should not be taken as meaning that the BHA played any role as an organisation.

⁷⁷ Sopot Report, page 10, paragraph 47.

⁷⁸ Sopot Report, page 14, paragraph 73.

⁷⁹ Sopot Report, page 14, paragraphs 73 to 74.

⁸⁰ Sopot Report, page 10, paragraph 50.

⁸¹ Statement of Gayle Bradshaw (ATP).

⁸² Statement of Mark Young (ATP).

⁸³ Statement of Mark Young (ATP).

⁸⁴ Statement of Albert Kirby (formerly FTS).

⁸⁵ Sopot Report, pages 11 to 12, paragraph 61.

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37. Throughout the Sopot Investigation the ATP were in regular contact with the Sopot Investigators⁸⁶. Mr Bradshaw was the primary contact between the ATP and the Sopot Investigators, and was involved in the key aspects of the investigation.
38. From the contemporaneous documents the Panel has seen, at the outset of the Sopot Investigation the Sopot Investigators put forward a strategy for conducting the investigation and this plan of action was sent to the ATP.
39. On 15 August 2007, Robert King of the BHA sent an email to Mr Bradshaw in which he asked, amongst other things, the ATP to make written requests of the players for telephone records and examination of information storage equipment as soon as possible:
- "2. It will be our likely intention to interview both players and their Player Support Personnel. Can you provide as much info as possible on these people? Names, address, role / relation and any other info you may consider necessary.*
- 3. When we have an interview list, it would be imperative in terms of time for the ATP to make written requests of players and PSP [player support personnel] for telephone records and examination of "information storage equipment" The sooner we do this the quicker the investigation. From our experience it can take up to 40 days for phone companies to produce records from the requests of subscribers.*
- 4. It is our intention to forensically examine mobile telephones at the time of interview. This will be crucial to the investigation and seen as an essential task. There is a cost implication as an expert from the Forensic Telecommunications Services (FTC) will have to be present at the interview. Phones will not need to be retained or in any way damaged to complete this process and can be done in the presence of the interviewee".*
40. In addition, Mr Scotney and Mr King met with Mr Bradshaw and Mr Young on 16 August 2007 to discuss the strategy proposed. From a contemporaneous document it is noted that a number of decisions and action points were reached⁸⁷, to include:
- 40.1 Obtaining telephone records from the players. In particular, the following actions were noted as being agreed in a document authored by the Sopot Investigators:
- "• Action: ATP to draft letters of request for Players forthwith and forward to IO's [Investigating Officers] for agreement.*
- Periods to be covered: One month before the tournament and one month afterwards*
- On production of the telephone records, persons concerned to identify all numbers called on the day and day before the match."*
- 40.2 Conducting interviews with the players. It was agreed that the players should not be interviewed whilst actively engaged in a tournament, but that there was no reason why they could not be interviewed in the host country were they to arrive several days beforehand. Amongst the agreed actions was the following:
- "• Actions: ATP to provide personnel details and all available background information on Players and PSP. This information would include earnings, rumour gossip, concerns, media articles or any other information deemed relevant.*
- IO's to prepare a list and profile of persons to be interviewed. This will be forwarded to the ATP to prepare letters requesting interview [...] Although notes would be taken during the interviews, full recordings would also be made. Recording equipment would be presented at the interview and persons concerned informed that recordings were to be made in the interests of accuracy and fairness.*
- Action: IO's to provide appropriate recording equipment"*

⁸⁶ Statement of Gayle Bradshaw (ATP).

⁸⁷ Document entitled 'Progress of Enquiry, Investigation No: 26, Updated: 16/08/07'.

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The possibility of using a company specialising in forensic analysis to examine the information storage devices belonging to the players. The discussion and actions were recorded as follows: *“There was discussion concerning the use of the Forensic Telecommunication Services (FTC). The ATP supported the idea in principle although there had to be some clarification as to whether or not the FTC would or could carry out non law enforcement work and if they could, what would the likely cost be. (Serving an additional written request at the end of the interview on players or psp for examination of information storage devices ought to be considered.)*

- Action: Albert Kirby to liaise with FTC
- ATP to examine Rules to ascertain whether this course of action is feasible”.

40.3 Mr Kirby told the Panel that based on his role at FTS he *“had a good understanding about the evidence that could be obtained from telephones.”* He further stated that he *“suggested to the BHA that FTS should be retained to provide specialist telecoms services and retrieve data from Davydenko’s and Arguello’s telephones. The BHA then explained the requirements of this process to the ATP.”*⁸⁸

41. Under the ATP Rules 2007 Mr Bradshaw⁸⁹ (as acting ARC) had the power to conduct an investigation of any alleged Corruption Offense (as defined in the ATP Rules 2007). Such investigation could be conducted in conjunction with other relevant authorities. Further if Mr Bradshaw *“reasonably believed”* that a Player or any of his Player Support Personnel (as defined in the ATP Rules 2007) may have committed a Corruption Offense, he could make a written demand to such Player or Player Support Personnel to furnish any information that is reasonably related to the alleged Corruption Offense including, without limitation, copies of, or access to, all records relating to the alleged Corruption Offense (including, without limitation, telephone records, Internet service records, computers, hard drives and other information storage equipment).⁹⁰
42. On 23 August 2007, Mr Bradshaw sent Mr King a draft copy of the written demands he intended to send to both players, which he acknowledged receipt of on 24 August 2007. This draft only contained a demand for mobile phone records for the period in question. The final copy of that written demand was sent on 29 August 2007 to both players on the same terms (i.e. the demand was limited to mobile phone records). In addition, in the covering email to Vassallo Arguello, Mr Bradshaw stated that he would call Vassallo Arguello *“concerning the plans for [his] interview.”*
43. The contemporaneous documents suggest that the ATP supported in principle the idea of using a forensic expert to examine information storage equipment, but wanted to confirm that it was possible under the ATP Rules 2007. As explained above, under the rules the ATP had the authority to make a written demand to furnish any information including copies of, or access to, records – this included access to *“information storage equipment”*. *“Information storage equipment”* is not defined in the ATP Rules 2007. It is not clear from the contemporaneous documents whether the ATP, with or with legal counsel, did examine the ATP Rules 2007 regarding this matter. It is also not clear whether the ATP took *“information storage”* to mean mobile phones. In any event, no such written demand was made in respect of access to mobile phone devices to download data, notwithstanding the provisions set out in the ATP Rules 2007.

Interviews of and statements from officials

44. The Sopot Investigators conducted interviews and/or obtained statements from the various officials in positions of responsibility at the Sopot event⁹¹; staff at Montreal⁹²; a former tennis professional⁹³; and the betting exchange Betfair⁹⁴. The Sopot Investigators undertook analysis of the betting on the Sopot Match⁹⁵, obtaining further information where

⁸⁸ Statement of Albert Kirby (formerly FTS).

⁸⁹ Rule 7.05 (E) (2) (a) under the heading Investigations and Procedures > Investigations.

⁹⁰ Rule 7.05 (E) (2) (c) under the heading Investigations and Procedures > Investigations.

⁹¹ Sopot Report. The Sopot Investigators obtained evidence from Gayle Bradshaw, the ATP Executive Vice-President Rule and Competition; Giorgio Di Palermo, the ATP Player Services Manager; Carlos Sanches, the ATP Tournament Supervisor; Mohamed Lahyani, the Chair Umpire; Christian Swier, the ATP physiotherapist; Carmello Di Rio, the ATP Match Referee; Martin Degahs, the ATP Communications Manager; Ryszard Fijalkowski, the tournament director; and Wojciech Makarewicz, the tournament doctor.

⁹² Sopot Report, page 10, paragraphs 49 to 50. Jacques Foueg was the Montreal tournament doctor, and Bill Morris was the ATP trainer/physiotherapist in Montreal.

⁹³ Todd Martin. Sopot Report, page 11, paragraphs 59 to 60.

⁹⁴ Mark Davies. Sopot Report, page 4, paragraphs 10 to 11.

⁹⁵ Sopot Report, pages 11 to 12, paragraphs 61 to 64.

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necessary from Betfair.

Attempts to interview the betting account holders

45. The Sopot Investigators sought to interview the Russian holders of the betting accounts, identified by Betfair⁹⁶, with varying degrees of success. It was necessarily difficult to do this, as the account holders were located in Russia. According to the Sopot Report, some of the account holders were not prepared to speak. The account holders were upset that Betfair would not allow settlement of the bets, denied forming part of any betting syndicate, and variously described their success as attributable to research and preparation, “*watching the line*” and betting accordingly, and risk taking, rather than access to any inside information from the player or those around him. The Sopot Investigators were unable to pursue these interviews further in light of the account holders’ unwillingness to speak, their location, and the absence of any power to require them to give evidence.

Interview of Vassallo Arguello

46. The Sopot Investigators interviewed Martin Vassallo Arguello⁹⁷. He denied knowing anyone in Italy or Russia involved in betting on tennis or knowing of any approaches to him, his support personnel or his family. He denied speaking to Davydenko before the match or having any knowledge that Davydenko might be injured. He said that he had spoken with other Argentine players and coaches the night before the match, and there had been speculation that with the hard court season coming up with more ranking points at stake, and with Davydenko “*only at the tournament for the appearance money*”, Davydenko might not want to tire himself out at Sopot. Vassallo Arguello was also recorded as admitting “*tanking on one or two occasions in doubles matches when he did not really want to be at the tournament... in those cases he would not be bothered if he lost those games*”⁹⁸.

Vassallo Arguello’s telephone records

47. The ATP served a written demand on Vassallo Arguello in respect of the player’s telephone records⁹⁹. Pursuant to the demand, the Sopot Investigators duly obtained some of Vassallo Arguello’s telephone records, although some other records remained to be obtained¹⁰⁰.

Data was downloaded from Vassallo Arguello’s mobile telephone

48. Data was downloaded from Vassallo Arguello’s mobile telephone¹⁰¹, which was obtained from the player at the time he was interviewed. The contemporaneous documents and the evidence provided to the Panel from the individuals involved at the time of the interview indicate that:
- 48.1 The ATP approved in advance the Sopot Investigators’ proposal that a forensic expert be available at the time of the Vassallo Arguello interview in order to “*conduct on site work with mobile phones*”¹⁰².
- 48.2 The interview took place on 17 September 2007¹⁰³ in Szczecin, Poland¹⁰⁴. The interview itself was carried out by Mr Kirby and Mr Nutten, with the assistance of a translator¹⁰⁵. The player attended alone¹⁰⁶.

⁹⁶ Sopot Report, pages 20 to 23, paragraphs 124 to 151.

⁹⁷ Sopot Report, pages 15 to 16, paragraphs 80 to 90.

⁹⁸ Sopot Report, page 16, paragraph 90.

⁹⁹ The ATP’s written request to Vassallo Arguello dated 29 August 2007.

¹⁰⁰ Sopot Report, page 20, paragraphs 121 to 123.

¹⁰¹ Sopot Report, page 20, paragraphs 121 to 123.

¹⁰² Email from Paul Beeby to Gayle Bradshaw (copying Paul Scotney, Phil Walker, and Laura Warwin) dated 7 September 2007.

¹⁰³ Statement of Gayle Bradshaw (ATP).

¹⁰⁴ Statement of Paul Beeby (formerly BHA).

¹⁰⁵ Statement of Paul Beeby (formerly BHA).

¹⁰⁶ Statement of Gayle Bradshaw (ATP).

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- 48.3 Before the interview Mr Beeby and Mr Bradshaw were also present and met the player. Mr Bradshaw attended the interview¹⁰⁷. Mr Beeby did not attend the interview¹⁰⁸. The forensic analysis expert had also travelled to Poland with the Sopot Investigators¹⁰⁹.
- 48.4 No written demand was given to the player at that meeting. The only written demand that had been sent by the ATP to Vassallo Arguello in advance of the interview was the one referred to in paragraph 47 above, but this solely referred to the ATP wishing to obtain the player's telephone records. It did not refer to the examination of information storage devices such as his mobile telephone.
- 48.5 The oral request made to Vassallo Arguello was not recorded on the transcript of the interview.
- 48.6 The summary of the interview states that Vassallo Arguello "*willingly handed over his two mobile phones for examination*"¹¹⁰.
- 48.7 In an email from Gayle Bradshaw to Mark Young, Mr Bradshaw sent an update to the ATP's external lawyers during the course of the interview: "*Interview underway. Very cooperative. Both he and his coach have turned over their phones and the forensic expert is downloading data now*".
- 48.8 The player's mobile telephone was taken from the room so that the forensic analysis expert could download data from it. The forensic analysis expert used specialist software and hardware to download the data from the telephone. The data downloaded included deleted texts (or at least partial texts)¹¹¹ and contacts.
49. The evidence relating to the explanation given to Vassallo Arguello as to why his phone was required is set out in detail in Chapter 9.
50. Some of the texts that were downloaded from Vassallo Arguello's mobile telephone included exchanges that warranted further investigation, in particular potentially significant exchanges related to two matches in which Vassallo Arguello had played. Some of the contacts also warranted further investigation. However, to the extent that those text exchanges and contacts related to conduct in respect of any match, the Sopot Investigators concluded that they did not relate to the Sopot Match against Davydenko, and so did not address them further in the Sopot Report¹¹². The Sopot Report stated that "*the outcome of forensic examinations disclosed both intelligence and evidence that will now form the basis of future investigations concerning Vassallo Arguello*"¹¹³.
51. Paul Scotney stated to the Panel that "*during the interview of Arguello we were able obtain a great deal of information from his mobile telephone handset which he handed over to a forensic expert we had present. The data we retrieved from the phone included text messages and the names of people in his contacts list. Whilst this information did not relate to the Davydenko v Arguello match, there was useful information about other potentially corrupt tennis matches including the identity of people placing suspicious bets on other Arguello matches. These did not relate exclusively to ATP matches. The evidence found on Arguello telephone was damning and definitely worthy of further investigation.*"¹¹⁴

¹⁰⁷ Statement of Gayle Bradshaw (ATP).

¹⁰⁸ Statement of Gayle Bradshaw (ATP); Statement of Paul Beeby (formerly BHA).

¹⁰⁹ Statement of Gayle Bradshaw (ATP); Statement of Paul Beeby (formerly BHA).

¹¹⁰ Summary of Interview of Martin Vassallo Arguello (appended to the Sopot Report).

¹¹¹ Statement of Gayle Bradshaw (ATP); Statement of Paul Beeby (formerly BHA).

¹¹² Sopot Report, page 20, paragraphs 121 to 123. The Sopot Investigators found a number for Davydenko in the contacts, but could not identify when it was added to the list, or whether any calls to it had been made or whether any calls from it had been received, and so based no conclusions on it.

¹¹³ Sopot Report, page 20, paragraph 122.

¹¹⁴ Statement of Paul Scotney (formerly BHA).

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52. Mark Phillips stated that the phone material provided corroborative evidence in relation to some of the 45 matches¹¹⁵ that the Environmental Review stated “*warrant[ed] further review*”¹¹⁶. As explained in paragraphs 189 to 194 below, he stated that he had already identified those 45 matches through his analysis of betting data before he saw the relevant Vassallo Arguello phone material. The resultant intelligence that was reported to the ATP and the ATP’s approach to that intelligence are addressed in Section C below. The presentation of the information to Jeff Rees and others following the inception of the TIU is addressed in Chapter 9.

Interview of Vassallo Arguello’s coach Leonardo Olguin

53. The Sopot Investigators interviewed Vassallo Arguello’s coach Leonardo Olguin¹¹⁷. He stated that when he saw Davydenko receive treatment he thought that gave Vassallo Arguello a chance, as “*Davydenko would look after his foot and keep himself for the Master Series that was his next match and was far better for him to win*” (the Montreal event). He stated that “*everybody could see that he was not alert. He was late and was not responding*”. Olguin stated that he had never bet on tennis, that he did not know anyone in Russia involved in betting on tennis and that no one had approached him for information.

Interview of Davydenko

54. The Sopot Investigators interviewed Davydenko¹¹⁸ in the presence of his lawyer Dr Frank Immenga.
55. The player denied that anyone had made any approaches to him, his support personnel or his family¹¹⁹. He denied knowing the Russian account holders or anyone else involved in betting in Russia, and stated that he did not recognise their names¹²⁰. He denied being involved in any type of betting¹²¹. He also said that he did not know Vassallo Arguello well¹²².
56. Davydenko was asked about the term “*tanking*” and was reported as responding “*that it was normal during a small tournament that players might not try so hard if they had an injury, or if there was a big tournament coming up (such as a Grand Slam) players would prefer to have more time to prepare*”¹²³. He also said this had nothing to do with the Sopot event. When it was put to him that others might seek to exploit knowledge about tanking, he said that players did not have time to become involved with anyone other than the physiotherapists, their family and their coaches¹²⁴.

Davydenko’s telephone records

57. When the Sopot Investigators sought to obtain Davydenko’s telephone records, the player’s lawyers exercised the player’s right to object and raised an appeal to the Anti-Corruption Hearing Officer or AHO¹²⁵. The ATP’s lawyers, Smith Hulsey & Busey, acted for the ATP on the appeal. In November 2007, the AHO decided that the telephone records should be provided. The player then provided telephone records, which the player’s lawyer stated related to the player’s telephones although they were not registered in his name, and none of which showed contact with the Russian account

¹¹⁵ As appears in Mark Phillips’ PowerPoint presentation described in paragraphs 201 to 214 below, one of the 45 matches was mentioned in the deleted texts and involved betting via a Betfair account registered with a telephone number that also appeared in Vassallo Arguello’s contacts list in the mobile phone’s address book and two of the 45 matches involved betting via accounts registered with telephone numbers that also appeared in Vassallo Arguello’s contacts list in the mobile phone’s address book.

¹¹⁶ Statement of Mark Phillips (formerly BHA).

¹¹⁷ Sopot Report, paragraphs 91 to 98.

¹¹⁸ Sopot Report, paragraphs 67 to 79.

¹¹⁹ Sopot Report, paragraph 75.

¹²⁰ Sopot Report, paragraphs 75 and 76.

¹²¹ Sopot Report, paragraph 75.

¹²² Sopot Report, paragraph 79.

¹²³ Sopot Report, paragraph 77.

¹²⁴ Sopot Report, paragraph 78.

¹²⁵ Under ATP TACP 7.05 E(2)(c) and (d).

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holders¹²⁶. The Sopot Investigators reported that no records were provided for the number the ATP had recorded as the player's landline or mobile, the player's lawyer stating that the latter was no longer his mobile number¹²⁷. The Sopot Investigators reported that the landline number had no subscriber details, and that the mobile number appeared to belong to a company in Germany with which the player had no apparent connection¹²⁸. A third number that the ATP had was registered to the player's agent Eckard Oehms.

Interview of Davydenko's agent Ronnie Leitgeb

58. The Sopot Investigators interviewed Ronnie Leitgeb¹²⁹, described as an agent for Davydenko since July 2007, but who was also a coach. He stated that the player lost in the first round in the three tournaments after Wimbledon (Gstaad, Amersfoort and Umag) because he had found it difficult to adjust back from grass to clay, and because he had lost confidence on the surface. Leitgeb had given him two hard training sessions, and the player had mentioned pain in one of his feet. Leitgeb had then left Sopot.
59. Leitgeb was reported as saying that tanking may happen where, for example, a player seeks to protect an injury or to save himself for a major tournament, and that such information was readily available at tournament hotels. He was also reported as saying that *"there may be a tendency for some to play the first round, pick up first round prize money then move on"*¹³⁰.

Interviews of Irina Davydenko and Eduard Davydenko

60. When the Sopot Investigators sought to interview the player's wife Irina and brother Eduard, Frank Immenga reserved an objection to the ATP's jurisdiction over them, on the basis that they were not covered by the ATP TACP.
61. The player's wife stated that she was aware of his injury, but had not passed the information to anyone else¹³¹. She denied knowing Vassallo Arguello, that any threats had been made to her or her husband, or knowing any of the Russian account holders¹³². At that stage, she made no objection to providing her telephone records¹³³.
62. The player's brother was reported as also serving as his coach¹³⁴. He was not at Sopot because he had been away from his own family for several months, and was about to be away again for two more. He stated that his brother regularly had injury problems, that journalists regularly called him enquiring about his brother's form, and that the player *"does not keep his injuries quiet when speaking with Russian supporters"*. He stated that his brother always tried *"to give of his best at tournaments"*.

