Neutral Citation Number: [2012] EWHC 1919 (QB)

Case No: HQ12X01661

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 July 2012

Before :

SIR RAYMOND JACK
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

PARK PROMOTION LIMITED T/A PONTYPOOL RUGBY FOOTBALL CLUB	**Claimant**
- and -	
THE WELSH RUGBY UNION LIMITED	**Defendant**

- -
- -

Ian Rogers (instructed by **Messrs Geldards LLP**) for the **Claimants**
Adam Lewis QC and Tom Mountford
(instructed by **Messrs Charles Russell LLP**) for the **Defendants**

Hearing dates: 25, 26 and 27 June 2012

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Judgment

Sir Raymond Jack :

1. This case is concerned with the right of the claimant, the Pontypool Rugby Club, a club with a proud history, to continue to play in the Premier Division of Welsh rugby in the 2012/13 season. The defendant is the Welsh Rugby Union, which organises and controls the sport of rugby union in Wales. It is the view of the WRU that as a result of the re-organisation of the Premier Division to reduce the number of clubs playing in it and Pontypool's position in order of playing meritocracy of the fourteen clubs formerly in the division, the club is now only eligible to play in the Championship, the next division down. The essence of Pontypool's case is that clubs which are above it on a basis of playing merit have not met the requirements to hold an A licence as required for the Premiership by the WRU's National League Rules 2011/2012, and so there is a place for Pontypool within the Premiership.

2. The WRU is a company limited by guarantee named The Welsh Rugby Union Limited. It was formed in 1997 to take over the assets, undertaking and liabilities of the unincorporated association called the Welsh Rugby Union. Its primary object is 'to promote foster encourage control and improve rugby union football in Wales' – paragraph 3(b) of the memorandum of association. Welsh rugby union football clubs and organisations are eligible for membership – paragraph 4 of the articles of association with the definition of 'club' in paragraph 2. Pontypool is a member.

3. Under the aegis of the WRU the organisation of rugby union in Wales is pyramidal in form. At the head is the national team. Then there are four fully professional clubs who play in British and international competitions, namely the Llanelli Scarlets, the Neath and Swansea Ospreys, the Cardiff Blues and the Newport Gwent Dragons. They are often referred to as 'the Regions' because south and west Wales, the strongest rugby playing areas, is divided into four regions, one for each club. They provide the pool of players from which the national team is drawn. Then there is the Premier Division with both professional and part professional players. Until the close of the 2011/12 season it contained 14 clubs. Below the Premier Division is the Championship, newly created for the 2012/13 season with 16 clubs. Then come the Divisions containing a large number of lesser clubs.

4. I will next summarise the most important events.

5. On 28 April 2011 at a meeting of the board of directors of the WRU the board voted to approve the proposals before it for a Premier Division of 10 teams and a Championship. The proposals had previously been the subject of considerable discussion between others involved, including representatives of the Premiership clubs. The proposals had been supported by Pontypool. The purpose in reducing the number of clubs in the Premiership was to improve the quality of play in the Premiership by reducing the number of players and by increasing the finance available to the remaining individual clubs. The new scheme was given effect by the WRU National League Rules 2011/2012 which replaced the 2010/11 Rules. Such Rules had been published for each year. The 2011/12 Rules made only such changes as were required to give effect to the new proposals. I will return in more detail to the provisions of the 2011/12 Rules – which I will simply call 'the Rules'. They provided, however, that selection for the Premiership for 2012/13 should be determined by the holding of an 'A Licence', signing a Participation Agreement and by a meritocracy formula set out in the Rules. A and B Licences were something provided for in previous editions of the Rules. The criteria to play in the Premiership had to be met by 31 August 2011.

6. On 20 April 2011 Pontypool applied for an A licence. It was initially refused on the ground that not all of its spectator facilities were permanently enclosed – the ground is in a public park. Pontypool appealed to the Criteria Appeals Panel. On 13 July Pontypool was informed that its appeal was successful in that an exception had been granted. This is an example of how the WRU system as to non-compliance works in practice. If a requirement for a licence cannot be met, a club can 'appeal' to the Criteria Appeals Panel, which may grant an exception so that facilities which the club can provide will be acceptable. Second, the club may ask the Panel for further time to meet a requirement thus obviating any deadline. It is the policy of the Panel according to the evidence of Ms Julie Paterson, WRU's Head of Compliance, to assist a club in so far as it properly may so that the clubs meet the Rules and the best clubs in terms of playing quality are in the Premiership. In order to comply with the A Licence requirement for covered hard standing for 1000 spectators Pontypool needed to use temporary 'gazebos' if a permanent solution could not be completed in time. By an email of 18 August Mr Stanton was told that if these were not in place by 31 August, the compliance department would have to issue a 'fail': but the club could appeal and the Criteria Appeal Panel would be convened at the earliest possible date. I mention this as a further example of the use of the Panel.

