General Points

*Power – who has it and who wants it*
General Points

Disputes typically arise because decisions are made without an affected party being represented or where the affected party is represented in a manner where he/she feel his/her views have not been taken into account.
General Points

• Employment relationship characterised by power disparities
• Other unique characteristics: personal service, obligation of trust and confidence, on-going relationship
• Special relationship different to a commercial contractual relationship
“Relationships between employers and employees are generally characterised by an imbalance of economic power. Recognising the vulnerability of employees to exploitation, discrimination, and other undesirable practices, and the social problems which can result, Parliament has long intervened in those relationships so as to confer statutory rights on employees, rather than leaving their rights to be determined by freedom of contract. In more recent times, further measures have also been adopted under legislation giving effect to EU law. In order for the rights conferred on employees to be effective, and to achieve the social benefits which Parliament intended, they must be enforceable in practice”.

*R(UNISON) v Lord Chancellor* [2017] UKSC 51, para 6
Labour Relations Law - UK

- Governs relationship between trade union/employer
- Defines trade union (s1)
- Voluntary recognition or statutory recognition procedure
- s178(2) lists subjects of collective bargaining
- **Collective agreements not ordinarily legally enforceable** (s178(1))
- Immunity from some tort claims if strike in “contemplation or furtherance of a trade dispute”, and ballot and notice requirements met (s 219, ss 226-234, s 234A and 244)
Labour Law Relations—European/International

- European Convention on Human Rights, Art 11
- European Union Labour Relations Law: limited competence
- International Labour Organisation (ILO)
  - Convention 87
  - Convention 98
Sports Industry
Sports Industry

• Unionised athletes in professional sport at a national level and international level

• Collective bargaining influences final form of working conditions in some competitions at a national level

• Outcomes of collective bargaining differ for legal, regulatory, economic reasons, bargaining power
Players Associations - National
Premier League
Collective Relationship

- Multi-employer collective bargaining through the league structure
- Professional Football Negotiating and Consultative Committee (PFNCC)
- **PFNCC Constitution** underpins the relationship between the parties
- Consists of representatives of PL(2), FL(2), FA(1) and PFA (4) and CEOs
- Meet 4 times/year
- Independent chair
- Arbitration clause
- Broad scope of bargaining issues
Premier League

- **PFNCC agenda:** determined by events occurring in the industry

- **Collective Agreements:** series of collectively negotiated agreements, standard players’ contract, PFNCC Constitution, collectively negotiated FA and Premier League Rules

- Squad list system, registration system, no salary cap wage payment model, no draft, disciplinary/grievance procedure, standard player contract
FA Role

Eastham

Maximum Wage Rule
Premier League

- Commission on Industrial Relations 1971 Inquiry into the state of Labour Relations in Professional Football

- **Recommendation:** FA should be involved in collective bargaining

- PFNC formed (later became PFNCC)
FA Role

- Commission on Industrial Relations 1971 Inquiry into the state of Labour Relations in Professional Football
- **Recommendation:** FA should be involved in collective bargaining
- PFNC formed (later became PFNCC)
- FA role: act as “peace-broker”; consult/seek agreement of players/clubs to changes to FA Rules that affect the employment relationship
Premier League

Football Association (FA) is a private entity; decisions are not subject to judicial review and Board decision-making does not involve the players.

PFNCC facilitates consultation with all affected parties on regulatory matters.

Good governance.
Trade Disputes

- Very few: threat of industrial action in 1991 and 2001

- PFNCC has contributed to stable industrial relations in football

- Regular meetings, good working relationship, independent chair

- PFNCC unique to football in UK; not replicated in other professional sports
International Level - Players Association
Labour Relations - International Level

An International Federation:

- falls outside the scope of national labour relations law
- may have no legal obligation to consult with those affected by interests
- sets regulatory conditions for contract termination, eligibility, discipline, which establish parameters for employment relationship at a national level
- determines commercial terms of participation in an international event
Labour Relations - International Level

• Dynamic between IF and union is different
• *White Paper: Athlete’s Rights and Mega-Sporting Events* (Jan 2017):
  - joint forum for consultation (rugby union)
  - partnership to deliver world event (ice hockey, baseball)
  - commitment to consult and agree regulations
Example – International Rugby Union

- IF: World Rugby
- *Regulations Relating to the Game*
- Rugby World Cup (RWC) Terms of Participation
- Historically expectation that NFs consult with those affected by regulation changes
- Manner/form of consultation determined by NF
- Bargaining power
Example – International Rugby Union

• International Rugby Players (trade union) (IRP)
• Rugby Athlete’s Commission (established within governance structure of World Rugby)
• Established in different way to most ACs
• Represents partnership between IRP and World Rugby
• RAC members appointed from IRP Player Advisory Group not NFs
• Recognised in the World Rugby Governance Structure (Other Committee)
• Reports to the Rugby Committee (Standing Committee) => WR Council
Rugby Athlete’s Commission

• **Benefit:** Enables consultation/player participation in decision-making independent of NFs

• **Not perfect:** Delays implementing AC action points; resourcing issues; players’ view may not prevail in final decision

• **Negotiation of RWC Terms of Participation** – situation characterised by power imbalance, but equalizing difficult when at an international level there is no labour relations law
Solutions – International Level

• Tri-partite forum similar to PFNCC
• Social regulation through the ILO
• Power-sharing
• Strengthen domestic political/legal controls
• Utilise human rights law – Centre for Sport and Human Rights – United Nations Principles on Business and Human Rights