The telephone records of Irina Davydenko and Eduard Davydenko

63. When the Sopot Investigators sought to obtain Irina Davydenko's and Eduard Davydenko's telephone records in January 2008, Dr Immenga invoked the objection that had previously been reserved, that the ATP had no jurisdiction over the player's wife and brother because they were not subject to the ATP TACP. Smith Hulsey & Busey acted for the ATP on the challenge to the jurisdiction. In July 2008, the AHO decided that the telephone records should be provided. However, the Sopot Investigators were then informed that it was the relevant telephone company's policy to destroy records after a certain time, and that the relevant records had been destroyed.

¹²⁶ Sopot Report, paragraph 117.

¹²⁷ Sopot Report, paragraph 116.

¹²⁸ Sopot Report, paragraph 118.

¹²⁹ Sopot Report, paragraphs 110 to 115.

¹³⁰ Sopot Report, paragraph 113.

¹³¹ Sopot Report, paragraph 101.

¹³² Sopot Report, paragraphs 101 and 102.

¹³³ Sopot Report, paragraph 102.

¹³⁴ Sopot Report, paragraph 104.

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(3) THE SOPOT REPORT

64. The Sopot Report was provided to the ATP in May 2008. The report recited the background, interviews, statements and other evidence summarised above.
65. The Sopot Report concluded that *“there is no doubt that, based on the betting evidence, the individuals controlling the suspect accounts knew the outcome of the match before its conclusion. It was this knowledge that allowed them to bet with such confidence prior to and during the match”*¹³⁵. This drew on Mark Phillips’ view, on the basis of the betting pattern, that *“the suspect Russian accounts knew that Davydenko was going to lose the match”*¹³⁶. The Sopot Report concluded that the bettors had that knowledge before the match started: *“the betting suggests that the suspect Russian accounts knew prior to the match that Davydenko would not win”*¹³⁷. In reaching this conclusion, the Sopot Report dismissed the alternatives:
- 65.1 The Sopot Report concluded that it was unlikely that the Russian accounts had bet as they had based on knowledge of such injury as the player had going into the match, as that injury did not mean that he would necessarily have to retire, justifying the high level of betting before the match started. In short, knowledge of a slight injury, like Davydenko’s, would not have led to such a betting pattern involving such amounts bet at such odds¹³⁸.
- 65.2 The Sopot Report concluded that it was unlikely that the Russian accounts had bet as they had based on knowledge of the player’s poor form, losing in the first round of each of the previous three tournaments (Gstaad, Amersfoort and Umag). The accounts had not bet against Davydenko when he played his first round match at Sopot, which they could be expected to have done if they had been betting on this basis. But in any case, in short, knowledge of the player’s prior defeats would not have led to such a betting pattern involving such amounts bet at such odds¹³⁹.
- 65.3 The Sopot Report concluded that it was *“inconceivable”* that such a betting pattern had been based on *“account holder opinion”*, and that rather it involved *“betting on a known result”* and *“betting with inside information”*¹⁴⁰.
66. The Sopot Report concluded that it was, however, unknown *“how the suspect account holders knew that Davydenko would lose and Vassallo Arguello would win”*¹⁴¹.
67. The Sopot Report concluded that *“there is no evidence to show who passed information to the account holders that Davydenko would lose and Vassallo Arguello would win. It could have been communicated by the players themselves, their family members, player support or anyone else who had that information. That information might have been passed to the Russian account holders without the players’ knowledge”*¹⁴².
68. The Sopot Report then suggested, without concluding, that the nature of the information that was passed in advance of the match might have been that Davydenko would retire during the match, not for betting or other corrupt purposes, but for other reasons; here, in order better to rest and prepare for the more important and valuable Montreal Masters and the remainder of the ATP North American hard-court swing leading into the US Open¹⁴³.
69. The Sopot Report concluded that *“there is no evidence to connect”* either of the *“players and their support staff”* with

¹³⁵ Sopot Report, paragraph 152.

¹³⁶ Sopot Report, paragraph 64.

¹³⁷ Sopot Report, paragraph 158.

¹³⁸ Sopot Report, paragraphs 154 and 155.

¹³⁹ Sopot Report, paragraph 156.

¹⁴⁰ Sopot Report, paragraph 156 and 158.

¹⁴¹ Sopot Report, paragraph 153.

¹⁴² Sopot Report, paragraph 160.

¹⁴³ Sopot Report, paragraph 161 to 163. The Sopot Investigators referred to the relative values of the Sopot tournament, where the winner would earn 175 ranking points and €59,200, and the Montreal tournament, where the winner would earn 500 ranking points and \$400,000. The Sopot Investigators also referred to Davydenko’s retirement from the Sydney event and his ensuing comments to the press, as “of some interest”.

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*“the account holders”*¹⁴⁴. The Sopot Investigators pointed to the facts that they could not secure more information from the accounts holders and that there had been an incomplete collection of telephone records, but made clear that *“of course we will never know if this would have revealed links to the Russian Betfair account holders”*¹⁴⁵.

70. The Sopot Report also concluded that the Sopot Investigation had been hindered, amongst other things, by the fact that *“the anti-corruption code rules were in places unclear and restrictive and difficult to work with; clarity and further definition is required. This will be the subject of additional recommendations”*¹⁴⁶.
71. Finally, the Sopot Report set out its principal conclusion that *“the investigation has been unable to find any evidence supporting the possibility of Nikolay Davydenko or Martin Vassallo Arguello being involved in any corrupt practices surrounding their second round match in Sopot on 2nd August 2007”*¹⁴⁷. The Sopot Investigators went on to state *“it is felt that had we have had the full support of Betfair account holders and all requested itemised telephone billings then this investigation may well have had a different conclusion”*, but that possibility did not alter the conclusion made.

(4) THE ATP'S ACTION UPON RECEIPT OF THE SOPOT REPORT

72. The ATP took that principal conclusion of the Sopot Report as meaning that there was no basis for bringing disciplinary proceedings under the ATP TACP in respect of the 2 August 2007 Sopot Match against either player, or indeed anyone else covered by the ATP TACP¹⁴⁸.
73. Gayle Bradshaw gave evidence to the Independent Review Panel that the ATP agreed with the conclusions in the Sopot Report¹⁴⁹. Reliance was placed by the ATP on the assessment made by the Sopot Investigators. Whilst Mr Bradshaw agreed that the bettors must have obtained information from somewhere, there was no evidence in his assessment that this information had come from Davydenko. It might have been that the bettors had picked up information from elsewhere. Davydenko's injury problems were well known. Gayle Bradshaw did not believe, on the basis of the evidence obtained and the conclusion of the Sopot Investigators, that it could be proved that Davydenko walked on to court having decided in advance that he was going to lose or retire.
74. Consequently, Gayle Bradshaw's position is that he, as the responsible official at the ATP, could not conclude that he *“reasonably believed”*¹⁵⁰ for the purposes of the ATP TACP that a corruption offence had been committed. According to Mr Bradshaw:
- 74.1 No one could be charged with *“contriving the outcome”* of a match on the basis that he had deliberately lost or retired for reasons other than betting or other corrupt purposes¹⁵¹, because first the provision had not been construed, and the ATP did not consider that it fell to be construed, as extending to such a situation. As a result, no consideration was given to a charge on this basis. Second, and in any event, even if consideration had been given to such a charge in Gayle Bradshaw's view there was insufficient evidence revealed by the Sopot Report to allow him to conclude that he *“reasonably believed”*¹⁵² that the unusual betting pattern in fact stemmed from Davydenko having made a prior decision to lose.

¹⁴⁴ Sopot Report, paragraph 166.

¹⁴⁵ Sopot Report, paragraphs 164 to 166.

¹⁴⁶ Sopot Report, paragraph 167.

¹⁴⁷ Sopot Report, paragraphs 168.

¹⁴⁸ Statement of Mark Young (ATP); Statement of Gayle Bradshaw (ATP).

¹⁴⁹ Statement of Gayle Bradshaw (ATP).

¹⁵⁰ 2007 ATP TACP 7.05 E(2)(e).

¹⁵¹ 2007 ATP TACP 7.05 C(2)(a).

¹⁵² 2007 ATP TACP 7.05 E(2)(e).

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- 74.2 No one could be charged with themselves wagering¹⁵³ or inducing others to wager¹⁵⁴, because the specific conclusion of the Sopot Investigators had been that there was no evidence linked the bettors to any player, support personnel, or family. Again, Gayle Bradshaw could not conclude that he “*reasonably believed*”¹⁵⁵ a corruption offence had been committed.
- 74.3 No one could be charged with paying or taking a bribe not to use best efforts¹⁵⁶, because again the specific conclusion of the Sopot Investigators had been that there was no evidence of any link between any player or support personnel, or family, with the bettors, and again Gayle Bradshaw could not conclude that he “*reasonably believed*”¹⁵⁷ a corruption offence had been committed.
- 74.4 No one could be charged with paying or taking a bribe in return for inside information¹⁵⁸, because again the specific conclusion of the Sopot Investigators had been that there was no evidence of any link between any player or support personnel, or family, with the bettors, and again Gayle Bradshaw could not conclude that he “*reasonably believed*”¹⁵⁹ a corruption offence had been committed.

(5) EVALUATION OF THE ATP’S RESPONSE TO THE 2007 SOPOT MATCH AND TO THE 2008 SOPOT REPORT

75. The Independent Review Panel has considered against the facts above whether the ATP’s response to the 2007 Sopot Match and subsequently to the 2008 Sopot Report on it, was effective and appropriate.

The ATP’s decision to appoint independent investigators

76. The ATP did not have the resources or capabilities to investigate an incident such as this. The ATP went to the BHA, a body with extensive expertise and experience in this context. The BHA recommended the appointment of two of its staff, together with two experienced detectives from outside. In the present¹⁶⁰ view of the Independent Review Panel, it was effective and appropriate for the ATP to bring in experienced external investigators and to select the Sopot Investigators.

The investigation carried out under the ATP TACP

77. Subject to paragraphs 78 and 79 below, the Independent Review Panel has seen nothing to indicate that the Sopot Investigation was not carried out effectively within the constraints that existed. The Panel presently considers that the Sopot Investigation was competent and thorough and involved considerable time and resources being invested by the ATP. In the present view of the Panel, it was appropriate for the ATP to conclude its investigation with respect to the Sopot Match after receiving the Sopot Report.
78. The Sopot Investigators’ inability to secure the telephone records to all relevant numbers and to obtain and search all relevant telephones was in the present view of the Panel primarily a function of limitations in the ATP TACP, jurisdictional difficulties, and the right of the player to appeal to the AHO. It also underlined the limitations that the Sopot Investigators faced as a result of not having a close working relationship with law enforcement agencies. A benefit of such relationships is that local authorities may be able to secure the provision of evidence, such as telephone records, in circumstances where that evidence cannot be otherwise obtained.

¹⁵³ 2007 ATP TACP 7.05 C(1)(a).

¹⁵⁴ 2007 ATP TACP 7.05 C(1)(b).

¹⁵⁵ 2007 ATP TACP 7.05 E(2)(e).

¹⁵⁶ 2007 ATP TACP 7.05 E(2)(c) and (d).

¹⁵⁷ 2007 ATP TACP 7.05 E(2)(e).

¹⁵⁸ 2007 ATP TACP 7.05 C(2)(e) and (f).

¹⁵⁹ 2007 ATP TACP 7.05 E(2)(e).

¹⁶⁰ Pending the consultation process between Interim and Final Reports.

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79. The evidence as to the manner in which the Vassallo Arguello phone material was obtained under the ATP TACP is dealt with in Chapter 9.¹⁶¹

Could and should a disciplinary case have been brought by the ATP against either player or any other person under the ATP TACP in relation to the Sopot Match?

80. The focus of the Sopot Investigators was to establish whether there were links between the players and bettors.
81. The Sopot Report concluded that “*there is no doubt that, based on the betting evidence, the individuals controlling the suspect accounts knew the outcome of the match before its conclusion*” but that “*the investigation has been unable to find any evidence supporting the possibility of Nikolay Davydenko or Martin Vassallo Arguello being involved in any corrupt practices . . .*”
82. With the Report having found insufficient evidence to establish a corrupt motivation and link to bettors, it was appropriate for the Sopot Report to conclude that charges could not be brought against anyone for “*contriving the outcome*” in the sense of deliberately losing for betting or other corrupt purposes¹⁶², or with inducing another player not to use his best efforts¹⁶³, or with paying or taking a bribe not to use best efforts¹⁶⁴.
83. In the present¹⁶⁵ view of the Independent Review Panel, it was appropriate that the ATP placed significant reliance upon the assessment that the Sopot Investigators reached in the 2008 Sopot Report. The Sopot Investigators had much greater experience in obtaining evidence to bring prosecutions, and their conclusion was clear: The Sopot Investigators were unable to find any evidence of either player’s involvement in corrupt practices related to the Sopot Match.

A broader construction of “contrivance” under rule 7.05 C of the ATP TACP

84. Whilst the focus of the Sopot Investigators was on establishing whether there was a link between the players and bettors, the Panel has considered whether Davydenko, Vassallo Arguello, or anyone else could or should have been disciplinarily charged by the ATP in respect of the Sopot Match on the basis of a broader construction of “*contrivance*” under rule 7.05 C of the ATP TACP.
85. In the Panel’s assessment, it would have been preferable for consideration also to have been given to whether Davydenko could have been charged with “*contriving the outcome*” of a match in the sense of deciding in advance deliberately to lose or retire for reasons other than betting or other corrupt purposes¹⁶⁶:
- 85.1 It does not seem to the Panel that the words of the provision fell, or at least necessarily fell, to be construed as being limited to where a player had acted for betting or other corrupt purposes. It seems to the Panel that the proper construction of the provision is that a player might contrive the result if he or she decides in advance to lose or retire, irrespective of motivation, because the text of the rule does not limit its application to situations where a player acted for betting or corrupt purposes.
- 85.2 The Sopot Report was clear in its conclusion that the betting was so marked that the bettors must have known in advance that the player would retire or lose. It seems to the Panel that it would have been preferable for the ATP to have considered whether that warranted a charge.
86. Such a charge was not considered by the ATP because:
- 86.1 The ATP had not construed the provision, and has stated that it did not believe it should be construed in light of the designation in the ATP TACP of the contrivance offence as an act of “*corruption*”, as extending to such a situation. On that premise, there was no reason so far as the ATP was concerned to go beyond the conclusion of the Sopot Investigators that there was no evidence of corrupt practices.

¹⁶¹ Chapter 9, Section C and Section E.

¹⁶² 2007 ATP TACP 7.05.C.(2).(a).

¹⁶³ 2007 ATP TACP 7.05.C.(2).(b).

¹⁶⁴ 2007 ATP TACP 7.05.C.(2).(c) and (d).

¹⁶⁵ Pending the consultation process between Interim and Final Reports.

¹⁶⁶ 2007 ATP TACP 7.05.C.(2).(a).

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86.2 The Sopot Investigators themselves did not give consideration to such a charge being brought. The conclusion in the Report for these purposes was simply that there was no evidence of corrupt practices.

87. As addressed in Chapter 14 Section A in relation to the equivalent provision in the current uniform TACP¹⁶⁷, the Panel considers that it needs to be made expressly clear in the amended rules that the prohibition on contriving the result applies irrespective of motivation, though the seriousness of the offence may depend, at least in part, on motivation.
88. However in relation to the Sopot Investigation, even if consideration had been given to this by the ATP, and a different construction had been adopted, it appears from Gayle Bradshaw's evidence that he would not have regarded there to be sufficient evidence to charge Davydenko with "*contriving the outcome*" of a match¹⁶⁸ in the sense of deciding in advance deliberately to lose or retire even for reasons other than betting or other corrupt purposes, on the disciplinary prosecutorial standard that applied at that time under the ATP TACP. Gayle Bradshaw's evidence is that he could not have concluded that he "*reasonably believed*" that Davydenko had decided in advance deliberately to retire for any reason.¹⁶⁹
89. The conclusion of the Sopot Report that there was no evidence of any link between anyone and the bettors also effectively precluded anyone covered by the ATP TACP being charged with wagering or inducing others to wager¹⁷⁰.
90. The conclusion of the Sopot Report that there was no evidence of any link between anyone and the bettors also effectively precluded anyone covered by the ATP TACP from being charged with paying or taking a bribe in return for inside information¹⁷¹.

Failure to co-operate under rule 7.05 E of the ATP TACP

91. The Panel has considered whether Davydenko, Vassallo Arguello, or anyone else could or should have been disciplinarily charged with a failure to co-operate¹⁷²:
- 91.1 It does not appear to the Panel that Davydenko or anyone else in his camp could or should have been charged with failing to co-operate in relation to phone records. Their actions in appealing the requests made were permissible under the ATP TACP¹⁷³. Although it is noted that the Sopot Investigators observed that "*the situation with obtaining Davydenko's complete telephone billings and/or an explanation for other phones he was suspected of using has not been resolved satisfactorily*"¹⁷⁴ and that the Sopot Investigators "*received no itemised telephone billings*" for Davydenko's coach and his wife¹⁷⁵, the Panel has not seen evidence demonstrating that these circumstances afforded any basis for a disciplinary charge.
- 91.2 Nor does it appear that once that appeal process was complete, and the order was made, anyone in fact failed to comply with an AHO direction. If evidence no longer existed, and no obligation existed to preserve it, it is not a failure to co-operate to fail to provide it.

Were there deficiencies in the ATP TACP that hindered investigation?

92. As the Sopot Report concluded, there were deficiencies in the ATP TACP that hindered investigation. In particular, the ability of investigators to obtain records and telephones rapidly was circumscribed, and there were doubts as to the extent to which some individuals were covered by the rules. These issues were to some extent addressed in the uniform

¹⁶⁷ Chapter 14, Section A.

¹⁶⁸ 2007 ATP TACP 7.05.C.(2).(a).

¹⁶⁹ 2007 ATP TACP 7.05 E.(2)(e).

¹⁷⁰ 2007 ATP TACP 7.05.C.(1).(a) and (b).

¹⁷¹ 2007 ATP TACP 7.05.C.(1).(e) and (f).

¹⁷² 2007 ATP TACP 7.05.E.(2)(b).

¹⁷³ 2007 ATP TACP 7.05 E.(2)(d).

¹⁷⁴ Sopot Report, paragraph 166.

¹⁷⁵ Sopot Report, paragraph 166.

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TACP subsequently introduced¹⁷⁶, and are the subject of further recommendations by the Independent Review Panel¹⁷⁷.

93. It also appears from the Sopot Report that the definition of prohibited conduct in the ATP TACP, as construed by the ATP, made the prospect of obtaining sufficient evidence unlikely. In particular:
- 93.1 The Sopot Report highlighted the difficulty in proving corrupt motivation and a link with bettors, when arguably it is or ought to be a breach of integrity simply to contrive the result of a match even absent proof of such matters.
- 93.2 The Sopot Report highlighted the difficulty in proving reward for the passing of inside information, when arguably it is or ought to be a breach of integrity to pass such information even absent proof of such reward.
94. The Sopot Report highlighted the difficulty in proceeding in respect of the actions of individuals not covered by the rules.

¹⁷⁶ TACP (2009), Section F.2.c

¹⁷⁷ Chapter 14, Section D.

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B THE 2008 ENVIRONMENTAL REVIEW AND DEVELOPMENT OF UNIFORM RULES

95. In the light of the events described in Chapter 7 and above, and in particular the ATP's experience in relation to the number of suspicious or unusual betting patterns¹⁷⁸, the investigation of betting accounts in the names of players and coaches¹⁷⁹ and the commencement of the Sopot Investigation into the Vassallo Arguello v Davydenko Sopot Match¹⁸⁰, in autumn 2007 the International Governing Bodies of tennis jointly initiated a review of their approach to match-fixing and related breaches of integrity by participants in the sport, with a view to the development of new uniform rules to be applied across the sport.
96. Independent experts were appointed by the International Governing Bodies to conduct an environmental review to examine the nature and extent of the problem faced by tennis and to recommend the steps that should be taken to address it¹⁸¹. At the same time, the International Governing Bodies and legal advisers addressed the development of uniform rules¹⁸².