7. On 13 May 2011 Ms Paterson wrote to Mr Stanton, then Pontypool's Chief Executive Officer, about the selection process for the Premiership. She referred to the three elements, an A Licence, the signing of a Participation Agreement, and a points based meritocracy over 6 years. She stated that applications for selection must be submitted by 22 May. She informed Mr Stanton that Pontypool's standing on meritocracy was 13th out of the 14 clubs in the existing Premier Division. On 16 May Mr Stanton sent in Pontypool's application for the Premiership.

8. On 5 June and 6 July 2011 Mr Stanton wrote letters to the WRU concerning health and safety issues relating to the grounds of other clubs. Ms Paterson replied on 7 July saying that, as she had said before, she would not enter into discussions about other clubs in relation to the criteria audit process. She referred to the requirement for a safety management plan in the A Licence criteria: the plan was the club's responsibility. She noted that Pontypool had not previously raised these concerns. On 15 July Mr Stanton responded, saying that he was not seeking to attack Ms Paterson's Department. He said that a structural engineer had visited three grounds, Cross Keys, Llandovery and Tonmawr and had found there were not covered hard standing facilities for 1000 spectators – an A Licence requirement, which facilities accorded with the Government's Guide to Safety at Sports Grounds, called 'the Green Guide'. He said that there were also doubts about Swansea and Bedwas. He said that the issue was safety and the WRU should raise it with the clubs with the closing date of 31 August in mind. Ms Paterson replied on 1 August. She said in particular that the clubs were solely responsible for safety at their grounds and compliance with the relevant legislation.

9. On 10 August Mr Martyn Rees, the WRU's administration manager, sent the Rules by email to members of the Regulatory Committee. He reminded members that the WRU Board had given the committee power to approve the Rules. He asked for approval as soon as possible. It must be presumed that it was given. This was late on in the intended timetable of events. However it was known by the clubs what the requirements were, and no difficulties seem to have arisen.

10. On 18 August 2011 there was a meeting between the WRU's Rugby Board, Regional Rugby Wales, and the four Regional clubs. RRW and the clubs raised their concerns as to the changes to the Premiership. On 25 August the Board of the WRU decided to maintain the approved timetable while continuing a dialogue. The outcome was that on 24 November RRW and the Regions presented concrete proposals to the WRU Board. The proposals were debated by the Board with differing views being expressed. The outcome was that the proposals were accepted by a vote of 12 to 3. The proposals centred on the addition of Bridgend Ravens and Carmarthen Quins to the Premiership, thus raising the number of clubs from 10 to 12. The proposals were specific to those two clubs, but were supported by all four Regional clubs. Bridgend is in the Region of, and closely connected with, the Ospreys, and Carmarthen likewise with the Scarlets. The case made for their inclusion centred on the claim that without them the 'player pathways' to the two clubs would be weakened. Pontypool is in the Region of Newport Gwent Dragons, but the Dragons did not make a similar case for Pontypool's inclusion. I am satisfied that the WRU Board accepted the proposal because it was considered that it was in the interests of the development of Welsh rugby to do so. The Board imposed conditions on the Regions which were designed, inter alia, to protect the positions of the clubs already in the new Premiership.

11. Bridgend and Carmarthen were 11th and 12th in the meritocracy ranking. So although the proposal was specific to them, it did not mean that they jumped in over a club with a higher ranking. It was accepted that the two clubs would be allowed time to meet the criteria for inclusion. Bridgend already had an A Licence, but Carmarthen did not. It may well be that if the Regions had developed their case further at the start of the year, a 12 club Premiership would have been agreed on 28 April 2011.

