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# Sports Resolutions Annual Conference 2018: Staying Ahead of the Game

**Peter Crowther and Jade-Alexandra Fearn of Winston & Strawn London LLP, provide an overview of the discussions had at the Sports Resolutions Annual Conference organised in association with Winston & Strawn, held on 3 May 2018.**

From sandpaper in pockets to holes in the walls of doping laboratories along with diverging international standards of what is considered 'fair play' or 'cheating,' questions must be asked of the international sports community about how to ensure fairness and integrity in sport. In the wake of Baroness Tanni Grey-Thompson's Duty of Care in Sport Review as commissioned by the UK Government, questions must also be asked about how best to protect athletes, especially vulnerable athletes, across all levels of sport: from recreational sport through to elite athletes. Sports Resolution's

2018 Annual Conference afforded industry stakeholders and interested parties the opportunity to discuss these issues. This year's conference covered the following three sessions:

Session 1: Athletes and Their Mental Health  
Session 2: Is Integrity in Sport a Hopeless Ideal?  
Session 3: Transgender Athletes and Their Right to Compete

Before the sessions, the audience enjoyed a powerful and emotive talk

from Richard Parks, a former professional Welsh rugby player. After a shoulder injury ended his career at 31, he could see no future for himself. His physical and emotional wellbeing hit rock bottom.

"The horizon is only the limit of our sight."

It was this line from his grandmother's funeral that inspired him to emerge from 21 days in solitude in the empty white room at the back of his parent's house. He threw himself into a new life that culminated in becoming the first person in history to climb the highest

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peak on each of the seven continents and ski to the North and South Poles in the same calendar year, completing the arduous feat in less than seven months.

Richard's powerful opening speech was followed by the first session: 'Athletes and Their Mental Health' with a panel comprised of Ian Braid, Jeffrey Bacon, Shameema Yousuf, Richard Brian and Helen Richardson-Walsh.

During the session, the panel discussed what more could be done to promote mental health and emotional wellbeing throughout sport. Early intervention (either at youth level or early signs of deterioration), an open dialogue and effective language are critical features to help create a safe space for athletes to speak up on their emotional wellbeing and mental health issues. The panel also considered whether sporting bodies owed their athletes a duty of care to promote and protect emotional wellbeing. Whilst the panel considered whether a legal duty of care existed, questions were also asked as to whether a moral duty of care existed (especially where a legal duty of care could not necessarily be established) to protect the emotional wellbeing of athletes and those involved in sport.

Questions were asked about the source of funding for the necessary personnel, such as psychologists needed to provide appropriate pastoral and medical services in sport. The panel agreed that the provision of adequate mental health services should not be inhibited by lack of funding. Questions therefore remain as to where the additional funding should come from.

Following Session 1, David Howman, chair of the Athletes Integrity Unit and former director general at WADA, gave a powerful speech about the importance of integrity in sport. David asked rhetorically what is meant by a "clean athlete" given that the concept of what is "clean" is not defined in sport. He discussed the endemic levels of corruption across all levels of sport, not

just in relation to doping, and explained that he supported the findings of the UK's Duty of Care in Sport Review, chaired by Baroness Tanni Grey-Thompson. In particular, David welcomed the concept of an independent Sports Ombudsman to help protect integrity across all levels of sport in the UK. David noted that the UK could be a pioneer for the world of international sport should the UK give the Ombudsman sufficient enforcement powers.

For the second panel, David was joined by women's marathon world record holder, Paula Radcliffe, and Managing Partner of Winston & Strawn London LLP, Peter Crowther. The panel engaged in a lively debate about whether integrity in sport is a hopeless ideal. Questions were asked about whether doping and other non-criminal forms of cheating should be criminalised and if so, how the relevant penalties would be enforced. Turning to the present anti-doping system, it was agreed that the investigative process should be shortened so that athletes accused of doping, along with their competitors and the wider public know their fate quickly. An efficient investigative process is also important in ensuring that the consequences imposed on athletes who have been found guilty of doping are enforced in a fair and timely manner.

The panel also discussed whether an integrity tax should be placed on key stakeholders in international sport (such as broadcasters and sponsors) to help agencies detect corruption and cheating and enforce suitable penalties both in relation to on-field and off-field cheating, especially in relation to the trillion-dollar industry of sports betting. Lessons about the success or shortcomings of such taxes or 'integrity fees' may be learned from the US where such fees are being considered in certain states to act essentially as taxes on legal sports betting. Both the NBA and MLB have supported the introduction of such fees as they look to find a way to profit from the proliferation of legalised sports betting and to promote integrity in their sports.

In light of the IAAF's recent guidelines about the eligibility of athletes to compete in female sport, the final panel comprising of Fenella Morris QC, Adrian Christy, Fiona Bruce, Dr Mike Irani and Jonathan Taylor QC discussed whether the guidelines are sufficient in and of themselves to promote inclusion across all levels of sport for all female athletes, including transgender athletes.

The panel engaged in a lively debate as to whether the guidelines are correct in isolating testosterone levels as the main criteria for inclusion in female sport. Questions were asked about what further research needed to be done to understand the effects of medication to reduce the levels of testosterone in male-to-female transgender athletes, and whether high testosterone levels alone gave athletes an advantage over their peers.

Whilst the panel considered whether a points-based system for transgender athletes, effectively acting as a handicap, might be a suitable alternative for professional sports, it was noted that such system was not afforded with the same anonymity as a system relying on testosterone levels. Self-determination was also considered, but questions were asked about the effectiveness of a system where athletes can self-select their gender.

Recent incidents of athletes lying about their age in youth sport make clear that certain checks and balances are required to protect fair competition for all athletes, especially in professional sports. Outside of professional sports, for example in recreational sports clubs, it was agreed that more can be done to promote the inclusion of transgender athletes. The panel also discussed their own experiences in facilitating the inclusion of transgender athletes onto sports teams and recognised that, in a similar fashion to mental health wellbeing, effective language and education would help improve acceptance of transgender athletes.