(1) THE COMMISSIONING AND UNDERTAKING OF THE ENVIRONMENTAL REVIEW AND THE DEVELOPMENT OF UNIFORM RULES

Establishment of the Professional Tennis Integrity Review Committee

97. In October 2007, following discussions between them, the International Governing Bodies established a Professional Tennis Integrity Review Committee made up of Mark Young of the ATP, David Shoemaker of the WTA and Ian Ritchie of the AELTC on behalf of the GSB to decide how to implement an investigation and development of new rules.

Appointment of Ben Gunn and Jeff Rees to undertake the Environmental Review

98. In November 2007, having undertaken research, attended meetings with potential authors, and considered proposals, the committee appointed Ben Gunn and Jeff Rees to undertake the Environmental Review.
99. Each had great experience in policing and in sports integrity:
- 99.1 Mr Gunn had spent 40 years in law enforcement, principally in the Metropolitan Police in London where he specialised in countering espionage, subversion and terrorism¹⁸³, and then as Chief Constable of the Cambridgeshire Constabulary. Following retirement from the police in 2002, he had been a member of the Integrity Committee of The Jockey Club¹⁸⁴ and in 2007 became Independent Regulatory Director at the BHA. During his time at The Jockey Club, he was appointed Independent Chairman of the joint Jockey Club and British Horseracing Board's Security Review Group, tasked with examining integrity issues in the horseracing industry¹⁸⁵.
- 99.2 Mr Rees had spent 35 years working for the Metropolitan Police in London. Mr Rees stated "*I led major investigations not only in London but in several different countries around the world, so gaining experience of operating in the international arena and in very different legal jurisdictions. This experience stood me in good stead when I entered the field of investigating betting-related corruption in international sports*"¹⁸⁶. Mr Rees stated that in 2000

¹⁷⁸ Chapter 7, Section A.

¹⁷⁹ Chapter 7, Section B.

¹⁸⁰ Section A above.

¹⁸¹ Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008) (hereafter the "Environmental Review") - Appendix: Key Documents.

¹⁸² The product of the International Governing Bodies' and legal advisers' work (which work was described as "the Regulatory Review" in the Environmental Review) was the uniform Tennis Anti-Corruption Programme ("the TACP") in its original form, in force from 1 January 2009.

¹⁸³ Statement of Ben Gunn (formerly BHA).

¹⁸⁴ The regulatory and governing body of horseracing in Great Britain at that time, since superseded by the Horseracing Regulatory Authority and the British Horseracing Board and, latterly, the BHA.

¹⁸⁵ Statement of Ben Gunn (formerly BHA).

¹⁸⁶ Statement of Jeff Rees (formerly TIU).

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he “retired in the rank of Detective Chief Superintendent, having held leading roles in a number of New Scotland Yard’s most successful operational units”¹⁸⁷. Mr Rees stated that he retired from policing having been invited by Lord Condon to assist with establishing the International Cricket Council’s (ICC) anti-corruption unit and was then appointed its Chief Investigator and General Manager¹⁸⁸.

100. Mr Rees gave evidence that, in his view, each of the two authors brought differing perspectives. He stated that “Ben Gunn had come from the BHA. The BHA had a developed integrity programme, but it was a one-country regulator”. Mr Rees added that “as far as I am aware Ben Gunn’s experience was limited to holding an executive position rather than managing, directing and carrying out investigations himself”¹⁸⁹. Mr Rees stated “I had experience both in executive and operational roles”¹⁹⁰. Mr Rees also suggested that their experiences differed in that he “brought experience from a sport that existed to provide a sporting spectacle and where betting was, in the wider scheme of things, largely incidental.”. Whereas in horseracing, Mr Gunn had worked for “a sport which existed primarily as a vehicle for betting”¹⁹¹.

The terms of reference of the Environmental Review

101. The terms of reference of the Environmental Review were “(i) To identify the nature of the threats to the integrity of professional tennis worldwide (ii) To consider what regulatory strategies, structures, policies and resources are necessary to combat current and foreseeable threats to integrity worldwide (iii) To report the recommendations to the commissioning tennis authorities”¹⁹².

The task of the team asked to develop uniform rules

102. The task of the team asked to develop new uniform rules was to produce rules that could apply across the professional sport, and which took into account lessons learned from past experience¹⁹³. A team was set up to draft this set of unified rules, made up of Mr Young, Mr Shoemaker, Bill Babcock, Stephen Busey of Smith Hulsey Busey and Jamie Singer of Onside Law. Each had legal or sports regulatory experience.
103. It is to be noted that at least two of the Grand Slams simultaneously undertook their own exercises to examine how integrity issues arose in their specific contexts.

The undertaking of the Environmental Review and development of uniform rules

104. Mr Gunn and Mr Rees were appointed at the end of 2007 and undertook the Environmental Review in the beginning of 2008.
105. Their “*Methodology and Consultation*”¹⁹⁴ included consideration of materials provided to them by the International Governing Bodies and “*ninety five interviews... with people representing a wide range of stakeholders and interests within tennis and the betting industries, as well as senior representatives of the various international tennis bodies*”.
106. The Environmental Review was finalised in May 2008. Mr Gunn and Mr Rees had a very limited period in which to conduct the Environmental Review¹⁹⁵, and yet were able in that time to gather together and effectively process a great deal of information as to the environment within tennis. The Panel appreciates greatly their work, which has been of substantial assistance in the Panel’s understanding and consideration of the issues, historical, current, and future.
107. The proposed new uniform rules were produced at the same time. They took as their starting point the ATP TACP, and adapted it. The ultimate product of their work was the TACP itself, in its original form.

¹⁸⁷ Statement of Jeff Rees (formerly TIU).

¹⁸⁸ Statement of Jeff Rees (formerly TIU).

¹⁸⁹ Statement of Jeff Rees (formerly TIU).

¹⁹⁰ Statement of Jeff Rees (formerly TIU).

¹⁹¹ Statement of Jeff Rees (formerly TIU).

¹⁹² Environmental Review Appendix A, page A-1.

¹⁹³ The exercise undertaken by the team is described in the Environmental Review, paragraph 1 as a “*Regulatory Review which seeks to harmonise the various Rules and Codes of Conduct for international tennis into one uniform Anti-Corruption Programme*”. The Environmental Review further described “the Regulatory Review” in paragraphs 1.27 to 1.31, stating that Ben Gunn and Jeff Rees had liaised with Jamie Singer, and strongly supported and recommended the adoption of the harmonised Tennis Anti-Corruption Programme.

¹⁹⁴ Environmental Review Appendix B, pages B21 to B-2.

¹⁹⁵ Jeff Rees gave evidence to the Panel that “*the only constraint or limitation [placed upon the authors of the Environmental Review] was in relation to the time available for us to carry out our research and submit our report. Ben Gunn and I were each paid for 40 days’ work.*” (Statement of Jeff Rees (formerly TIU)).

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(2) THE CONTENTS OF THE ENVIRONMENTAL REVIEW

108. The Environmental Review contained an Executive Summary¹⁹⁶ and an introductory Section 1¹⁹⁷. It then contained a section dealing with each of the three heads of the terms of reference set out above¹⁹⁸, divided into a number of sub-sections:
- 108.1 Section 2 addressed the first head of the terms of reference and contained sub-sections entitled “*the nature of the threats to the integrity of professional tennis worldwide*”;¹⁹⁹ “*corrupt practice by players/officials and others in respect of betting on tennis*”; “*breaches of the rules and regulations of professional tennis which affect the integrity of the sport*”; “*accreditation / credential violations*”; “*misuse of inside information for corrupt betting purposes*” and “*illegal or abusive behaviour towards players*”.
- 108.2 Section 3 addressed the second head of the terms of reference and contained sub-sections entitled “*regulatory action to address the threats to professional tennis*”;²⁰⁰ “*a uniform anti-corruption programme*”; “*a regulatory strategy*”, “*a regulatory structure – an integrity unit*”; “*regulatory processes/procedures*”; “*interface with betting and betting organisations*” and “*interface with police and other law enforcement agencies*”.
- 108.3 Section 4 addressed the third head of the terms of reference and contained recommendations to the commissioning tennis authorities.²⁰¹
- 108.4 Section 5 contained conclusions.²⁰²
109. The Environmental Review warrants reading in its entirety. It constitutes a second detailed appraisal of the integrity-related issues facing professional tennis, and like the first appraisal, the 2005 Ings Report²⁰³, raised many of the issues that continue to confront tennis today. The Panel summarises below a number of particularly important points for the purposes of this further Independent Review of Integrity in Tennis, by reference to the headings described above.

“The nature of the threats to the integrity of professional tennis worldwide”

110. The Environmental Review concluded that “*the integrity of professional tennis is under threat*” because “*a few players are vulnerable to corrupt approaches*”²⁰⁴. There had however been very little disciplinary action²⁰⁵. The authors stated that they had examined 73 matches raising unusual betting patterns in the five years up to the Sopot Match. Of those, 45 had been more closely examined in the light of intelligence arising out of the Sopot Investigation and “*warranted further review*”, and the information had been passed to the professional tennis authorities. Other matches since the Sopot Match also merited further review. There would likely have been other suspect betting elsewhere. There could be no room for complacency²⁰⁶.

¹⁹⁶ Environmental Review, pages 1 to 3, paragraphs 1 to 15.

¹⁹⁷ Environmental Review, pages 4 to 7, paragraphs 11 to 1.31.

¹⁹⁸ Paragraph 102 above.

¹⁹⁹ Environmental Review, pages 8 to 21, paragraphs 2.1 to 2.109.

²⁰⁰ Environmental Review, pages 21 to 42, paragraphs 3.1 to 3.166.

²⁰¹ Environmental Review, pages 43 to 44, paragraphs 4.1 to 4.2.

²⁰² Environmental Review, pages 44 to 45, paragraphs 5.1 to 5.6.

²⁰³ Chapter 7; The Ings Report has been published as redacted at Appendix: Key Documents.

²⁰⁴ Environmental Review, page 8, paragraphs 2.2 to 2.5. Environmental Review, paragraphs 2.2 to 2.5. The authors concluded that there was “a broad consensus that the integrity of professional tennis was under threat” because although “tennis is not institutionally or systemically corrupt... a few players are vulnerable to corrupt approaches” on the evidence not from “Russian or Italian Mafia” but from “criminal elements... that may even involve organised criminal gangs”. Also Executive Summary, page 1, paragraphs 3 and 5.

²⁰⁵ Environmental Review, page 8, paragraph 2.6. “...worldwide disciplinary cases for corrupt action brought under the Codes of Conduct over the past five years are limited” and “criminal charges internationally for such activity are nil over the same period”. The authors also stated at paragraph 2.9 that they had liaised with those conducting current investigations and that the Environmental Review was to be taken as without prejudice to those investigations. This was a reference, principally, to the authors’ liaison with the Sopot Investigators appointed to look into the Sopot Match.

²⁰⁶ Environmental Review, page 9, paragraphs 2.10 to 2.12. The authors stated that they had “examined some 73 matches which have been identified as having suspect betting patterns over the past five years and leading up to the Sopot Match on 02/08/07”, that they had “examined more closely 45 of those matches as a result of specific enquiries arising out of the Sopot Match and have identified specific concerns from a betting perspective which would warrant further review” and that they had “examined further matches... identified as having suspect betting patterns since the Sopot Match” which also merited review. The authors stated that “the betting patterns give a strong indication that... account holders are in receipt of inside information” and that the authors had “shared... information on them with the professional tennis authorities”. They considered that “there is merit in reviewing those matches in an effort to identify whether the initial suspicions raised did indeed affect the integrity of professional tennis, whether there may have been other tennis reasons for the outcome of such matches and, importantly, to identify any intelligence leads for future reference. The scale of the allegedly suspicious matches indicates there is no room for complacency”. Also Executive Summary paragraphs 4 and 7. As described in Chapter 7, the Panel has identified 202 matches from the beginning of 2003 to the end of 2008 that raised suspicious or unusual betting patterns, within which are 45 referred to by the Environmental Review. Not all of the matches in that list, and not all of the 45 matches referred to by the Environmental Review were reported at the time the match took place, as opposed to subsequently.

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111. The authors found that the investigatory process necessary to prove corrupt activity was lengthy and complex, and involved the collection of betting evidence, evidence of what happened at the match, telecommunications data, interview evidence, and expert analytical evidence linking them together²⁰⁷.
112. The authors summarised the five principal threats to integrity that they had found to exist²⁰⁸: first, corrupt practice for betting purposes; second, breaches of the rules such as ‘tanking’; third, accreditation abuse; fourth, misuse of inside information; and fifth, illegal or abusive behaviour towards players. They concluded that there was a “*lack of clarity in understanding the nature of the principal threats*”, which needed to be clearly set out in a regulatory strategy so that they could be addressed.

The 45 matches referred to in the Environmental Review

113. The Panel addresses the identification of the above-referenced 45 matches in Section C below. As there described, Mark Phillips reported that the 45 matches referred to in the Environmental Review had been identified through his analysis of betting data provided by Betfair in the course of the Sopot Investigation. As Jeff Rees and Ben Gunn report, however, neither Mr Rees nor Mr Gunn were aware of the details set out in Section C or that Mr Phillips had subsequently concluded that the downloaded Vassallo Arguello texts and contact details provided corroboration in relation to some of the 45 matches that he had already identified based on his analysis of the betting data provided by Betfair.
114. Mr Rees’ evidence as to his understanding in relation to the 45 matches identified in the Environmental Review as warranting further review is as follows:
- 114.1 Mr Rees relied on the assessment of Mr Gunn and his analysts in relation to those matches²⁰⁹. Mr Rees informed the Panel that “*they did explain their reasoning in general terms and cited individual matches as examples of matches worthy of causing concerns for the tennis authorities*”²¹⁰.
- 114.2 Mr Rees understood the source of the 73 matches, and the 45 matches, to be either that they had been identified by Betfair or other gambling operators, or that they had been identified from the ATP’s or other tennis records²¹¹. He understood this from what Mr Gunn had told him and because of regular references by Mr Gunn and others to Betfair records. That Betfair was the original source was reflected in paragraphs 2.11 and 2.12 of the Environmental Review. In the Panel’s view, that understanding was broadly correct, although the matches had actually been identified by Mr Phillips’ analysis of the Betfair data.
- 114.3 When individual matches were discussed during the course of the Environmental Review, the Vassallo Arguello telephone material was never mentioned²¹². Mr Rees told the Panel that he had no reason to, and did not, link the 73 matches or the 45 matches to the Vassallo Arguello material²¹³, and it was not suggested to him by anyone at any time that there was a link.
115. Mr Gunn’s evidence to the Panel was that:
- 115.1 Neither he nor Mr Rees had the time to carry out a detailed analysis of these matches themselves.
- 115.2 Instead, they proceeded on the basis that the work had been undertaken by betting analysts who had worked on the Sopot Investigation, who were members of Mr Gunn’s integrity team at the BHA, including Mr Phillips.

²⁰⁷ Environmental Review, page 9, paragraphs 2.13 and 2.14, as further developed in Appendix D, page D-1.

²⁰⁸ Environmental Review, pages 9 to 10, paragraphs 2.15 and 2.16. Also Executive Summary, page 1, paragraph 6.

²⁰⁹ Statement of Jeff Rees (formerly TIU).

²¹⁰ Response of Jeff Rees (formerly TIU) to Notification given under paragraph 21 ToR. (Oct. 2017).

²¹¹ Statement of Jeff Rees (formerly TIU).

²¹² Statement of Jeff Rees (formerly TIU).

²¹³ Statement of Jeff Rees (formerly TIU).

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Mr Gunn believed that both he and Jeff Rees were sent notes on the matches that had been identified by the betting analysts²¹⁴. Mr Gunn and Mr Rees agreed that these matters were in the hands of skilled and experienced intelligence and betting analysts in whom Mr Gunn had the utmost confidence, and both he and Mr Rees were prepared to accept their judgements on those matches.

115.3 Mr Gunn's view at the time, with which he understood Mr Rees to agree, was that to "drill down" themselves into the matches and become involved in "an investigation" of them was not the best use of their time. Mr Gunn also considered that an investigation into those matches "may well have been beyond the terms of reference".

115.4 Upon reflection and with the benefit of hindsight, Mr Gunn's view is that the use of the word "examined" (in respect of the 73 matches set out at paragraph 2.10 of the Environmental Review) was perhaps put too strongly as it arguably implied that he and Mr Rees had looked into the matches in some detail. In fact, as explained above, Mr Gunn and Mr Rees entrusted that task to skilled and experienced analysts.

116. Mr Gunn also told the Panel that to the best of his knowledge a list of 73 matches had been given to Paul Beeby, Tom Chignell and Mr Phillips by a journalist, although Mr Gunn was not aware of the journalist's identity²¹⁵. Mr Gunn believed the 45 matches had originated from that longer list of 73 matches. The original text of the Environmental Review referred to the 73 matches as having been identified by Betfair²¹⁶.

"Corrupt practice by players/officials and others in respect of betting on tennis"

117. The authors concluded that tennis was particularly vulnerable to corrupt betting practices²¹⁷, and that there was a general consensus that such practices were the principal concern for the sport²¹⁸. The authors found that not only players, but also other participants, should continue to be prohibited from betting on tennis, and that care would be needed in the drafting of the definition of the people covered by the new uniform rules²¹⁹.

118. The authors also found that most players with whom they had spoken had some degree of knowledge of approaches to other players to throw matches. While players would report an approach made to themselves, they would not report an approach they understood to have been made to another player, as result of concern for their own safety, concern that any such report would not be kept confidential, and a reluctance to inform on fellow players. The authors concluded that it would be appropriate for the new uniform rules to impose an obligation to report even suspected corrupt practices by others, and that the education programme should clearly address players' concerns and reluctance²²⁰.

119. The authors concluded that there was "no evidence" of a threat to safety of players who reported an approach. That threat rather arose when a player who had previously succumbed to corruption later refused to cooperate and this needed to be made clear through education²²¹.

²¹⁴ Statement of Ben Gunn (formerly BHA).

²¹⁵ Statement of Ben Gunn (formerly BHA).

²¹⁶ Paragraph 167.2 below.

²¹⁷ Environmental Review, page 10, paragraphs 2.18 to 2.20. The authors cited the University of Salford Report "Risks to the Integrity of Sport from betting Corruption", Professor Forrest, February 2008.

²¹⁸ Environmental Review, page 10, paragraph 2.20; Environmental Review, pages 1 and 2, paragraph 7.

²¹⁹ Environmental Review, pages 10 and 11, paragraphs 2.21 to 2.27.

²²⁰ Environmental Review, pages 11 to 12, paragraphs 2.28 to 2.30. The authors stated "A large majority of current and former players we interviewed claimed to 'know of' approaches to players being invited to 'throw matches' presumably for corrupt betting purposes. Only one player admitted being directly approached several years ago. Interestingly, although some players said they would inform the appropriate tennis authorities about any such approach to themselves, there was almost a unanimous view that they would not do so if they knew/suspected another player had been approached... the reasons given for adopting that attitude were: concern about their personal safety from would-be corruptors; concern about the confidentiality of any approach made by them to the tennis authorities; a general feeling that informing on other players was a breach of the trust/bond that exists between players".

²²¹ Environmental Review, page 12, paragraphs 2.30 to 2.31. The authors stated "One particular concern about personal safety needs specific comment. There is a common view that players are afraid of reprisals/threats of violence to themselves or their families if they report any nefarious approach... The experience of other sports is that there is no evidence that such a fear is justified. Certainly, we found no evidence of any tennis player or family being threatened following any alleged approach from a would-be corruptor. Indeed, the strong indication from other sports is that corruptors are seeking compliant sportsmen and women to pursue their corrupt activity. If a player says 'no' to any approach, the would-be corruptor will move on until he finds a willing participant. Experience has shown that the real danger lies in a player initially complying with a corruptor's demands and subsequently refusing to co-operate. At that stage, the player may well be vulnerable to threats, blackmail or other forms of coercion. As Lord Condon stated 'once in, you're in for life'".