12. Meanwhile by letter of 6 September 2011 the WRU had informed Pontypool that it had achieved an A Licence, had executed a Premiership Participation Agreement and stood 13th in the meritocracy: it had therefore been selected for the Championship for the 2012/13 season. The letter referred to Pontypool having a guaranteed place in the Championship for two seasons, and to discussions as to the agreed funding payments.

13. On 14 September 2011 Pontypool lodged two appeals against its selection for the Championship. It might have raised one appeal with two grounds. The first ground was that the WRU had failed to follow its own regulations in the issuing of A Licences because there had been no survey of spectator facilities by an independent assessor applying the Green Guide. The second was that clubs had been selected for the Premiership, which had submitted inaccurate 'statements of truth' in that they did not have covered facilities for 1000 standing spectators meeting 'the necessary building regulations, approvals and safety requirements from their local authorities.' On 4 November Pontypool sent a 16 page submission in support of its appeal.

14. On 23 September 2011 Pontypool's A licence was summarily revoked by the Criteria Appeal Panel on the ground that temporary enclosure of spectators had not been secured. On 19 October Mr Stanton gave notice of appeal. Pontypool was never informed by the Criteria Appeal Panel of any outcome. In a letter of 21 February 2012 mainly dealing with other matters Mr Roger Lewis, WRU's chief executive officer, said that he was unsure whether Mr Stanton had been notified that at its recent board meeting the WRU Board had determined that the A licence should be reinstated. How the Panel dealt with the appeal, and how the Board became involved is unknown. On 21 and 23 November Cross Keys and Swansea made Code of Conduct complaints to the WRU against Pontypool in respect of public statements related to their grounds. Those complaints were upheld and a suspended fine of £1000 was imposed on Pontypool. These matters are not directly relevant to the issues I have to determine, but are part of the history.

15. On 1 December 2011 there was a meeting at the Welsh National Assembly Government Offices relating to Pontypool's safety concerns. On 9 December Mr Roger Lewis informed Mr Stanton that the WRU had commissioned an independent review. On 21 February Mr Lewis wrote with the outcome of the review: in short it had concluded that Pontypool had been treated fairly and that the WRU should not become responsible for the safety of spectators.

16. On 4 January 2012 Mr Stanton wrote to Mr Gareth Williams, the company secretary of the WRU, raising the legitimacy of the addition of Bridgend and Carmarthen to the Premiership. It is alleged in paragraph 16 of the particulars of claim (which is admitted by paragraph 23 of the defence) and also in paragraph 12(iii) of Pontypool's opening written submissions for this trial that Pontypool's appeal against its omission from the Premiership was extended to include the alleged wrongful admission of Bridgend and Carmarthen. But the letter of 4 January does not in fact suggest that the

appeal should be widened to include issues relating to Bridgend and Carmarthen. In it Mr Stanton asked for Mr Williams' assistance and said he did not know to whom the letter should be addressed. I have not found any reply to it. Pontypool's submissions also refer to a letter dated 6 March 2012 from Mr Stanton to Mr Lewis, the WRU's chief executive officer. When the appeal was heard Mr Stanton's submissions did not address the issues relating to the addition of Bridgend and Carmarthen, and the Regulatory Committee did not consider them.

17. On 9 February 2012 Pontypool's appeals against its omission from the Premiership were heard by the WRU Regulatory Committee. Time was short and so the WRU's response was provided by Mr Rhodri Lewis, Head of Legal Affairs, in a memorandum dated 15 February 2012. It provided a clear statement of the WRU's case. Mr Stanton responded on 22 February. The Committee met again on 6 March to consider the appeals further. The substance of the minute of the meeting is as follows:

> "At today's meeting, Members noted that Rule 9(i) of the National League Rules provides a mechanism for a Club to make a protest or dispute arising out of the National League Rules and that Mr Stanton had asserted that he first raised his concerns with the Union in his letter dated 6th June 2011, sent by him to the Head of Group Compliance.
>
> The criteria for granting an 'A' Licence are set out in Appendix A of the National League Rules. A Club needs to comply with all of those criteria to be granted an 'A' Licence.
>
> Members also noted the advice provided by the Head of Legal Affairs in his memorandum dated 15th February 2012 in which he states that the Union's position is straightforward and that it is entitled to appoint an independent assessor under the National League Rules but it is not obliged to do so, and the appointment of an independent assessor can be waived for a variety of legitimate reasons which are summarised in the memorandum.
>
> However, whilst acknowledging that legally the requirement for an independent assessment appeared discretionary, Members also accepted that most Club officials would interpret the relevant requirement within the published National League Rules as being an imperative, because there is no indication whatsoever within the Rules to suggest the requirement for an independent assessment is not mandatory but is actually at the Union's discretion.
>
> Members also noted Mr Stanton's assertion that the WRU would be vicariously liable in the event of an incident involving spectators at a ground of a Principality Premier Division Club, had been firmly rejected at the WRU Board meeting held on 22nd February 2012, where it was also reported that the independent barrister asked to review the sequence of the events leading up to the issues raised by Mr Stanton, had