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120. The Environmental Review concluded that the players most vulnerable to corrupt approaches were young players who were not earning enough to cover costs, players who had received financial support earlier from sponsors with dubious motives, players nearing the end of their careers who wished to bolster dwindling earnings, and players who had become disillusioned when they realised they had insufficient skills or commitment to advance. These categories of vulnerability needed to be addressed through education²²². The authors also stated that these “*categories do not presume that a top player can never be vulnerable to corruption*”; it was possible that some might be tempted by “*easy money*”, or some might have succumbed early and then be “*in for life*”.
121. In his evidence to the Panel, Mr Rees highlighted this as an area in relation to which he believes, with the benefit of hindsight, he should have expanded by emphasising the danger posed by those players who seek to corrupt other players²²³.
- “Breaches of the rules and regulations of professional tennis which affect the integrity of the sport” or “tanking”**
122. The Environmental Review identified “*tanking*” as a threat to the integrity of the sport. The authors pointed out that the word was used by different people to mean different things, and that it covered a range of behaviour from actions that were regarded by many as “*part of the game*” to actions that were “*a definite threat to integrity*”. A player failing to give “*best efforts*” could be motivated by anything from tactically ceding a game or set, to losing deliberately to facilitate corrupt activity. In between were such behaviour as a player protecting an injury, a player starting with good intentions but losing heart, a player being tired and so wanting out, a player reserving his best efforts for a more lucrative tournament, and players agreeing to an outcome for reasons other than betting²²⁴.
123. The authors found that there was a “*consensus among players and officials*” that a player tactically ceding a game or set, a player protecting an injury, a player starting with good intentions but losing heart or a player being tired and so wanting out, were all “*part of the game*”, though at least some of them might constitute a failure to use best efforts. The authors however concluded that the public and others involved in tennis were entitled to see players performing in each match, and that though such actions posed a lesser threat to integrity, there were dangers in allowing a culture of such lower level tanking to take hold in the sport. They were troubled by the view expressed to them that if a player is going to tank “*he should at least make it look good*”. They considered that it was on the contrary necessary to create a culture of honest endeavour and best efforts. It was no answer that it might be difficult to detect if a player failed to use best efforts, as the rule existed and could be enforced. While no formal recommendation in relation to integrity was made in respect of such lower level tanking the authors urged officials to be alert to it and to deal with it as a breach of the Codes of Conduct²²⁵.
124. The authors then pointed out that the danger was that, if a decision to “*tank*” was made in advance, those around the player who knew of his decision in advance could seek to profit it from it through betting or the provision of information: perhaps with the player’s knowledge, perhaps without²²⁶.
125. The authors disagreed with the view that players who “*tanked*” in order to play or to play better at a more lucrative tournament elsewhere at the time or soon after constituted only a low-level threat to integrity if unconnected with corrupt activity, because such behaviour short-changed the public and others involved in tennis. Again, no formal recommendation in relation to integrity was made in respect of such behaviour, but the authors concluded that the tennis authorities must closely monitor the situation to prevent abuse²²⁷.

²²² Environmental Review, page 12, paragraphs 2.33 to 2.34.

²²³ Statement of Jeff Rees (formerly TIU).

²²⁴ Environmental Review, page 13, paragraphs 2.35 to 2.40. “*One activity identified as a threat to the integrity of the sport is ‘tanking’ This term covers a range of behaviour which, at the lower end, is regarded almost as ‘part of the game’ and at the higher level is a definite threat to the integrity of tennis*”. The authors set out a table showing where they considered different types of behaviour fell on a range from a “lesser threat” to integrity, to “corrupt” action.

²²⁵ Environmental Review, page 13 to 14, paragraphs 2.41 to 2.46. Also Executive Summary, page 2, paragraph 8.

²²⁶ Environmental Review, page 14, paragraphs 2.46: “*With a proliferation of betting on tennis, support staff close to a player who may be aware that the player is not going to give a match ‘best efforts’, may seek to profit from that knowledge possibly without the player knowing*”.

²²⁷ Environmental Review, page 14, paragraphs 2.47 and 2.48. The authors also stated: “*We consider that players who agree to take part in a professionally sanctioned tournament and are contractually bound to that event, should not be allowed to sign up for an unsanctioned tennis event which takes place at the same time. In connection with this and other acts of ‘tanking’, we were also told by medical staff and some players that more attention needed to be paid to players who retired from matches on medical grounds*”.

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126. The Environmental Review then identified further threats to integrity in players agreeing to lose so that the other player secures ranking points, and in a lucky loser system where the lucky loser is known in advance as opposed to randomly selected²²⁸.
127. The authors found that there was a “*consensus among players and officials*” that a player tactically ceding a game or set, a player protecting an injury, a player starting with good intentions but losing heart or a player being tired and so wanting out, were all “*part of the game*”, though at least some of them might constitute a failure to use best efforts. The authors however concluded that the public and others involved in tennis were entitled to see players performing in each match, and that though such actions posed a lesser threat to integrity, there were dangers in allowing a culture of such lower level tanking to take hold in the sport. They were troubled by a view expressed to them that if a player is going to tank “*he should at least make it look good*”. They considered that it was on the contrary necessary to create a culture of honest endeavour and best efforts. They noted the difficulty in identifying if a player was not giving best efforts and that on court it was the umpire’s responsibility to enforce the rule. While no formal recommendation in relation to integrity was made in respect of such lower level tanking the authors urged officials to be alert to it and to deal with it as a breach of the Codes of Conduct²²⁹.
128. The authors also found that a player being able to earn an appearance fee without advancing at an event, which did not count towards his ranking, meant there was a greater risk that the player would tank²³⁰.
129. The authors stated that the fact that changes to the ranking system or to appearance fees would be unpopular amongst some should not stand in the way of their being made in the interests of preserving the integrity of the sport, which was a responsibility for all²³¹.
130. Lastly the authors reiterated that “*tanking*” for betting purposes is a corrupt practice²³².

“Accreditation / credential violations”

131. The Environmental Review concluded that the accreditation system was insufficiently robust to prevent third parties securing enough access to players and tournaments in order to obtain inside information for betting. Whereas the systems at Grand Slams such as the Australian Open (which the authors attended) might be more robust, even they were not immune, and the systems at lower level tournaments were less robust, not least in the light of lack of financial and other resources. A particular problem was the number and range of people in player entourages who have access to player facilities and the access of others such as club members to those facilities²³³.
132. The authors also identified elsewhere that the lack of an accreditation procedure for coaches meant that “*bogus coaches*” might gain access to player areas, giving rise to a threat to integrity²³⁴.
133. The authors recommended a review of accreditation procedures at all levels, with a view to achieving the “*radical reduction of those people entitled to full accreditation*” necessary to “*enhance the security environment around all events and improve both the reality and perception of anti-corruption measures*”. The authors contemplated, first, that only the players and their essential support team such as coach and physiotherapist should have access to player areas, and that the rest of the entourage (managers, agents, family and friends) and former players and the media should be catered for through complimentary ticketing. Second, the authors suggested that the ATP should operate the same policy as the WTA, confining the locker room itself to players²³⁵.

²²⁸ Environmental Review, page 14, paragraphs 2.49 and 2.50.

²²⁹ Environmental Review, pages 13 to 14, paragraphs 2.41 to 2.46. Also Executive Summary, page 2, paragraph 8.

²³⁰ Environmental Review, page 15, paragraphs 2.51 and 2.52: “guaranteed payments for players participating in tournaments which do not count for ranking purposes and where such payments are not dependent on a player’s progress in the competition, may make the matches less meaningful and create the risk that players are less inclined to give their “best efforts”... there is a good case for staging payments to players as they progress through a tournament, rather than paying them a guaranteed sum just to compete”.

²³¹ Environmental Review, page 15, paragraphs 2.55 to 2.56: The authors stated “*We recognise that if such a move to make each match count is adopted, it will not be universally popular with some players feeling that their ability to compete is being restricted and with tournament directors being concerned that they may miss out on attracting top players to their tournaments... However, as mentioned in Section 1, if the threat is substantiated, it is the responsibility of all stakeholders in tennis to ensure the integrity of the sport, even though necessary action to address a threat may disadvantage some people*”.

²³² Environmental Review, page 15, paragraph 2.57.

²³³ Environmental Review, pages 16 to 18, paragraphs 2.58 to 2.75.

²³⁴ Environmental Review, page 21, paragraph 2.109.

²³⁵ Environmental Review, pages 18 to 19, paragraphs 2.76 to 2.83. Also Executive Summary, page 2, paragraph 9.

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“Misuse of inside information for corrupt betting purposes”

134. The Environmental Review found that access to inside information in tennis was “*wide and various*”. Too many people had access to player areas, and they could gain information both as to matters of fact, such as injury, and what the authors termed as matters of opinion, such as the mental state of the player. The authors made recommendations as to what information should constitute inside information (which included both what they termed fact and opinion) and as to the necessary breadth of the definition of the people prohibited from passing on inside information²³⁶.
135. The authors confined the prohibition that they considered should apply to where a person “*knowingly uses the information personally for cheating at betting, or passes it to another knowing or reasonably believing it will be sued for the purpose of cheating at betting*”²³⁷.
136. The authors stated that again this had also to be addressed through education and operational procedures²³⁸.

“Illegal or abusive behaviour towards players”

137. The Environmental Review identified as a potential threat to integrity the welfare issue of how some young players, particularly female, might be subject to abuse by coaches, parents, or others, and recommended a distinct education module to address this²³⁹.

“Regulatory action to address the threats to professional tennis”

138. The Environmental Review then dealt at length with the need for, and the form that should be taken by, an integrity unit to implement the three mechanisms described above. The authors explained that intelligence was critical to any anti-corruption programme. The authors stated that they “*recognise the efforts that have been made by the Tennis Authorities to date but trying to develop and progress single pieces of information/intelligence in an uncoordinated, case by case basis is less likely to result in successful disciplinary (or criminal) charges than a co-ordinated evidence gathering process which an integrity unit can provide*”²⁴⁰.

“A uniform anti-corruption programme”

139. The Environmental Review recommended the agreement by the International Governing Bodies to the uniform Tennis Anti-Corruption Programme then under development by a team of tennis officials and legal advisers²⁴¹.

“A regulatory strategy”

140. The Environmental Review concluded that the principal mechanisms by which integrity could be maintained and enhanced were first “*prevention’ (deterrence)*” and second “*‘detection’ (enforcement)*”, the latter through the investigation and prosecution of breaches of the rules, both by the sport in disciplinary proceedings and where possible by the police in criminal proceedings. A third supportive mechanism was “*an improved education and awareness programme*”. The authors recommended adoption of a “*Regulatory Strategy*” setting out these mechanisms, which they appended²⁴².

“A regulatory structure – an integrity unit”

141. The Environmental Review then dealt at length with the need for, and the form that should be taken by, an integrity unit to implement the three mechanisms described above. The authors explained that intelligence was critical to any anti-corruption programme. The authors stated that they “*recognise the efforts that have been made to date but trying to develop and progress single pieces of information/intelligence on an uncoordinated, case by case basis is less likely to result in successful disciplinary (or criminal) charges than a co-ordinated evidence gathering process which an integrity unit can provide*”²⁴³.

²³⁶ Environmental Review, pages 19 to 20, paragraphs 2.84 to 2.94. Also Executive Summary, page 2, paragraph 9.

²³⁷ Environmental Review, page 20, paragraph 2.95.

²³⁸ Environmental Review, page 20, paragraphs 2.96 to 2.98.

²³⁹ Environmental Review, page 20, paragraphs 2.99 to 2.109. Also Executive Summary, page 2, paragraph 10.

²⁴⁰ Environmental Review, page 23, paragraphs 3.13 to 3.19.

²⁴¹ Environmental Review, page 22, paragraphs 3.9 and 3.10.

²⁴² Environmental Review, page 22, paragraphs 3.11 and 3.12, and Appendix C, page C-1.

²⁴³ Environmental Review, page 23, paragraphs 3.13 to 3.19.

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142. The authors recognised that the form of the integrity unit was a matter for the international tennis governing bodies, and so offered a number of options for consideration by them²⁴⁴.
143. The integrity unit could be a single “stand-alone” unit located in one place, or could involve “satellite units, located, say, in Europe, USA, Australia”, or could be a joint unit with another sport. The authors’ assessment “considering the comments made by consultees” was that a single stand-alone unit located in London was the “favoured option”²⁴⁵.
144. The integrity unit would need to have both an intelligence section and an investigation section linked with a common IT system²⁴⁶. It was however unclear what size of unit was necessary. The authors stated²⁴⁷:
- 144.1 *“We are unsure on the evidence currently available, precisely what size of unit may be necessary, proportionately, to address the perceived threats. We are, however, very conscious of the suspect betting activity on the matches described [above], as well as the potential for betting related corruption on professional tennis to increase”.*
- 144.2 *While “the global nature of international tennis” meant that “information/betting data [was] being generated over a 24-hour period”, the approach anticipated was intelligence gathering leading to focussed action, and so the authors did not envisage the integrity unit being staffed on a 24 hour basis.*
- 144.3 *“In respect of historical data, we are also cognisant of the problems that the professional tennis authorities have faced to date to gather and collate, in any coordinated sense, suspected betting patterns concerning matches or players. However, again taking cognisance of the potential range and volume of the suspect activities identified [above] and the significant investigative work that will be necessary to address such issues, we feel that an Integrity Unit must be ‘fit for purpose’ and staffed accordingly”.*
- 144.4 *“We are conscious that our recommendation for the structure and resourcing of the Integrity Unit should be proportionate to the perceived threats to professional tennis now and in the future”.*
145. The two authors then each described a different “Option” that they favoured for the form of the integrity unit, for consideration by the international tennis governing bodies²⁴⁸. The full description of each in the Environmental Review merits reading, as one of the principal criticisms levelled at the international tennis governing bodies by the media in early January 2016 was that they chose the wrong option.
146. Option 1, favoured by Mr Gunn, was as follows²⁴⁹:
- 146.1 Option 1 proceeded on the basis that “*whilst tennis is not institutionally or systemically corrupt, it is potentially at a crossroads*”. While the evidence to establish the exact level of corrupt activity was limited, the intelligence on the 45 matches and various account holders in the five years up to the Sopot Match and the matches thereafter, described above, indicated a “*sufficient cause for concern about the integrity of some players and those outside tennis who seek to corrupt them*”. Option 1 recognised “*the broad range of intelligence assessment, analysis, targeting and investigation that will be required to deal with even a few of those suspect matches in order to gain some evidential insight into the precise level of corruption in professional tennis*”. Option 1 also took into account “*the need for ongoing monitoring of suspicious betting activity*” and the preparation of “*targeted plans to investigate future threats to integrity*”.

²⁴⁴ Environmental Review, page 23, paragraph 3.20.

²⁴⁵ Environmental Review, page 24, paragraphs 3.21 to 3.25.

²⁴⁶ Environmental Review, page 24, paragraphs 3.26 and 3.27.

²⁴⁷ Environmental Review, page 25, paragraphs 3.30 to 3.33.

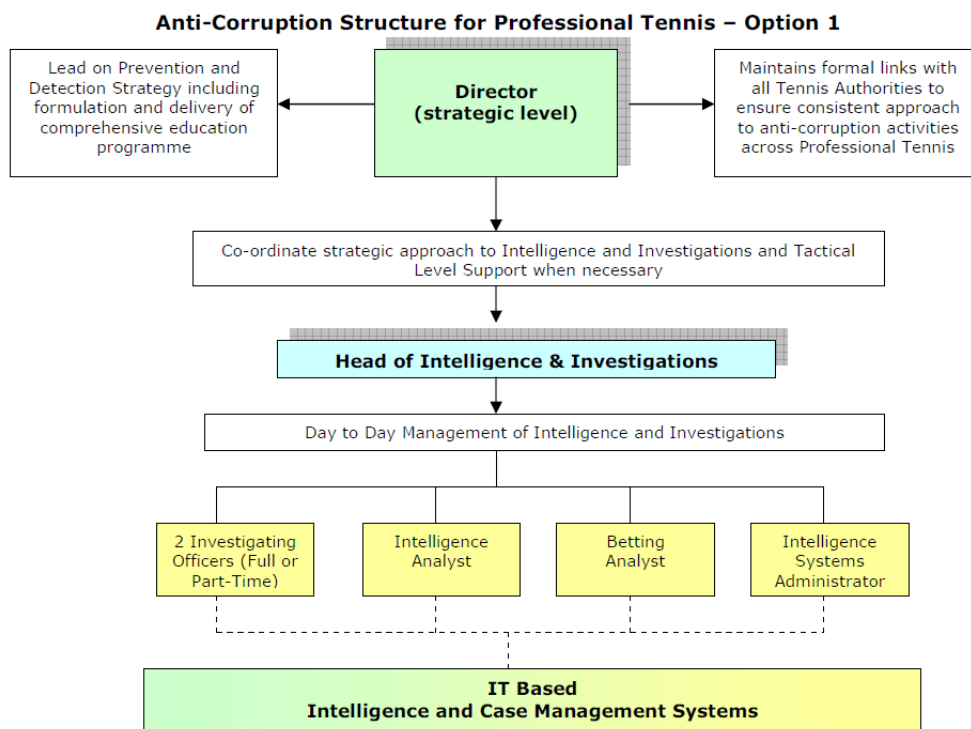
²⁴⁸ Environmental Review, page 25, paragraph 3.34.

²⁴⁹ Environmental Review, pages 25 to 26, paragraphs 3.35 to 3.40.

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146.2 Option 1 proposed that the “integrity unit should be resourced adequately now to cater for both the current and emerging strategic and tactical issues affecting the integrity of tennis as it becomes an increasingly attractive sport for betting”. Experience suggested the problem might be greater than so far discovered, and only a properly resourced unit would be able to cope if that proved to be the case. Option 1 would “send a clear message to all in professional tennis and the wider sporting, betting and commercial sectors, that professional tennis is serious about tackling integrity related issues in the sport”.

146.3 Option 1 envisaged that it was crucial that there be a separate “Director”, who would operate at the strategic level, above a “Head of Intelligence and Investigations”, who would operate at the tactical level. Option 1 was set out in the figure below detailing the staff and their responsibilities. Under the Head of Intelligence would be two full or part-time “Investigating Officers”, an “Intelligence Analyst”, a “Betting Analyst” and an “Intelligence Systems Administrator”. All their functions would be linked through “IT based Intelligence and Case Management Systems”. Each would have a role in training participants in tennis on integrity issues. Job Descriptions were appended²⁵⁰.



146.4 Estimated costs were separately provided to the tennis authorities²⁵¹.

²⁵⁰ Environmental Review, Appendix E(i), pages E1 to E-6.

²⁵¹ Environmental Review, pages 26 to 27, paragraph 3.40.

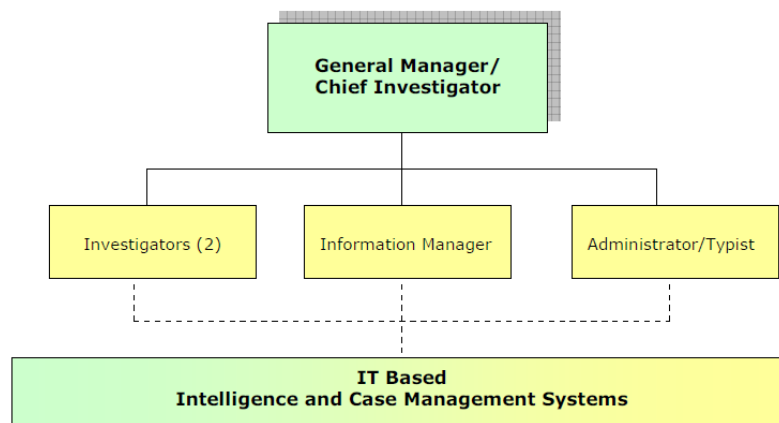
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147. Option 2, favoured by Jeff Rees, was as follows²⁵²:

147.1 Option 2 proceeded on the basis that “*professional tennis is not yet in crisis because of corruption threats. The majority of interviewees, including tennis media representatives believed that only a very small number of players were corrupt and that the overall threat to the sport from betting related corruption was minimal*”. Option 2 accepted that “*details of possibly suspect matches over five years provided by Betfair, coupled with concerns voiced by informed senior figures within the sport*” indicated the time had come for an integrity unit “*capable of investigating matches, managing corruption-related intelligence with all that implies, targeting corrupt players and delivering an anti-corruption and education and awareness programme*”.

147.2 Option 2 suggested that “*the needs of professional tennis would be served in the first instance by an integrity unit*” made up of a “*General Manager/Chief Investigator*” leading a team of two “*Investigators*”, an “*Information Manager*” and an “*Administrator/Typist*”. Option 2 was set out in the figure below, detailing the staff. All their functions would again be linked through “*IT based Intelligence and Case Management Systems*”. Job Descriptions were appended²⁵³.

Anti-Corruption Structure for Professional Tennis – Option 2



147.3 The Information Manager would be the focal point for information coming into the unit. He “*would have the aptitude necessary to learn to interpret internet betting patterns,*” but was different from the betting analyst under Option 1 (which is “*a specialist post requiring in-depth knowledge of betting systems, operations, and odds compilation*”).

147.4 “*An important duty of the General Manager/Chief Investigator in Option 2 would be that of using mature judgement to ensure all personnel in the unit focused primarily on the current and the relevant, rather than delving into events of years before to little purpose. A second responsibility would be making sure that quick and decisive action was taken once there was clear evidence that a player or relevant person was corrupt*”.

147.5 While the staff should be capable of delivering education and awareness packages, they might in practice be

²⁵² Environmental Review, pages 27 to 28, paragraphs 3.41 to 3.52.

²⁵³ Environmental Review, Appendix E(ii), pages E-7 to E-9.

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delivered through “internet learning programmes”.

147.6 It was envisaged that a well-managed unit staffed by high quality and suitably experienced staff “*should then be able to act effectively to counter corruption in professional tennis whilst, simultaneously, it would be proportionate to the threat professional tennis currently faces under the view taken by Option 2*”. Option 2 recognised that it was possible that the unit might “*unearth a previously unsuspected level of corruption or become overwhelmed by information*”. In that event “*the unit could be strengthened by staff possessing whatever skills it required beyond those of the core postholders identified in*” the Option 2 figure.

147.7 “*Option 2 is also premised upon the view that a danger of comprehensive resourcing represented by Option 1 would be to suggest to the media, sponsors, other stakeholders and spectators, that the problems facing international tennis are more than they really are, thus risking harm to the sport commercially and reputationally. In contrast, Option 2 suggests small incremental increases to staff numbers, if and when required, would be unlikely to exercise comment*”.

147.8 Estimated costs were separately provided to the tennis authorities²⁵⁴.

148. In his evidence to the Panel, Mr Rees stated “*I perhaps should have stated more explicitly that the intention behind my ‘option 2’ was for the unit to grow with the challenges it faced; the creation of the TIU should have been seen as the commencement of an organic process, which was anticipated to create a unit that would evolve and adapt to the size and nature of challenges and the needs for specialist skills*”²⁵⁵. He said he intended the Environmental Review to have shown “*option 2 as a way forward, rather than a final blueprint*”²⁵⁶. He stated that his experience led him to the view that “*throwing people and other resources at a problem when it arises or is recognised is not the best way to proceed in the first instance*” or “*to set foundations for the long-term*”, rather that it was “*much better to start with a lean, focused and organised team, where everyone is fully occupied from the outset and knows what is required of them*”²⁵⁷. He further stated that “*I never ruled out the possibility of employing a betting analyst, although I doubted whether tennis betting analysts employed within the unit would provide a better service in terms of identifying suspicious betting patterns and suspect gamblers than that which would be provided by analysts within the betting industry – a service which we were being offered by Betfair and others*”²⁵⁸.

149. In his evidence to the Panel, Mr Rees also explained why he did not agree with Mr Gunn’s Option 1 proposal²⁵⁹. He stated that he considered the key area of divergence to relate to the fact that Mr Gunn’s model envisaged a betting analyst as central to the unit, with a focus on desk-based investigations, as opposed to a unit that utilised full-time investigators pursuing long-established methods of investigation (such as persuading players to give evidence against fellow players, proactively seeking information and ‘turning’ guilty players). Mr Rees’s view was that Mr Gunn’s model risked “*burdening tennis with a one-trick pony*”²⁶⁰.

150. The Environmental Review made no recommendation as to the body to which the integrity unit should be responsible²⁶¹. The choice was between a “*steering group made up of representatives from each authority*”, or the choice of one of the authorities to fulfil the role. Regardless, the Environmental Review did recommend that there be one nominated person with whom the head of the unit could liaise in relation to political issues on the international level.

²⁵⁴ Environmental Review, page 28, paragraphs 3.51 to 3.52.

²⁵⁵ Statement of Jeff Rees (formerly TIU).

²⁵⁶ Statement of Jeff Rees (formerly TIU).

²⁵⁷ Statement of Jeff Rees (formerly TIU).

²⁵⁸ Statement of Jeff Rees (formerly TIU).

²⁵⁹ Statement of Jeff Rees (formerly TIU).

²⁶⁰ Statement of Jeff Rees (formerly TIU).

²⁶¹ Environmental Review, pages 28 to 29, paragraphs 3.53 to 3.54.

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“Regulatory processes/procedures”

151. The Environmental Review contained an explanation of the importance of,²⁶² and methods for, the integrity unit properly handling intelligence from a wide range of sources, identified in a figure. The authors considered that there should be a dedicated “*fit for purpose computerised system*” based on a “*user requirement*” to be drawn up by the head of the new unit. The authors also recognized that local data protection legislation would have to be complied with. Subject to that legislation, the authors considered that “*nominal records should be created on all players/coaches/physios and related persons, and anyone else who reasonably could be a threat to tennis*”, in which any intelligence received could be placed. In addition to such an intelligence database, the authors recommended an IT based system for the management of specific investigations. It was recommended that the head of the new unit draw up an “*Intelligence Strategy*”.
152. The Environmental Review contained an explanation²⁶³ of the importance of, and methods for, the integrity unit properly carrying out the “*investigations function*”, which would draw on the intelligence gathered to carry out “*prevention*” and “*detection*”. As to prevention, the authors considered that the most effective route would be the effective disciplinary prosecution of breaches of the new uniform rules, as “*there is no greater deterrence than the example of those who do wrong being caught and punished*”. As to detection, the integrity unit would need an “*investigative ability*” provided by two investigators with the “*option of buying in other investigators on an ad hoc basis*”, and an “*Investigation Strategy*” should be drawn up by the head of the new integrity unit. That strategy would need to take into account the extent to which an investigation might uncover activity that was criminal as well as a breach of the anti-corruption rules, and what should happen in that event. The authors further suggested that the use of “*informants/confidential sources*”, “*covert surveillance techniques*”, access to “*telephone data/financial records*” and a “*confidential hot line*” should be considered where possible in various national jurisdictions. The Environmental Review recommended that the new “*integrity unit should form the cutting edge of the compliance and enforcement strategy for professional tennis*”.
153. The Environmental Review contained an explanation²⁶⁴ of the importance of, and methods for, the implementation of that compliance and enforcement strategy. The authors were sceptical about the disciplinary process contained in a first draft of the new uniform rules, which contemplated that each of the International Governing Bodies would have their own Anti-Corruption Officer (“ACO”) responsible for bringing disciplinary proceedings based on evidence gathered by the unit, with an appeal to an Anti-Corruption Hearing Officer (“AHO”) appointed by each body. In a second figure, the authors recommended that instead there should be regional ACOs who had responsibility across the matches of all of the International Governing Bodies. In relation to the powers of investigation, the authors stressed the need for those covered by the new rules to be expressly “*obliged to assist in a disciplinary enquiry*”. In relation to penalties, the authors considered that financial penalties had only limited deterrent effect, and it was necessary to include power to impose a “*lengthy suspension for any player caught cheating for betting purposes*”, even in cases of first proven offences.
154. The Environmental Review contained an explanation²⁶⁵ of the importance of, and methods for, the delivery of an effective education and awareness programme. In particular, participants needed to understand the nature of the threats, and the regulatory consequences, including penalties, of breach of the rules. The authors considered that the current education and awareness programmes of the International Governing Bodies were based on sound intentions, but did not go far enough. Younger players in particular needed to be brought to a full understanding of the issues. According to the Environmental Review, elements of the ATP University and the WTA’s PRO-U IT based education programme needed to be combined and expanded and applied across the sport.

²⁶² Environmental Review, pages 29 to 30, paragraphs 3.55 to 3.65.

²⁶³ Environmental Review, pages 31 to 32, paragraphs 3.66 to 3.85.

²⁶⁴ Environmental Review, pages 33 to 35, paragraphs 3.86 to 3.97.

²⁶⁵ Environmental Review, page 35, paragraphs 3.98 to 3.107.

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155. The Environmental Review contained an explanation²⁶⁶ of the importance of, and methods for, the delivery of an effective media strategy on integrity: it should be channelled through one source and should have discrete themes on the threats to integrity; the action to address the threats; education and awareness for all concerned; and compliance and enforcement.

“Interface with betting and betting organisations”

156. The authors addressed the form that relationships between the new integrity unit and betting operators should take²⁶⁷. They considered it difficult to assess the size of the market for betting on tennis, but clear that the amount bet on different matches within different levels of tournament varied widely. The authors analysed two examples of matches to demonstrate that headline figures of how much was traded on a match do not tell the whole story, in particular as to the scale of winnings and the scale of individual bettor’s wins. In the specific context of an exchange such as Betfair headline figures reflected the amounts matched, and therefore came in at double what the figures would be for a bet placed with and taken by a traditional betting operator.

157. The authors recommended that the memoranda of understanding with the betting operators should be maintained so as to ensure that alerts of suspicious betting patterns were provided to the single point of contact of the new integrity unit. Then *“any previous suspicious activity/data on the players/associates involved will have been logged and can form part of a pattern to build up an ‘intelligence package’ worth further investigation, either from a disciplinary aspect, or if appropriate, for referral to police...”*²⁶⁸.

158. The authors also noted the difference of views *“on whether betting should be allowed on tennis at all”*, and on whether gambling-related sponsorship, either for individual players or tournaments, should be allowed²⁶⁹. The authors considered that there should be *“a total ban on players’ personal sponsorship arrangements because they are able to influence the result of a match and, therefore, the perception of some irregularities/corrupt activity could arise”*. The authors offered their thoughts to assist discussions, and in particular pointed out that it would be unworkable to ban betting on tennis all the way around the world, and that the more fruitful course would be to work with the betting industry to address integrity issues, and also to seek to secure a financial contribution from the betting industry towards the cost of addressing those issues²⁷⁰. They then went on to look at the ways in which such a financial contribution might be secured²⁷¹, addressing in particular the mechanism in Australia, under which betting operators must pay a fee to be able to offer betting on each sport.

“Interface with police and other law enforcement agencies”

159. The authors outlined the form that relationships between the new integrity unit and police and other law enforcement agencies should take. They pointed out that corrupt betting activity was a criminal offence in some jurisdictions as well as a disciplinary breach of the anti-corruption rules, but that the preparedness of the police to take an interest varied, and recourse would often be necessary in the first place to gambling regulators. Where, however, criminal activity was involved, the authors suggested that investigation should in the first place be referred to the police, rather than pursued as a disciplinary matter, and the head of the new integrity unit should consider drawing up protocols to deal with this situation.

²⁶⁶ Environmental Review, page 36, paragraphs 3.108 to 3.116.

²⁶⁷ Environmental Review, page 37 to 41, paragraphs 3.117 to 3.156.

²⁶⁸ Environmental Review, page 39, paragraphs 3.134 and 3.135.

²⁶⁹ Environmental Review, pages 39 to 40, paragraphs 3.140 to 3.147. Also Executive Summary, pages 2 to 3, paragraph 14.

²⁷⁰ Environmental Review, page 40, paragraph 3.148.

²⁷¹ Environmental Review, page 40 to 41, paragraphs 3.148 to 3.156.

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Recommendations of the Environmental Review

160. The Environmental Review then drew together the formal Recommendations that had been made through the body of the document, and summarised above²⁷². In the Executive Summary at the outset of the Environmental Review, the authors stated that *“in assessing the threats to the integrity of professional tennis and recommending action to address them, we have been conscious that any recommendations should be proportionate to the threats. We have not sought to cast a straight-jacket over the sport”*²⁷³.
161. It is noted that no formal recommendations were made by the authors in relation to tanking. In his evidence to the Panel, Mr Rees said that his view (and he believed Mr Gunn’s view too) was that the integrity unit should concern itself with *“crooked behaviour”*, with *“best effort”* issues continuing to fall within the remit of the tennis governing bodies²⁷⁴.

272 Environmental Review, page 43, paragraphs 4.1 and 4.2, and also Executive Summary, page 2, paragraphs 11 to 13. The recommendations were as follows: “Having identified and assessed the threats to the integrity of professional tennis worldwide, we consider there are four crucial recommendations to address those threats.

Recommendation 1: We fully support the harmonisation of the various Regulations and Codes of Conduct for Professional Tennis and we strongly recommend that the new Uniform Anti-Corruption Programme is agreed by the various Tennis Authorities.

Recommendation 2: We strongly recommend that the new Anti-Corruption Programme forms the basis for a new Regulatory Strategy which focuses principally in the twin aims of ‘prevention’ and ‘detection’ and is supported by an improved education and awareness programme which identifies the principal threats to professional tennis and the action to address them.

Recommendation 3: We strongly recommend the creation of an Integrity Unit to the degree represented by Option 1 or 2.

Recommendation 4: We strongly recommend the Director/General Manager of the Integrity Unit should prepare: (i) an intelligence strategy; (ii) an investigation strategy; and (iii) a user requirement for a computer database incorporating the administrative and operational procedures detailed in Section 3(v)(a)&(b).

In addition, we make the following 11 other recommendations which we consider are important to encourage a more focused Anti-Corruption culture for professional tennis and create an environment in which threats to integrity issues can more readily be identified and addressed:

Recommendation 5: The current ban on players betting to be reiterated in the Uniform Anti-Corruption Programme is maintained.

Recommendation 6: The current ban on betting on tennis by tournament representatives and other relevant persons to be reiterated in the Uniform Anti-Corruption Programme is maintained.

Recommendation 7: That officials examine those matches that players take part in over and above those necessary for achieving ranking points. If that study confirms our suspicions that such matches are vulnerable to the integrity of tennis, then

careful consideration should be given to the Ranking Rules being changed to make each match count.

Recommendation 8: There should be a review of current accreditation procedures for all Grand Slam, ITP, ATP and WTA Tournaments.

Recommendation 9: Only the player and essential tournament personnel should have access to the players’ locker room (in both men and women’s tennis) and this should be specified in the regulations.

Recommendation 10: ‘Inside Information’ is defined as ‘information about the likely participation or likely performance of a player in a professional tennis match which is known by the player, coach, physio, tournament official, other relevant person, or betting or media representative, and is not in the public domain.

nb: ‘relevant person’ is whoever is defined in or covered by the re-drafted harmonised regulations.

nb: ‘information in the public domain’ is information which has been published or is a matter of public record or can be readily acquired by an interested member of the public and/or information which has been disclosed according to the rules or regulations governing a particular event.

nb: inside information includes ‘matters of fact’ and ‘matters of opinion’.

Recommendation 11: A separate ‘integrity module’ is created to include the assessed threats and recommendations of this report and used for the education and awareness of both male and female players.

Recommendation 12: A streamlined common investigation process and a single hearings tribunal for all disciplinary cases involving integrity issues.

Recommendation 13: Any player caught cheating should be punished by a lengthy suspension for a first offence and, if the circumstances merit it, a life ban.

Recommendation 14: An agreed co-ordinated media strategy for integrity issues which is:

- planned;
- clear;
- consistent;
- targeted;
- proactive and reactive.

Recommendation 15: The Professional Tennis Authorities consider seeking the support of other sporting bodies for legislation creating income streams from selling sporting rights and/or the creation of a ‘Right to Bet’.

273 Environmental Review, pages 41 to 42, paragraphs 3.157 to 3.166.

274 Statement of Jeff Rees (formerly TIU).

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Conclusions of the Environmental Review

162. The Environmental Review then set out its conclusions²⁷⁵:

162.1 *“Professional tennis, like other sports, is experiencing threats to integrity from a range of issues”.*

162.2 *“The threat from the more serious level of cheating for corrupt betting purposes is difficult to assess in evidential terms. We have detailed, however, a number of suspected tennis matches over the past five years, and currently, which are being, or need to be, investigated further. There are strong indications that some players are vulnerable to corrupt approaches and others outside of tennis are using them to make corrupt games on betting from professional tennis. For these reasons, we believe that action is necessary now to address the problems”.*

162.3 *“The separate regulatory processes and procedures for investigating such offences have blunted the effectiveness of investigations in the past because they have principally focused on single issues/cases rather than building up evidence from an intelligence-based platform following co-ordination of information and analysis of different events which have identified suspected targets. The structure and procedures we recommend in this report will enhance both the efficiency and effectiveness of disciplinary investigations, as well as acting as a sound decision basis on when such matters should be referred to police”.*

162.4 *“The middle to lower level of threats to integrity described in Section 2 also need to be addressed. A culture of players breaching the rules at the lower end of the threat spectrum without rigorous investigation and sanction can lead to complacency at least and a lack of compliance/complete disregard of the Rules at most”.*

162.5 *“A recognition of these issues, together with an agreement by the Professional Tennis Authorities and determination to address them will help to maintain and enhance the integrity of a professional sport which is played by so many and enjoyed by millions around the world”.*

162.6 *“The recommendations of this report, supported by an agreed Anti-Corruption Programme, are designed to achieve that goal. An estimate of the costs of introducing the new integrity measures recommended in this report have been passed to the Professional Tennis Authorities and reflect two options. Proper regulation is not cheap but the cost of not taking action now could be immeasurably higher to both the sporting and commercial interests of professional tennis”.*

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(3) THE INTERNATIONAL GOVERNING BODIES' CONSIDERATION OF THE ENVIRONMENTAL REVIEW

Consideration in draft

163. In March 2008, the Environmental Review was provided to the International Governing Bodies in draft before its finalisation. The International Governing Bodies were able to, and some of them did, make comments. However, the authors Ben Gunn and Jeff Rees were not prepared to make anything other than factual corrections. In the words of Mr Gunn, “we were not prepared to alter the opinions distilled in the [Environmental Review]” but “we were prepared to have the document fact checked”²⁷⁶.
164. In the present²⁷⁷ assessment of the Panel, two proposed changes are particularly material to the Panel’s assessment.
- 164.1 The ATP stressed the importance of a player’s confidentiality being protected until he had been found guilty of a charge. The ATP asked that information that could reveal the names of players under suspicion be removed.
- 164.2 The ATP raised the point that the draft executive summary referred to 45 matches that warranted further “investigation”, involving 12 players who similarly should be investigated. The ATP stressed that every suspicious match that was raised with the ATP had been looked into and that there were a number of reasons why the results in many of those matches were in fact not suspicious. The ATP went on to state that including the number of matches, 45, and the number of players needing further investigation, 12, did not seem necessary in describing how it had been determined that a threat exists.
165. A conversation also took place at this time between Bill Babcock and Mr Gunn²⁷⁸. Mr Babcock appears to have been responsible for providing feedback on behalf of the International Governing Bodies, save that the ATP gave its feedback directly.
166. In response to the comments received, Mr Gunn and Mr Rees made a number of amendments. In respect of the two proposed changes referred to above:
- 166.1 Mr Gunn confirmed that he and Mr Rees appreciated the confidentiality issues raised. The changes proposed by the ATP in this regard were made, so as to prevent the identification of any player against whom there had not been any disciplinary proceedings.
- 166.2 Amendments were also made to passages of the Environmental Review dealing with the 45 matches. Whereas the original draft stated that 45 matches had been identified as warranting further “investigation”, the final version stated that these matches warranted further “review”. Further amendments were made reducing the detail given in relation to the betting activity underlying the 45 matches and the players involved, and raising the possibility that what had happened in those matches might have an innocent explanation. From a comparison performed by the Panel, the changes made were as follows:

²⁷⁶ Statement of Ben Gunn (formerly BHA).

²⁷⁷ Pending the consultation process between Interim and Final Reports.

²⁷⁸ Statement of Ben Gunn (formerly BHA).