concluded that having considered all the relevant evidence, the Club had been treated in a wholly fair and impartial way by the Union. Moreover, the barrister had added that he had seen nothing to suggest that the Compliance Department was motivated to do anything other than to assist Pontypool RFC (in particular to obtain an 'A' Licence).

The allegation purporting to be based on independent undisputed third party evidence supplied by Mr Stanton could not be ignored by the Union, as according to Mr Stanton, his evidence clearly demonstrated that at least 3 Principality Premier Division Clubs had each lodged a false "Statement of Truth" with the Union, as part of the criteria assessment process for entry to the Principality Premier Division.

Despite Mr Stanton's allegations, Members accepted that Pontypool RFC had still failed to meet the criteria based on the points gained by the Club as part of the assessment and as such agreed that the Club had not been disadvantaged, a view endorsed by the independent barrister.

However, Members felt that the Union was now obliged to act to carry out independent assessments across all Principality Premier Division Clubs otherwise, they anticipated the concerns raised by Mr Stanton would become a crusade and until the matter was dealt with in accordance with the Union's published National League Rules, they felt the situation would continue to fester, which would cause further unrest within the Principality Premier Division, as well as those Clubs with aspirations to eventually play in that Division.

The Chairman stated that he had briefed a structural engineer to establish what a minimum inspection of hard standing/covered facilities for 1,000 spectators would cost to inspect and provide a written report/confirmation and the unit cost was quoted at £400 per Club, a sum which Members of the Committee felt was well worth spending and a small price to pay for peace of mind, in order to be seen to be responding to Mr Stanton's concerns about the welfare of spectators at Principality Premier Division rugby Clubs, as well as show that the Union took those concerns very seriously, as it considered the safety of spectators to be paramount. In addition, Members suggested that the overall cost would still be far less than the cost to the Union of instructing an independent barrister to review the case in the first place.

In summary, members recommended that the covered/hard standing area of 1,000 spectators at all Principality Division Clubs should be inspected/independently assessed as a matter of priority during May 2012 and that in future, the National League Rules are amended to make it absolutely clear that the

> requirement for such an independent assessment is at the Union's discretion."

18. The Committee's conclusions can be summarised as follows:

    a) Pontypool failed to meet the meritocracy criterion on the basis of the club's points, and it had been fairly and impartially treated and had not been disadvantaged.

    b) According to Pontypool's evidence three clubs had lodged incorrect statements of truth as part of their criteria assessment for the Premiership. To put this to rest there should be an independent enquiry by a structural engineer of all the Premiership clubs' covered hard standing facilities for spectators.

    It had not been suggested in Mr Rhodri Lewis's memorandum of 15 February 2012 that as Pontypool was not in the top ten clubs by meritocracy the club was automatically out of the Premiership. The essence of Mr Lewis's submission was that the WRU were not obliged to appoint independent assessors of club facilities. Nonetheless the second bullet point in the quotation from the committee's decision is consistent with it having taken the view that, because Pontypool was not in the top ten, it was out. The basis of the decision is unclear.