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<p>Environmental Review section</p>	<p>Amendments made (text deleted is shown struck through in red and text added <u>underlined in blue</u>)</p>
<p>Executive summary Paragraph 2</p>	<p>We have examined some 73 matches over the past 5 years involving suspected betting patterns. We have further examined 45 of those matches and there are specific concerns about each match from a betting perspective which would warrant further <u>investigation review</u>. Patterns of suspected betting activity have been noted involving 11 account holders in Russia, 6 accounts located in Northern Italy and 10 accounts in Sicily. There are also patterns emerging involving at least 10 on twenty-seven accounts <u>in two different countries and there are emerging concerns about some</u> players which would warrant further investigation <u>attention</u>. Bearing in mind these matches only relate to Betfair account holders, it is reasonable to assume that other suspect betting is taking place using other international legal and illegal betting markets. So there is no room for complacency. All the indications are that a co-ordinated and focused Anti-Corruption Programme with an adequately resourced Integrity Unit is needed to address the integrity concerns.</p>
<p>Executive summary Paragraph 4</p>	<p>We deal with each of those threats in detail. We judge that cheating at tennis for corrupt betting purposes is the most serious threat and goes to the core of the integrity of the sport. However, although the evidence currently available to prove the precise extent of that threat is limited, <u>as mentioned above</u>, we have examined, <u>more closely</u>, intelligence reports on 45 suspect matches over the past 5 years and there is sufficient suspicion to arouse concern that the integrity of tennis has been threatened. There is justification for a further investigation into those matches so. <u>The initial assessment of those matches, supported by other intelligence, indicates that a number of account holders are successfully laying higher ranked players to lose/backing lesser ranked players to win. The betting patterns give a strong indication that those account holders are in receipt of 'inside information', which has facilitated successful betting coups both on 'in-play' as well as 'match' betting. Because of the sensitive nature of these issues, the Report does not go into detail on those matches but we have shared further confidential information on them with the Professional Tennis Authorities. In view of the circumstances, we consider there is merit in reviewing those matches in an effort to identify whether the initial suspicions raised did indeed affect the integrity of Professional Tennis, whether there may have been other tennis reasons for the outcome of such matches and, importantly, to identify any intelligence leads for future reference. The scale of the allegedly suspicious matches indicates</u> there is no room for complacency.</p>

<p>Paragraph 2.10</p>	<p>We have examined some 73 matches which Betfair have <u>been</u> identified as having suspect betting patterns over the past five years and leading up to the Davydenko versus Arguello match <u>'Sopot Match'</u> on 2.8.07. We have examined more closely 45 of those matches and as a result of specific enquiries arising out of the 'Sopot Match' and have identified specific concerns from a betting perspective which would warrant further investigation. Patterns of suspected and sometimes linked betting have been noted, involving 11 account holders in Russia, 6 accounts in Northern Italy and 10 accounts in Sicily. The suspect matches also indicate that some 12 players, variously from Russia, Spain, Argentina and Italy, would be worthy of further targeting and investigation. <u>review. The initial assessment of those matches, supported by other intelligence, indicates that a number of account holders are successfully laying higher ranked players to lose/backing lesser ranked players to win. The betting patterns give a strong indication that those account holders are in receipt of 'inside information', which has facilitated successful betting coups both on 'in-play' as well as 'match' betting. Because of the sensitive nature of these issues, the Report does not go into detail on those matches but we have shared further confidential information on them with the Professional Tennis Authorities. In view of the circumstances, we consider there is merit in reviewing those matches in an effort to identify whether the initial suspicions raised did indeed affect the integrity of Professional Tennis, whether there may have been other tennis reasons for the outcome of such matches and, importantly, to identify any intelligence leads for future reference. The scale of the allegedly suspicious matches indicates there is no room for complacency.</u></p>
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167. The amendments made by Mr Gunn and Mr Rees were sent to Mr Babcock, who in turn circulated them to the International Governing Bodies. In respect of the 45 matches Mr Babcock explained that the redline amendments were a positive response designed “*to place the number of matches reviewed in a better context (i.e. need to review - not investigate - to make sure there are tennis reasons to explain results while having to recognize that these now-unnamed matches do suggest patterns)*”.
168. It was stressed by the International Governing Bodies that the comments were not designed to influence or change the authors’ findings, conclusions or recommendations.

Consideration of the final Environmental Review

169. The Environmental Review was provided to the International Governing Bodies in final form in May 2008.
170. The choices made by the International Governing Bodies in implementing the recommendations in the Environmental Review resulted in the system put in place from 1 January 2009, made up of the TIU, the uniform TACP and later the education programme the TIPP. The Panel describes those choices in Section D below.

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Publication of the Environmental Review

171. The Environmental Review was published on 19 May 2008 by the ITF on behalf of the International Governing Bodies, which issued a press release²⁷⁹. The International Governing Bodies stated in the press release that they would “*now start the process of implementing the 15 key recommendations*” and that “*a Steering Committee will oversee this process*”.

(4) EVALUATION OF THE APPROACH TO THE ENVIRONMENTAL REVIEW AND THE DEVELOPMENT OF UNIFORM RULES

172. The Panel has considered against the facts above the effectiveness and appropriateness of the International Governing Bodies’ approach in commissioning the Environmental Review and in developing uniform rules; the authors’ approach in undertaking the Environmental Review; the legal team’s approach in developing uniform rules; and the International Governing Bodies’ immediate consideration of the Environmental Review. The question of whether the subsequent choices made in implementing the recommendations of the Environmental Review were effective and appropriate is dealt with separately in Section D below.

The commissioning of the Environmental Review and the development of uniform rules

173. The Panel presently²⁸⁰ considers that it was effective and appropriate under the circumstances of the time to commission the Environmental Review, and Ben Gunn and Jeff Rees were well qualified to undertake it. The Terms of Reference were appropriate, and the Panel has seen nothing to suggest that any inappropriate constraints were placed on the authors.
174. Equally it was appropriate to develop uniform rules, and the team put in place were well qualified to undertake that task. It was however the case that everyone on the team came from or represented the International Governing Bodies. While some independent input came from the independent authors, it might have been sensible to include one or more independent members on the team.
175. The Panel presently considers that the process of developing the new rules was effectively and appropriately carried out by the legal team at the time:
- 175.1 The uniform TACP made significant improvements on the ATP TACP, addressing a number of the difficulties that had been highlighted through the Sopot Investigation and other ATP disciplinary cases. The approach of starting with the ATP TACP, and adapting it, seems to the Panel to have been an appropriate one at the time.
- 175.2 With the benefit of hindsight, the Panel might have approached the development of the rules in different ways. And the Panel now goes further in some respects, placing different emphases on various elements and aspects of the rules, and has identified, in Chapter 14, further possible recommendations for changes to the rules. That is, however, against the background of the subsequent experience of the operation of the TIU and uniform TACP, as well as the change in circumstances following the substantial increase in the number of matches on which bets could be placed.

²⁷⁹ It was published at the time on the ITF website, and the International Governing Bodies issued a press release hosted on the WTA’s website.

²⁸⁰ Pending the consultation process between Interim and Final Reports.

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The undertaking of the Environmental Review

176. The Independent Review Panel presently²⁸¹ considers that the Environmental Review was effectively and appropriately carried out:
- 176.1 Interviews were conducted and relevant documents were considered. A detailed Review document was produced, the majority of the conclusions of which, at least as to the extent and the origin of the problem, broadly coincide with the conclusions reached by the Panel in relation to common issues, as at 2008.
- 176.2 In the Panel's assessment, whilst a different approach could have been taken on some aspects (for example, in relation to tanking), the conclusions, and the recommendations that followed, were broadly effective and appropriate.
- 176.3 Given the short time available, it was appropriate for the drafting to be divided between the two authors. Further, it was appropriate for each author to put forward his proposed "*option*" as to the model for the TIU; the authors had divergent views on the best approach, and each put forward the model that he suggested would be most appropriate for consideration by the International Governing Bodies.

Reliance on the Sopot Investigation betting analysts to identify the 45 matches warranting further review

177. In the present assessment of the Panel, it was understandable that Mr Gunn and Mr Rees placed reliance on others to assist in reviewing and providing conclusions on the 45 matches. Those on whom they placed reliance were specialist analysts. It was not practicable for Mr Gunn and Mr Rees to have conducted specialised examinations of individual factual cases when their task was to look at the environment as a whole, and within a short time frame.
178. However, given the Environmental Review's conclusion that the 45 matches warranted further review and the Review's reliance on the 45 matches as evidence of the extent of the threat of "*cheating for corrupt betting purposes*", Mr Gunn and Mr Rees should have obtained, in the Panel's view, a better understanding of the factual basis for their conclusion before making it. During the representation process, both Mr Gunn and Mr Rees addressed this.
- 178.1 Mr Gunn stated (as set out in paragraph 115 above) that he and Mr Rees "*did not 'drill down' into the background and specific veracity of the 45 suspect matches because Rees and I had taken an agreed policy decision not to become embroiled in the specific details of those matters without further clarification from the tennis authorities that such action was within the ER's Terms of Reference*" and they "*agreed that the provenance of those matters was in the hands of skilled and experienced intelligence and betting analysts in whom I had the utmost confidence and we were prepared to accept their judgements on those matches*". Mr Gunn also stated that with the benefit of hindsight the use of the word "*examined*" in the Environmental Review "*was perhaps too strong as it arguably implies that Rees and I looked into the 45 matches in some detail - which for the reason shown we did not*".
- 178.2 Mr Rees stated that it was perfectly reasonable for him to rely on what he was told by Mr Gunn and his staff. He explained further "*I also need to make clear that whilst carrying out the Environmental Review I had not formed any intention of applying for a post in the TIU, should our recommendation that there should be such a unit be approved. I therefore looked at the 45 matches only from the point of view of whether or not these helped indicate that creation of such a unit was justified – not from the perspective of one who would subsequently have responsibility for their investigation*".
179. The background is relevant because the 45 matches were not in the event subject to further review after the Environmental Review, as addressed by the Panel in Chapter 9.

²⁸¹ Pending the consultation process between Interim and Final Reports.

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The consideration of the Environmental Review

180. It is understandable that the international tennis bodies were given the opportunity to comment on the Environmental Review in draft, particularly with a view to correcting factual mistakes.
181. It is also understandable that the ATP would seek, as it informed the Panel that it did, to protect the confidentiality rights of players in seeking to remove references in the Environmental Review (a document that was intended to be made public) that may have resulted in the identification of certain individuals.
182. The Panel can see how and why the amendments came to be proposed, and to be made. The International Governing Bodies said that they wanted to identify more precisely the nature of the concern that the matches raised, and to put forward the possibility that the matches did not necessarily reflect breaches of integrity. That was appropriate. The amendments in themselves did not change the thrust of the conclusions.
183. The Panel has seen no evidence that the authors of the Environmental Review made any changes that they were not comfortable making or that they were inappropriately asked or persuaded to make those changes.

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C THE ATP'S RESPONSE IN 2008 TO INTELLIGENCE ARISING OUT OF THE SOPOT REPORT AND THE ENVIRONMENTAL REVIEW

184. This Section deals with the ATP's response in 2008 to the intelligence it received about matches other than the Sopot Match, involving other players and betting syndicates, as a result of the Sopot Investigation and the Environmental Review. The handling of this intelligence was criticised in the media in early 2016.

(1) THE INTELLIGENCE ARISING OUT OF THE SOPOT REPORT AND ENVIRONMENTAL REVIEW

185. As the Sopot Investigation proceeded, the Sopot Investigators discovered information in relation to other matches, other players, and betting syndicates, in addition to information about the Sopot Match itself.

186. In particular, the Sopot Investigators obtained from Betfair the account history of the betting accounts that had made major profits from the Sopot Match²⁸². Through betting analysis described in paragraph 188 below, Mark Phillips reported that he discovered that a number of apparent betting syndicates had been regularly betting on matches that produced suspicious or unusual betting patterns and that involved a number of players²⁸³. The Panel presently considers that the matches, players and syndicates that Mr Phillips stated he had identified through this analysis were, as described in paragraph 190 below, the 45 matches, players and betting syndicates referred to in the original draft of the Environmental Review, before the wording was amended as described above²⁸⁴.

187. The Sopot Investigators also obtained material downloaded from Vassallo Arguello's mobile telephone, described in paragraph 48 above. Mr Phillips informed the Panel that he first saw the material downloaded from Vassallo Arguello's mobile telephone after he had already identified the 45 matches from his analysis of the Betfair data. He stated that when he saw the data from Vassallo Arguello's phone, he "*noticed and remarked to colleagues that particular matches identified in the texts had already been identified through my betting analysis*" of the Betfair data²⁸⁵. He stated that he concluded that the Vassallo Arguello phone material therefore provided "*powerful corroborative evidence*" in relation to some of the 45 matches he had already identified through his betting analysis²⁸⁶. Mr Phillips' PowerPoint presentation described in paragraphs 200 to 213 below referenced deleted text messages in the Vassallo Arguello phone material related to two of the 45 matches as well as telephone numbers that appeared in Vassallo Arguello's mobile phone's address book and matched the phone numbers associated with Betfair accounts that had bet on two more of the 45 matches (and one of the matches also related to the text messages).

Mark Phillips' identification of 45 matches through analysis of Betfair data

188. Mr Phillips stated that, using the account history obtained from Betfair, he examined the accounts that had made major profits on the Sopot Match, which were Russian accounts²⁸⁷. He then reviewed other matches that had been bet on by this group of Russian accounts. Mr Phillips stated that "*it became obvious that other matches that [the same Russian accounts] had bet upon required investigation due to the nature of the betting and the level of profits being made*"²⁸⁸. Mr Phillips stated that this analysis, combined with analysis of betting data obtained from Betfair, led him to identify "*a number of matches where the betting had been suspicious, involving particular players and three distinct bettor groups (Russian, Northern Italian and Sicilian) that had bet on those matches*"²⁸⁹.

282 Statement of Mark Phillips (formerly BHA).

283 Mark Phillips and John Gardner, 'Tennis Investigations – Summary of Betting and Telecoms Analysis' PowerPoint Presentation – the document has been suitably redacted as published. Appendix: Key Documents.

284 Paragraphs 167 to 169 above.

285 Statement of Mark Phillips (formerly BHA).

286 Statement of Mark Phillips (formerly BHA).

287 Statement of Mark Phillips (formerly BHA).

288 Statement of Mark Phillips (formerly BHA).

289 Statement of Mark Phillips (formerly BHA).

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189. Mr Phillips produced or contributed to a document, which the Panel has seen only in draft, and the date of which is not clear, entitled 'Tennis Investigations – General Logistical Issues'²⁹⁰. Mr Phillips also subsequently put together a PowerPoint presentation entitled 'Tennis Investigations – Summary of Betting and Telecoms Analysis'²⁹¹.
190. The document titled 'Tennis Investigations – General Logistical Issues' listed 45 matches. The 45 matches were broken down into the following groups:
- 190.1 12 matches in respect of the Sicilian group of accounts. The document stated that "*there are 12 matches involving*" the Sicilian group "*that warrant further investigation*" and then listed 12 matches (of which four were not mentioned in the subsequent PowerPoint presentation entitled 'Tennis Investigations – Summary of Betting and Telecoms Analysis').
- 190.2 29 matches in respect of the Northern Italian group of accounts. The document identified "*the most profitable match*" for the Northern Italian group and stated that "*there are at least 28 other matches that... warrant further investigation. Most of the 29 were first round matches in non high profile ATP tournaments.*" The document then listed 28 men's matches (including the most profitable one) and, immediately at the end of that list, stated "*there is only one suspect WTA match to add to the list*" and identified it. There were therefore 29 matches identified (of which 16 were not mentioned in the subsequent PowerPoint presentation).
- 190.3 Four matches in respect of the Russian group of accounts. The document stated that separately from the Sopot Match itself "*there are 4 other matches (all ATP)... that appear... to be suspicious. All the matches listed below were deemed by the Betfair integrity team to be suspicious*". The document then listed four matches (of which one was not mentioned in the subsequent PowerPoint presentation). There was in fact one additional WTA match that was also mentioned in relation to this group, but was not included in the list of four matches (and was also not in the subsequent PowerPoint presentation). The Panel has excluded the WTA match from the total here because the introductory text referred to four, not five, matches and because the WTA match was not specifically stated to be included in the list. It is however correct that if this match were included in the total, that total would be 46, and not 45, matches.
191. The 'Tennis Investigations – General Logistical Issues' document also stated that "*there are also smaller groups of account holders whose accounts have yet to be analysed, and these are Argentinean; French; and Austrian*".
192. The 'Tennis Investigations – General Logistical Issues' document recommended the investigation of ten players "*who stood out*":
- 192.1 There were six such players arising out of the betting by the Sicilian Group, one of whom was Vassallo Arguello.
- 192.2 There were four additional players arising out of the betting by the Northern Italian Group (in addition to Vassallo Arguello).
193. The 'Tennis Investigations – General Logistical Issues' document appears to have recorded the status of Mr Phillips' work at the time that it was produced, which included the list of 45 matches. While it is not clear exactly when it was produced, the latest-in-time match referred to in the document was played in August 2007, and the document appears to have been produced as part of the drafting of the Environmental Review, a draft of which, dated March 2008, appears to have been provided to the International Governing Bodies. Mr Phillips' PowerPoint presentation subsequently described a number (24) of those 45 matches, but not all of them, and it also described six other matches: two in respect of an Argentinean group, which in fact only involved betting from one account, three in respect of the French group, and one match from March 2008 unconnected to the others.

²⁹⁰ The "Tennis Investigations – 'General Logistical Issues' document has also been suitably redacted as published - Appendix: Key Documents.

²⁹¹ Mark Phillips and John Gardner, 'Tennis Investigations – Summary of Betting and Telecoms Analysis' PowerPoint Presentation - Appendix: Key Documents.

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The 45 matches mentioned in the Environmental Review

194. In the present²⁹² view of the Panel, it is likely that the 45 matches referred to in the Environmental Review are the 45 matches set out in the *'Tennis Investigations – General Logistical Issues'* document²⁹³:
- 194.1 The number of the matches, the number of the players, and the description of the syndicates identified in the document all coincide with the numbers and descriptions set out in the original text in the draft Environmental Review referring to the 45 matches²⁹⁴.
- 194.2 The Environmental Review stated that it was “as a result of specific enquiries arising out of the ‘Sopot Match’” that “specific concerns from a betting perspective which would warrant further review” were identified in relation to 45 matches²⁹⁵.
- 194.3 The matches in the document were derived from analysis of Betfair data, consistent with the belief of relevant individuals as described in paragraphs 113 to 116 above. That Betfair was the original source was reflected in paragraphs 2.11 and 2.12 of the Environmental Review.
- 194.4 The authors of the Environmental Review stated that they relied on analysts from Mr Gunn’s team at the BHA; Mr Phillips was such an analyst.
- 194.5 Mr Phillips told the Panel that he believed the 45 matches set out in the *'Tennis Investigations – General Logistical Issues'* document were probably the 45 matches referred to in the Environmental Review.
- 194.6 There is no other identified source for the 45 matches.
195. Accordingly, absent other evidence, it seems that the 45 matches identified in the Environmental Review that generated “specific concerns” from “specific enquiries arising out of the Sopot Match” correspond to the list of 45 matches raising suspicious or unusual betting patterns in the Sopot Investigators’ *'Tennis Investigations – General Logistical Issues'* document.
196. It is less clear to the Panel where the “73 matches” referred to in the Environmental Review comes from:
- 196.1 As set out in paragraph 116 above, Ben Gunn believed a list of 73 matches had been given to Paul Beeby, Tom Chignell and Mr Phillips by a journalist²⁹⁶. This may well be correct, since such lists were provided, but the Panel has not identified the list in question.
- 196.2 Also as set out in paragraph 166.2 above, the original text of the Environmental Review referred to the 73 matches as having been identified by Betfair. This could also be correct.
197. As to Mr Gunn’s belief²⁹⁷ that the 45 matches originated from that longer list of 73 matches, the Panel presently considers that:
- 197.1 It may be the case that the 45 matches were featured on such a longer list of 73 matches involving suspicious or unusual betting, whether it came from a journalist or from Betfair.

²⁹² Pending the consultation process between Interim and Final Reports.

²⁹³ The “Tennis Investigations – General Logistical Issues” document has also been suitably redacted as published. Appendix: Key Documents.

²⁹⁴ Paragraph 167.2 above.

²⁹⁵ Paragraph 167.2 above; Environmental Review, page 9, paragraph 2.10.

²⁹⁶ Statement of Ben Gunn (formerly BHA).

²⁹⁷ Statement of Ben Gunn (formerly BHA).

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197.2 The evidence presented to the Panel indicates that the 45 matches were identified through Mr Phillips' betting analysis described above.

197.3 It is likely that if the 45 matches were also featured on another list, it was because both lists were the products of exercises aimed at identifying matches where there had been suspicious or unusual betting patterns.

The corroboration in relation to some of the 45 matches revealed in deleted texts and contact details downloaded from Vassallo Arguello's mobile telephone

198. As described above²⁹⁸, the mobile telephone of Vassallo Arguello was obtained by the Sopot Investigators at his interview in Poland on 17 September 2007, and data from it was downloaded by a forensic expert, who had travelled to Poland along with the Sopot Investigators and Gayle Bradshaw of the ATP, using a forensic examination of the telephone. As described in the contemporaneous summary of the interview and in statements from witnesses discussed above, the player reportedly handed over his telephone voluntarily and in the knowledge it was to be examined, but he had not been served with a written demand. This issue addressed further in Chapter 9.

199. According to Mr Phillips, "*particular matches identified in the texts had already been identified through*" his analysis of the Betfair data²⁹⁹. Mr Phillips stated that the data from Vassallo Arguello's mobile telephone "*provided powerful corroborative evidence*" for the matches he had already identified³⁰⁰.

The description of the intelligence in the subsequent PowerPoint presentation

200. Mr Phillips subsequently put together the PowerPoint presentation entitled '*Tennis Investigations – Summary of Betting and Telecoms Analysis*'³⁰¹. The Panel presently³⁰² understands that the PowerPoint presentation:

200.1 Was given to Mr Bradshaw and Mark Young of the ATP in or around April 2008 as part of the conclusion of the Sopot Investigation, as described in paragraph 227 below.

200.2 Was given to Jeff Rees and Bruce Ewan of the TIU in the presence of Mr Bradshaw on 9 January 2009 as part of the handover to the TIU, as described in Chapter 9³⁰³.

200.3 Was published by the media³⁰⁴ in early 2016, in redacted form³⁰⁵.

201. Mr Phillips stated that the data from Vassallo Arguello's mobile telephone was described in the PowerPoint presentation because he believed these materials provided "*powerful corroborative evidence*"³⁰⁶. His PowerPoint presentation started with two of the 45 matches for which he believed that deleted texts in the Vassallo Arguello phone material provided corroborative evidence. The second of those was also, Mr Phillips believed, corroborated by the phone material as it involved betting by Betfair account holders with telephone numbers that were included in the saved contacts on Vassallo Arguello's mobile telephone. The presentation then evaluated two more of the 45 matches that were, Mr Phillips believed, corroborated by contacts found in Vassallo Arguello's mobile telephone. Mr Phillips stated, however, that all the matches addressed in the PowerPoint presentation had been separately and previously identified through his analysis of the Betfair data.

²⁹⁸ Paragraph 48 above.

²⁹⁹ Statement of Mark Phillips (formerly BHA).

³⁰⁰ Statement of Mark Phillips (formerly BHA).

³⁰¹ Mark Phillips and John Gardner, 'Tennis Investigations – Summary of Betting and Telecoms Analysis' PowerPoint Presentation – the document has been suitably redacted as published. Appendix: Key Documents.

³⁰² Pending the consultation process between Interim and Final Reports.

³⁰³ Chapter 9, Section A.

³⁰⁴ By BuzzFeed News at <https://www.documentcloud.org/documents/2685408-Betting-and-Telecoms.html#document/p26/a271720> (accessed 9 April 2018). The document was redacted by BuzzFeed News.

³⁰⁵ The version published by BuzzFeed contains the same slides but in a different order.

³⁰⁶ Statement of Mark Phillips (formerly BHA).

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202. In the first of the two matches that Mr Phillips found to have been corroborated by the texts collected from Vassallo Arguello's mobile telephone³⁰⁷, Mr Phillips reported that Vassallo Arguello lost the first set and went down a break in the second set before going on to win the remaining two sets. The data downloaded from Vassallo Arguello's mobile telephone included the text exchange described below between Vassallo Arguello and Fabrizio Guttadauro³⁰⁸. (According to Mr Phillips' analysis, Guttadauro held at least one of a number of Sicilian accounts that Mr Phillips found to be linked by computer sharing based on his analysis of betting accounts from the Betfair data).
- 202.1 The day before the match, Vassallo Arguello received a text from Guttadauro that began, "*This is my number, please if...*".
- 202.2 On the day of the match, Vassallo Arguello received three texts from Guttadauro that included the words: "*Are you awake? Can I call you? Room 1!*"; "*Don't call from the mobile but from the room!*"; and "*I would like to talk to you because of the match!*".
- 202.3 At 1.15pm Vassallo Arguello sent a text to Guttadauro that started: "*He doesn't want to do it. He intends to win and force...*".
- 202.4 At 1.26pm Vassallo Arguello sent a text to Guttadauro stating: "*I'll come!*".
- 202.5 At 3.44pm Vassallo Arguello sent a text stating: "*All okay!*". The match started at 3.55pm.
203. According to Mr Phillips' betting analysis, four of the linked Sicilian accounts that Mr Phillips identified based on his analysis of the Betfair data then bet on Vassallo Arguello to win the match, which Vassallo Arguello did after losing the first set and going down a break. His opponent had been favoured to win, because an Argentine account had bet substantial amounts on him to win and Vassallo Arguello to lose. That betting was suspicious or unusual, in that the lower-ranked player was backed down to relatively poor odds. The Argentine account lost more than £100,000 on Betfair. The four Sicilian accounts won more than £300,000, benefitting from good odds as a result of substantial betting by the Argentine account on Vassallo Arguello's opponent and as a result of Vassallo Arguello going a set and a break down. The Sicilian accounts stopped betting on Vassallo Arguello before he started to win in the second set. For each Sicilian account it was a win that was much greater than the next highest win on the account.
204. In the second of the two matches that Mr Phillips concluded were corroborated by the texts collected from Vassallo Arguello's mobile telephone³⁰⁹, Vassallo Arguello lost the first set and went down a break in the second set before going on to win the last two sets. The data downloaded from Vassallo Arguello's mobile telephone included the following text exchanges between Vassallo Arguello and his opponent and between Vassallo Arguello and Guttadauro.
- 204.1 At 6.38pm two days before the match, Vassallo Arguello's opponent texted him: "*Where are you?*".
- 204.2 At 6.59 pm Vassallo Arguello texted Guttadauro: "*He's replying to me this evening!*".
- 204.3 At 8.21pm Vassallo Arguello's opponent texted him: "*Martin, I'm in 109 - can we talk?*".
- 204.4 The day before the match, Vassallo Arguello sent a text to Guttadauro that started: "*I've spoken with [the opponent]. He has asked me for a ...!*".
- 204.5 At 2.34pm, on the day of (but after) the match, Vassallo Arguello's opponent texted him: "*Martin, we have to talk. These guys are ...!*".
- 204.6 At 6.12pm, Vassallo Arguello texted Guttadauro: "*Unfortunately he can't be trusted!*".

307 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, pages 2 to 4.

308 The "Tennis Investigations - Summary of Betting and Telecoms Analysis" PowerPoint presentation stated that "*the downloaded data from the deleted part of Vassallo's mobile phone shows that he exchanged at least 82 texts!*" with the mobile number. Appendix: Key Documents.

309 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, pages 5 to 8.

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205. According to Mr Phillips' betting analysis, two of the linked Sicilian accounts, two of the linked Northern Italian accounts, and the same Argentine account that had previously lost betting on the first match all bet on Vassallo Arguello to win the match, which he did after losing the first set and going a break down. The betting was particularly suspicious or unusual because the bettors continued to back Vassallo Arguello at the point at which he went a set and a break down. The accounts stopped betting on Vassallo Arguello before he started to win in the second. The two linked Sicilian accounts won in excess of £5,000, the two linked Northern Italian accounts won in excess of £24,000, and the Argentine account won in excess of £33,000.
206. This match was also corroborated by the fact that one of the two Northern Italian accounts was registered with a telephone number that appeared in Vassallo Arguello's mobile telephone address book, which was discovered when the Sopot Investigators downloaded the data from it.
207. Mr Phillips' presentation then addressed two further matches³¹⁰ involving Vassallo Arguello that Mr Phillips concluded raised suspicious or unusual betting patterns. The betting on both of these matches involved a Betfair account registered with a telephone number that was found in the contacts list obtained from Vassallo Arguello's mobile telephone. Both matches had been identified originally through his analysis of the Betfair data and were included in the 45 matches.
208. In the first of those matches³¹¹, Vassallo Arguello lost the first set and went down a break in the second set before going on to win the remaining two sets. According to Mr Phillips, four Northern Italian accounts linked by computer sharing bet on Vassallo Arguello to win the match. Of those accounts, one had a telephone number registered with Betfair that was also appeared in Vassallo Arguello's contacts list. Mr Phillips' presentation concluded that the betting was suspicious or unusual because the bettors continued to back Vassallo Arguello at the point at which he went a set and a break down. According to Mr Phillips' presentation, the accounts stopped betting on Vassallo Arguello before he started to win in the second set, and the four linked Northern Italian accounts won more than £75,000. Based on Mr Phillips' analysis in the presentation, in each case, the win was near the top of the list of highest wins on the account.
209. In the second of those matches³¹², Vassallo Arguello's opponent lost the first set and went down a break in the second set before going on to win the remaining two sets. According to Mark Phillips' analysis in the presentation, nine Sicilian accounts linked by computer sharing were involved in betting on this match. Mr Phillips' presentation concluded that the betting was suspicious or unusual because the bettors continued to back Vassallo Arguello's opponent at the point at which he went down a set and a break. According to Mr Phillips' presentation, the accounts stopped betting on Vassallo Arguello's opponent before he started to win in the second set. Mr Phillips concluded in the presentation that collectively the suspect accounts won more than £139,000³¹³. Mr Phillips' presentation concluded that, in each case, the win was near the top of the list of highest wins on the account.
210. In the PowerPoint presentation, Mr Phillips addressed other matches in addition to those discussed above that, according to his evidence, Mr Phillips had separately and previously identified through his analysis of the Betfair data³¹⁴. Mr Phillips' presentation addressed other matches on which the Sicilian group of computer-linked accounts and the Northern Italian group of computer-linked accounts (identified as above) had bet, evaluating whether the betting patterns in respect of those other matches were also suspicious or unusual. Mr Phillips' presentation also looked at other matches that had been bet on by the Russian group of computer-linked accounts that bet on the Vassallo Arguello v Davydenko Sopot Match. The presentation also reviewed matches bet on by an Argentine account and matches bet on by a French group of accounts.

³¹⁰ For the avoidance of doubt, different to the two matches to which the deleted partial texts had related. These two other matches formed part of the 45 matches.

³¹¹ Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, pages 8 to 10.

³¹² Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, pages 11 to 14.

³¹³ Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, page 13.

³¹⁴ Statement of Mark Phillips (formerly BHA).

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211. Under the heading “*matches worthy of further investigation*” in Mr Phillips’ PowerPoint entitled ‘*Tennis Investigations – Summary of Betting and Telecoms Analysis*’³¹⁵, Mr Phillips set out in brief summary:
- 211.1 Six other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which the Sicilian group of accounts linked by computer sharing had bet³¹⁶. Each of these matches was included in the 45 matches.
 - 211.2 11 other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which the Northern Italian group of accounts linked by computer sharing had bet³¹⁷. Each of these matches was included in the 45 matches.
 - 211.3 Three other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which the Russian group of accounts linked by computer sharing had bet³¹⁸. Each of these matches was included in the 45 matches.
 - 211.4 Two other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which an Argentine account had bet³¹⁹. These were not included in the 45 matches.
 - 211.5 Three other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which a French group of accounts linked by computer sharing had bet³²⁰. These were not included in the 45 matches
212. One other match was mentioned in Mr Phillips’ PowerPoint entitled “*Tennis Investigations – Summary of Betting and Telecoms Analysis*”, but the presentation was unclear as to the extent to which the betting information was suspicious³²¹. It was not one of the 45 matches, having not been played until March 2008. The betting accounts involved were different. It appears that it was mentioned because it was a recent ATP match that had been reported and would have been of interest to Mr Bradshaw and Mr Young when they received the presentation.
213. Accordingly, Mr Phillips’ PowerPoint entitled “*Tennis Investigations – Summary of Betting and Telecoms Analysis*”:
- 213.1 Identified four matches, all involving Vassallo Arguello, that he considered raised concerns, in part because the evidence of suspicious betting for two of the matches was corroborated by the contents of the texts and for two more of the matches by the presence in Vassallo Arguello’s contacts list of telephone numbers for the holders of the accounts involved in the betting.
 - 213.2 Identified 24 matches that were “*worthy of further investigation*”, and one where the position appeared to be that the betting was not suspicious, from Mr. Phillips’ analysis of the Betfair data.

315 Mark Phillips and John Gardner, “Tennis Investigations – Summary of Betting and Telecoms Analysis” PowerPoint Presentation, as redacted, pages 15 to 17.

316 Mark Phillips and John Gardner, “Tennis Investigations – Summary of Betting and Telecoms Analysis” PowerPoint Presentation, as redacted, page 16.

317 Mark Phillips and John Gardner, “Tennis Investigations – Summary of Betting and Telecoms Analysis” PowerPoint Presentation, as redacted, pages 16 to 17.

318 Mark Phillips and John Gardner, “Tennis Investigations – Summary of Betting and Telecoms Analysis” PowerPoint Presentation, as redacted, page 15.

319 Mark Phillips and John Gardner, “Tennis Investigations – Summary of Betting and Telecoms Analysis” PowerPoint Presentation, as redacted, page 17.

320 Mark Phillips and John Gardner, “Tennis Investigations – Summary of Betting and Telecoms Analysis” PowerPoint Presentation, as redacted, page 17.

321 Mark Phillips and John Gardner, “Tennis Investigations – Summary of Betting and Telecoms Analysis” PowerPoint Presentation, as redacted, page 14.

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(2) PROVISION TO THE ATP OF THE INTELLIGENCE ARISING OUT OF THE SOPOT REPORT AND ENVIRONMENTAL REVIEW

214. The ATP received Mark Phillips' intelligence based on his analysis of the Betfair data in April 2008, when it was given Mr Phillips' PowerPoint presentation³²². The ATP was informed of the existence of the Vassallo Arguello mobile telephone material some considerable time before then³²³.

The ATP's prior approval of the downloading of data from players' mobile telephones

215. As described above³²⁴ throughout the Sopot Investigation the Sopot Investigators liaised with the ATP, and in particular Gayle Bradshaw, who was present at the interview of Vassallo Arguello. As set out above³²⁵, the strategy for conducting the Sopot Investigation had been discussed between the Sopot Investigators and the ATP at the outset, and this included the strategy of using a forensic expert to download data from telephones belonging to the players.

216. As described above³²⁶ and from the contemporaneous documents, the Panel is satisfied that (a) the Sopot Investigators were clear from the outset of the Sopot Investigation that it was their intention to use a forensic expert to download data and that they viewed the data download as important to their investigation; (b) one of the action points for the ATP following the meeting on 16 August 2007 (referred to in paragraph 40 above) was to examine the rules and ascertain whether this course of action was possible; (c) the ATP (through Mr Bradshaw) authorised the Sopot Investigators to bring to Vassallo Arguello's interview an expert from a forensic telecommunications company. It is not clear (either from the contemporaneous documents or the evidence given to the Panel) whether the ATP, with or without legal counsel, did examine the rules and whether a decision was reached on whether a written demand should have been made ahead of downloading data from Vassallo Arguello's mobile telephone.

217. As referred to above, one of the Sopot Investigators Robert King was sent a copy of the written notice before it was sent to the players and, from the contemporaneous documents seen, there is no evidence to suggest that he was dissatisfied with the contents.

218. As described above³²⁷, Vassallo Arguello's mobile telephone was downloaded without prior notice by way of a written demand.

Provision to the ATP of the downloaded data, and the perceived constraints on its use

219. The ATP was informed of the existence of the Vassallo Arguello texts and contact details.

220. On 2 October 2007, Paul Beeby sent an email to Mr Bradshaw, in which:

220.1 He stated "*I have made a list of what we have available which ultimately may form part of any case. Many of these items are working documents. They are being used for research...*".

220.2 He then stated "*So what can we give you if you need it?*" and addressed five heads of documents under numbered paragraphs.

220.3 After dealing with the transcripts of various interviews, Mr Beeby stated, under paragraph 3 "*The telephone download material is sensitive. It shows our tactics and if placed in the public arena will not only jeopardise what we want to get from this case but potentially other cases in the future. I am happy to forward to you although they are paper only at this time. The rest of the phone download will be on disc and is not in our possession yet*".

³²² Statement of John Gardner (BHA); Statement of Mark Young (ATP).

³²³ Paragraph 221 below.

³²⁴ Paragraph 37 above.

³²⁵ Paragraphs 38 and 40 above.

³²⁶ Paragraphs 39 to 41 above.

³²⁷ Paragraphs 48 to 48.3 above.

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221. Mr Young gave evidence that following the download of Vassallo Arguello's mobile telephone, the ATP had a concern regarding the possible use of the downloaded text messages. Mr Young's evidence is that the concern arose from the fact that the process set out in the ATP TACP for obtaining information had not been followed. In particular, a written demand had not been given to the player. He was therefore concerned that the ATP had not followed its own rules and the text messages would be inadmissible. He also thinks that it is likely he would have consulted lawyers in respect of this issue³²⁸. Further he told that Panel "*I recall that Paul Scotney made a comment to me that the collection of the texts may have violated European privacy laws*"³²⁹; however, he does not recall anyone researching this issue³³⁰.
222. Mr Bradshaw gave evidence that following the download of Vassallo Arguello's mobile telephone Mr Beeby sent him an email stating that he did not want it to be known that the messages had been downloaded and that the information should be used for investigatory purposes only. From this email Mr Bradshaw assumed that the Sopot Investigators did not want to reveal their investigatory methods and that the messages could not be used as evidence³³¹.
223. Mr Beeby gave evidence that the Sopot Investigators' preference was to use the texts as intelligence rather than evidence. He stated that "*if the data was used against players, there was a danger that they would not hand over their phones in the future or ensure they employed tactics to disrupt – such as having secondary phones. We were looking beyond this investigation and wanted to preserve the tactic*"³³². Mr Beeby considers that what the material revealed warranted further investigation.
224. On 29 December 2007, Mr Bradshaw provided an update to Etienne de Villiers. In this update he stated that "*we have learned some things about Arguello that will warrant another interview but we still have some data analysis to complete before we are ready for that.*"
225. Mr Young gave evidence to the Panel that Paul Scotney had informed him that the text messages and contact list should not be relied upon as evidence, but used as intelligence³³³.
226. Further, Mr Young stated that he had a concern about the possible use of the text messages in that the process set out in the ATP TACP was not adhered to and that, as such, the resulting text messages may have been inadmissible³³⁴.

Presentation to the ATP of intelligence derived from Mark Phillips' analysis of the Betfair data

227. As set out above³³⁵, in April 2008 at a meeting between the Sopot Investigators and Mr Young and Mr Bradshaw of the ATP³³⁶, Mr Phillips gave his PowerPoint presentation entitled "*Tennis Investigations – Summary of Betting and Telecoms Analysis*". That contained Mr Phillips' identification from his analysis of Betfair data of matches raising suspicious or unusual betting patterns that were bet on by groups of bettors connected by computer sharing, involving particular players, and detailed the corroboration provided by the Vassallo Arguello texts in relation to two, and by the contacts list in relation to a further two, of those matches already identified through Mr Phillips' betting analysis.
228. As set out above³³⁷ and addressed further in Chapter 9, there was subsequently a second meeting at which the PowerPoint Presentation was again given, this time attended by Mr Bradshaw from the ATP and Jeff Rees and Bruce Ewan of the TIU. This was not until January 2009³³⁸, following the TIU and uniform TACP coming into operation on 1 January 2009.

328 Statement of Mark Young (ATP).

329 Statement of Mark Young (ATP).

330 Statement of Mark Young (ATP).

331 Statement of Gayle Bradshaw (ATP).

332 Statement of Paul Beeby (formerly BHA).

333 Statement of Mark Young (ATP).

334 Statement of Mark Young (ATP).

335 Paragraphs 201 and 215 above.

336 Statement of Mark Young (ATP).

337 Paragraph 201 above.

338 Statement of Gayle Bradshaw (ATP); Statement of Jeff Rees (formerly TIU).

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The ATP's decision that investigatory responsibility would be handed over to the new TIU, rather than dealt with by the ATP

229. On 29 April 2008, Albert Kirby stated in an email to Mr Bradshaw: *"I appreciate that you may have had some concern regarding my decision to examine the Arguello phones. The process we used is not commonly known and as I highlighted in my report should be kept within limited knowledge. However, as you will be aware, this examination has brought about valuable evidence. I was disappointed to hear from Paul Scotney that you had asked for this aspect of the investigation to be placed on 'hold' as the work had been almost completed (and by now may have been fully done as I had requested). I highlighted in my report that we should pursue the Arguello investigations without further delay as the ATP are now in the position of knowing they have a potentially corrupt player on the circuit and could further damage the reputation of professional tennis"*.
230. Mr Bradshaw responded by email on 29 April 2008: *"I certainly agree with you that Arguello seems to be a player we have strong evidence against, although not from the match that started this investigation. Our decision on Arguello is to be made soon as tennis is in the process of forming its own integrity team and the thought is that this should go to them – there is still debate on this"*.
231. Mr Young's evidence is that *"all of the information that emerged as a result of the Sopot investigation, including the text messages, was provided to the TIU once it was established"*³³⁹. Mr Young stated *"the ATP expected the newly established TIU to carry out such investigations as they considered appropriate, including in relation to any ATP matches that took place prior to the TIU being established. I probably told Jeff Rees in 2009 that, if they were to investigate matters that occurred prior to 2009, the TIU would need to investigate those matters under the pre-2009 applicable procedural rules governing the matter being investigated. It is my understanding that the pre-2009 ATP Tennis Anti-Corruption Programme gave players greater protection from investigative efforts because players under investigation could appeal requests for information and thereby delay compliance with those requests"*³⁴⁰.
232. The ATP took no disciplinary action based on, and did not further investigate, the information about other players and betting syndicates arising out of the Sopot Report and Environmental Review.
233. The circumstances surrounding the handover of responsibility from the ATP to the TIU for investigating pre-TIU matches and materials are further discussed in Chapter 9.

(3) EVALUATION OF THE APPROACH OF THE ATP IN RESPONSE TO THE INTELLIGENCE ARISING OUT OF THE SOPOT REPORT AND ENVIRONMENTAL REVIEW

234. The Independent Review Panel has considered against the facts above whether the approach of the ATP in response to the information it received about other players and betting syndicates arising out of the Sopot Report and Environmental Review was effective and appropriate.

³³⁹ Statement of Mark Young (ATP).

³⁴⁰ Statement of Mark Young (ATP).

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Should Vassallo Arguello or any player or the betting syndicates have been further investigated by the ATP?

235. For the reasons given below, having decided to hand over responsibility for investigating breaches of integrity to the new integrity unit, it was appropriate for the ATP to decide to pass the responsibility for further investigation to that unit once created. However, in the present assessment of the Panel, the ATP should have made greater use of the intelligence relating to Vassallo Arguello once it had been obtained and before the TIU was established.
236. On 29 December 2007 Gayle Bradshaw informed Etienne de Villiers that the ATP had learned some things about Vassallo Arguello that would warrant another interview but that the ATP still had some data analysis to complete. On 29 April Albert Kirby wrote to Gayle Bradshaw that the Arguello investigation should be pursued without further delay as the ATP was *"in the position of knowing they have a potentially corrupt player on the circuit and could further damage the reputation of professional tennis"*. Mr Bradshaw responded by email on 29 April 2008: *"I certainly agree with you that Arguello seems to be a player we have strong evidence against, although not from the match that started this investigation. Our decision on Arguello is to be made soon as tennis is in the process of forming its own integrity team and the thought is that this should go to them – there is still debate on this"*.
237. With Jeff Rees not appointed until September 2008, there was a nine-month period during which no investigatory steps were carried out in relation to Vassallo Arguello. In the present view of the Panel this was a missed opportunity. The delay in waiting for the new integrity unit to be established permitted a player to continue competing despite serious concerns about his integrity and risked that certain lines of inquiry may have closed by that time the TIU was established.
238. The ATP told the Panel that, with the Panel having noted that responsibility for the prosecution of Arguello was delegated to the TIU, *"the ATP should not be criticised for failing to take an action that [had been] delegated"*³⁴¹.

The ATP's decision to pass the information about other matches, players and betting syndicates to the TIU once created

239. The Independent Review Panel presently³⁴² considers that the ATP made an appropriate decision to pass the information about other matches, players and betting syndicates on to the TIU once created, to allow it to decide the appropriate course to take:
- 239.1 Certainly, notwithstanding the TIU's creation, the ATP could have decided itself to pursue investigation and disciplinary prosecution of breaches of its own rules in force before the coming into operation of the uniform TACP. Any disciplinary proceedings in respect of those breaches would have had to have been brought under the former rules, as the uniform TACP could not be applied retrospectively, at least insofar as the substantive prohibitions in it were concerned. At one level, the ATP would only be continuing to do what it had done before.
- 239.2 But it appears, first, that the ATP had come to realise that it did not have the capacity or capability to undertake such investigations effectively. It welcomed the advent of a new dedicated expert unit to take over that role, and it did not wish to continue activities in the area.
- 239.3 Second, if further investigation was to happen in the future, albeit of past breaches, it made sense that the dedicated expert unit should undertake it rather than have different investigations by different bodies of potentially linked behaviour. As it was put in the International Governing Bodies' collective submission to the Panel: *"Authority to decide how to use the intelligence was delegated to the TIU. There was no obligation or restriction as to how the TIU should use that information. The TIU had been formed to provide tennis with expertise and experience in the investigation of integrity breaches, and the International Governing Bodies took the view that it was not their role to challenge that expertise"*.
- 239.4 Third, there was no reason in principle why the new unit should not assist in the disciplinary prosecution of past

³⁴¹ Response of ATP to notification given under paragraph 21 of the Terms of Reference.

³⁴² Pending the consultation process between Interim and Final Reports.

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cases if the evidence was there, albeit against the standards in the old rules.

239.5 Fourth, equally, if what was to happen was that information was to be used for intelligence purposes, to inform future investigation of other future breaches, then it clearly was the new unit that should undertake it.

240. Further, having decided to hand over responsibility to the TIU, it was appropriate for the ATP to have relied on the TIU's judgment regarding whether investigations should be conducted into certain matches and how to use the materials received. It was appropriate to have expected that the new integrity unit, with greater expertise and specialisation in the areas of sports investigations and discipline, would be able to make appropriate decisions on these matters.
241. Finally, having decided to hand over responsibility, it was appropriate for the ATP not to have substantively investigated or brought disciplinary cases against Vassallo Arguello or any other player based on the information obtained during the Sopot Investigation that was unrelated to the Sopot Match. Having decided to hand over responsibility to the TIU, it was appropriate for the ATP to leave these decisions to the new integrity unit, which the ATP anticipated would have greater expertise and specialisation to make the determinations regarding such investigations and disciplinary cases.
242. The effectiveness of these decisions ultimately depends on what happened thereafter, which is dealt with in Chapter 9.

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D THE INTRODUCTION BY THE INTERNATIONAL GOVERNING BODIES OF THE NEW SYSTEM WITH EFFECT FROM 1 JANUARY 2009

243. This Section covers the International Governing Bodies' creation of the TIU, adoption of the uniform TACP, and establishment of the education programme TIPP, in the light of the recommendations made in the Environmental Review.

(1) THE DECISION AS TO THE FORM OF THE TIU AND THE CONTENTS OF THE TACP AND EDUCATION PROGRAMME

The choice between Option 1 and Option 2

244. Following the production of the Environmental Review, the International Governing Bodies quickly decided to accept its recommendation of the creation of a dedicated expert unit to administer new uniform rules and released a statement to the press on 19 May 2008 stating that its intention was to have the TIU in place that season³⁴³.

245. In implementing that decision, the International Governing Bodies had further to consider the form of the TIU to be adopted, since the two options described above³⁴⁴ had been advanced.

246. At Wimbledon 2008, an interview panel made up of Ian Ritchie, Gayle Bradshaw and Bill Babcock interviewed the two candidates for the job of heading the unit, Paul Scotney and Jeff Rees³⁴⁵. In his interview, amongst other things, Mr Scotney advocated Ben Gunn's Option 1. Mr Rees told the Panel that one of his reasons for applying for the post were that *"the decision had been taken to go with the option 2 model for the TIU. In the event that the option 1 model had been chosen, I would not have applied for the job as to have done so would have been hypocritical on my part. I did not believe that it met the needs of tennis."*³⁴⁶ The candidates were asked about their approach to the media. Mr Scotney was in favour of interaction with the media, including the passing to them of information at the right time. Mr Rees on the other hand favoured a more conservative approach, keeping more information confidential. They were asked about their experience and their management approach.

247. Mr Ritchie³⁴⁷, Mr Bradshaw³⁴⁸ and Mr Babcock³⁴⁹ each gave evidence to the Panel that the interview panel preferred Mr Rees as a candidate. They decided on which candidate to recommend first, and with that decision came a preparedness to accept, and so to recommend, what the favoured candidate regarded as the appropriate model. As stated above, Mr Rees informed the Panel that the Option 2 model had already been chosen at the time he was interviewed. According to the evidence, the interview panel asked Mr Rees what he needed and was prepared to recommend that it be given to him.

248. The interview panel was attracted by the proposition that the unit should start smaller and grow as and when the need to do so became apparent, rather than starting larger by including staff who might prove unnecessary. According to Mr Bradshaw and Mr Ritchie, the decision to recommend Mr Rees' Option 2 this was not driven by cost³⁵⁰, nor was it designed to signal that the problem was a small one³⁵¹.

³⁴³ Manfred Wenas, Tennis Governing Bodies to Implement All Recommendations of Independent Tennis Integrity Review (Tennis Grandstand, 19 May 2008), available at: <http://www.tennisgrandstand.com/tag/independent-environmental-review-of-integrity-in-professional-tennis/> [accessed 9 April 2018]

³⁴⁴ Paragraphs 146 to 148 above.

³⁴⁵ Statement of Gayle Bradshaw (ATP).

³⁴⁶ Statement of Jeff Rees (formerly TIU).

³⁴⁷ Statement of Ian Ritchie (formerly AELTC).

³⁴⁸ Statement of Gayle Bradshaw (ATP).

³⁴⁹ Statement of Bill Babcock (Grand Slam Board; formerly ITF).

³⁵⁰ Statement of Gayle Bradshaw (ATP).

³⁵¹ Statement of Ian Ritchie (formerly AELTC).

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Were the recommendations of the Environmental Review as to the TIU, TACP, and education programme implemented by the International Governing Bodies?

249. Having decided to create a new TIU³⁵², and to appoint Mr Rees to head it, the International Governing Bodies left it to him to set up the unit as he thought appropriate. The International Governing Bodies had accepted the recommendations in the Environmental Review in relation to the new TIU, and expected that Mr Rees as one of the authors of the Environmental Review would follow them, including the establishment of a regulatory strategy (aimed at prevention, detection and education)³⁵³ and preparation of an intelligence strategy, investigative strategy, and computer database³⁵⁴. So too they expected him to follow his recommendations as to the content of the education to be delivered³⁵⁵, a common investigation process³⁵⁶, and a co-ordinated media strategy³⁵⁷. The International Governing Bodies did not give thought to what, as part of the implementation of those recommendations, would be appropriate interfaces with betting operators, or with police forces and other law enforcement agencies.
250. As to the uniform TACP, the International Governing Bodies established and adopted the uniform TACP that had been developed at the same time as and with the approval of the Environmental Review authors³⁵⁸, which included bans on players betting³⁵⁹ and on other relevant persons betting³⁶⁰, took into account the suggestions on the definition of inside information made in the Environmental Review³⁶¹, created a single hearing tribunal³⁶², and provided for the possibility of a lengthy suspension for a first offence and, if the circumstances merited, a life suspension³⁶³.

(2) MEASURES TO ADDRESS ASPECTS OF THE ORGANISATION OF TENNIS AFFECTING INTEGRITY

No simultaneous action on aspects of the organisation of tennis

251. The International Governing Bodies did not however at this stage act to make changes to the wider aspects of the organisation of tennis that affected integrity.

Were the other steps recommended by the Environmental Review to address aspects of the organisation of tennis affecting integrity implemented?

252. The International Governing Bodies did not therefore address the specific recommendations in the Environmental Review that:
- 252.1 *“Officials examine matches that players take part in over and above those necessary for achieving ranking points, or give consideration to changing the ranking points systems to make every match count”³⁶⁴. There was an email from the ATP to tournament organisers immediately following the acceptance of the recommendations which stated in relation to this recommendation that: “As each of you could possibly be affected by any change to the ranking system you should know that this was not a mandate to change, it was a recommendation to monitor, study, evaluate and then determine if a change to the ranking system is necessary. We will not overreact to this*

352 Environmental Review page 43, paragraph 4.1, Recommendation 3.

353 Environmental Review page 43, paragraph 4.1, Recommendation 2.

354 Environmental Review page 43, paragraph 4.1, Recommendation 4.

355 Environmental Review page 44, paragraph 4.2, Recommendation 11.

356 Environmental Review page 43, paragraph 4.2, Recommendation 12.

357 Environmental Review page 43, paragraph 4.2, Recommendation 14.

358 Environmental Review page 43, paragraph 4.1, Recommendation 1.

359 Environmental Review page 43, paragraph 4.2, Recommendation 5.

360 Environmental Review page 43, paragraph 4.2, Recommendation 6.

361 Environmental Review page 43, paragraph 4.2, Recommendation 10.

362 Environmental Review page 43, paragraph 4.2, Recommendation 12.

363 Environmental Review page 43, paragraph 4.2, Recommendation 13.

364 Environmental Review page 43, paragraph 4.2, Recommendation 7.

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recommendation and any study results and/or future recommendations will be shared with the players and would be required to go through the normal process of the Player Council and the Board before any recommended changes could be implemented. If you have any thoughts on this issue, please let us hear from you.”

252.2 *“There should be a review of current accreditation procedures”³⁶⁵. The ATP stated in the same email in relation to this recommendation that: “This has already begun at the ATP level with our Tour Identification Card (TIC) initiative. However, the recommendation above goes beyond what the TIC initiative covers. The soon to be formed Tennis Integrity Unit will be conducting their own review of credentialing processes and will have recommendations of their own to submit; prior to that, we have asked each tournament to conduct an internal self-evaluation of their entire accreditation system and make changes where appropriate. Some of the things we have told the tournaments that they should look at implementing beyond what is mandated through the TIC are: (i) Requiring proof of identity for all credentialed persons; (ii) All credentialed persons complete a form giving their contact details; (iii) Re-assessing tournament credentials that give access to any player areas beyond those specified in the TIC initiative”.*

252.3 *“Only the player and essential tournament personnel should have access to the players’ locker room (in both men’s and women’s tennis)”³⁶⁶. The ATP stated in the email in relation to this recommendation that: “This begins following Wimbledon with our TIC initiative. For the moment we are restricting locker room and physio room access to the player, coach and private physio provided that all have completed and submitted a TIC application form in advance or at the tournament site. Tournaments are to make sure that they have the proper security at all limited access player areas and that proper credentialing access is adhered to without exception. Based upon the further recommendation that would prohibit coaches and private physios from the locker room – we will consult with the Player Council and try to assess the best way to proceed. We have told the Tournaments that they should start looking at their facilities and how acceptable alternate areas for the coaches/physios can be managed in the future. The coaches will need a place to change and the private physios will need an area where they can provide treatment to the players --- we will insure that proper facilities are provided so that the services to the players will not be negatively affected prior to implementing the full recommendation”.*

252.4 *“The professional tennis authorities consider seeking the support of other sporting bodies for legislation creating income streams from selling sporting rights and/or the creation of a ‘right to bet’”³⁶⁷. The ATP email did not address this recommendation.*

(3) NEW SYSTEM IMPLEMENTED BY RULE CHANGE

253. The new system was implemented by simply changing the rules. From 1 January 2009, the Rulebooks of each governing body simply contained the obligation to comply with the new uniform TACP, in place of the prior relevant rules. In advance of the change to the rules, the TIU sent notification letters to all players, along with a copy of the rules.
254. There were no other formal arrangements for transition of responsibility from the International Governing Bodies to the TIU. Rather, as dealt with in Chapter 9, each of the International Governing Bodies provided to the TIU the intelligence and files that they had in relation to integrity. Arrangements were made for a meeting for the Sopot Investigators to provide information to the TIU³⁶⁸.

³⁶⁵ Environmental Review page 43, paragraph 4.2, Recommendation 8.

³⁶⁶ Environmental Review page 43, paragraph 4.2, Recommendation 9.

³⁶⁷ Environmental Review page 43, paragraph 4.2, Recommendation 15.

³⁶⁸ Statement of Gayle Bradshaw (ATP); Statement of Mark Young (ATP).

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(4) EVALUATION OF THE APPROACH OF THE INTERNATIONAL GOVERNING BODIES TO THE INTRODUCTION OF THE NEW SYSTEM

255. The Independent Review Panel has considered against the facts above whether the approach of the International Governing Bodies to the introduction of the new system was appropriate. The effectiveness of their approach ultimately depends on what happened thereafter, which is dealt with in Chapters 9 and 10.

The approach of the International Governing Bodies as to the form of the TIU and the contents of the uniform TACP and education programme

256. The International Governing Bodies were entitled to choose Jeff Rees as the person whom they considered best for the job, and it was appropriate for the International Governing Bodies to adopt his model and to leave to him, as one of the authors of the Environmental Review and an expert in the field, how best to implement the recommendations in it as to the form of the TIU and the establishment of the various strategies.

257. Whilst Option 2 might have been regarded as on the small side in the light of the level of intelligence arising from the Sopot Investigation and the Environmental Review, it allowed for the TIU to grow as necessary. In this regard, the Panel has no reason to doubt that in the event that Mr Rees had requested additional resources such resources would have been approved by the International Governing Bodies. The decisions taken by Mr Rees as to the resource levels of the TIU are addressed in Chapter 10 below.

258. The International Governing Bodies appropriately adopted the recommendations in the Environmental Review as to the contents of the TACP. At the time that the uniform TACP was adopted it made appropriate improvements on the rules previously in place, and while with hindsight weaknesses can be identified and are the subject of recommendations by the Panel, the form of the uniform TACP was appropriate.

259. As to the education programme, it was equally appropriate for the International Governing Bodies to leave to the new TIU the development of the education programme, as recommended in the Environmental Review.

The International Governing Bodies' approach to assessing the player incentive structure and aspects of the organisation of tennis affecting integrity

260. The International Governing Bodies focused in their response to the Environmental Review on the creation of the new TIU and the new TACP.

261. The International Governing Bodies could at the same time have done more to assess what could be done to address aspects of the player incentive structure and organisation of tennis that the Environmental Review (and the 2005 Ings Report before it) concluded fostered integrity concerns.

262. The Environmental Review made specific recommendations related to the structural and organisational aspects of tennis, and suggested that the International Governing Bodies take steps to assess the effect that these had on integrity. Measures aimed at detecting and punishing breaches, and preventing them by deterrence and education, were only part of what could be done to address the problem faced. Another part of what could be done was to take steps to address the underlying environment, including the organisation of professional tennis, and so the incentives to the behaviour from which corruption grew. While prevention in the wider sense fell within the role of the new TIU, and while changes to the organisation of tennis such as the ranking system might be complex (leading the authors of the Environmental Review to stop short of recommending such changes) and even unachievable, the International Governing Bodies themselves ought to have coupled with their creation of the TIU and uniform TACP an active programme of assessing what could be done to address the player incentive structure and the aspects of the organisation of tennis affecting integrity that had been identified to them.