19. The Committee's decision was not communicated to Pontypool.

20. On 3 April Geldards, solicitors for Pontypool, wrote pressing the urgency of an outcome. The WRU replied on 4 April saying that 'in accordance with the Welsh Rugby Union's constitutional process', the Committee's decision would be discussed at the next WRU board meeting on 11 April and no decision would be issued until then. On 11 April the WRU did consider the Committee's conclusions. The dismissal of the appeals was upheld, but the recommendation of independent assessments of all Premiership clubs was overruled. The minutes record:

> "The Regulatory Committee had concluded that Pontypool RFC's appeal should fail as they had not met the criteria for admission to the new Premiership because they had not gained sufficient points in the league.
>
> The Company Secretary asked members of the Regulatory Committee what action they thought should be taken in the event that an independent inspection revealed that a Club was not compliant. In that event members of the Regulatory Committee considered that the matter should be referred to the Board to consider/resolve.
>
> The Company Secretary added that his understanding was that all of the Premiership clubs knew that in the past there had been no independent assessments, and that the clubs in meetings in 2011 had accepted that in any event there would be no further assessments by the Compliance Department in relation to the facilities to those clubs who had already been granted an A licence.

> The Company Secretary suggested that consideration should be given to overruling the recommendation of the Regulatory Committee, a proposal endorsed by Mr Alan Jones and the Chairman, prompting Mr Fowler to state that, in that case, it would be necessary to suspend Standing Orders which was duly agreed.
>
> After a period of reflection, it was agreed by a majority of 7 votes to four to overrule the recommendation of the Regulatory Committee requesting that independent assessments are carried out at all Clubs currently holding an "A" Licence and it was agreed that the Company Secretary would draft a suitable response to Geldards Solicitors."

21. On 18 April the WRU, Head of Legal Affairs, Mr Lewis, wrote to Geldards as follows:

> "I have been informed that the Regulatory Committee dismissed your client's appeal. The Committee concluded that there was no obligation on the part of the WRU to arrange independent assessments of club facilities. Under the relevant rugby performance criteria your client was in 13th position at the end of season 2010/11. Notwithstanding the fact that your client had been awarded an "A" Licence (of course that licence was awarded as a special dispensation because your client could not comply with the relevant criteria in that it did not have permanent, fully enclosed spectator facilities) the club did not qualify for a position in the revamped Premier Division.
>
> The Regulatory Committee did recommend to the Board that independent assessments of all relevant clubs' facilities should be undertaken given the allegations made by Mr Stanton. The Board did not agree with that suggestion, but in all other respects upheld the decision of the Regulatory Committee. Accordingly, your client's appeal has not been successful."

22. The action was commenced on 30 April. An order for a speedy trial was made and it was heard over three days commencing 25 June.

23. I will now set out the relevant provisions of the Rules.

Clause 2, Interpretation, includes:

> "Premier Division Criteria means the Licence criteria for entry into and prerequisite to remaining in the Premier Division as set out in Annexure 1 to these League Rules."

Clause 3, Form, deals with the form of the League. Under the heading 'Promotion and relegation at the end of 2011/12' it provides:

> "To play in the Premier Division in the 2012/2013 season a Club must have been granted an A Licence, signed commitment to the Premiership Participation Agreement, and have qualified by virtue of a meritocracy criterion. Details of the A Licence and the meritocracy criterion are set out in Annexure 1 hereto. The Clubs that fail to attain an A Licence or do not qualify by virtue of the meritocracy criterion will be relegated from the Premier Division to the Championship at the end of the 2012/2012 season."

Under the heading 'Number of Clubs in Division 2012/13' is stated 'Up to 10 Clubs'.

Clause 4 covers 'Eligibility to Participate' under the two headings 'Clubs' and 'Players'. The latter includes rules as to, for instance, overseas players and front row forwards and uncontested scrums.

Clause 5, Entry Conditions, requires that all Clubs should conform with the Rules, the memorandum and articles of association of the WRU, and its regulations and resolutions.

Clause 9 contains a number of 'General Rules' including as to passive scrums and postponed, rearranged and abandoned matches. Clause 9.i is headed 'Protests and Disputes'. It provides:

> "Protests or disputes arising out of the National League Competition or the rules relating thereto must be made in writing to the Group Chief Executive of the Union …… . The Regulatory Committee shall have discretion to investigate any breach of the rules at any time and to take such action as it shall deem appropriate.
>
> Any Club dissatisfied with a decision of the Regulatory Committee shall have the right to appeal to a Sub Committee appointed by the Board of Directors provided that the Club's appeal is lodged …. ."

Clause 9.m headed 'Adjudication' provides:

> "The Regulatory Committee shall have discretion in dealing with any protest or dispute relating to the National League, whether or not provided in this scheme or rules."

24. Annexure 1 is headed 'Criteria for Entry and participation in the Premier Division with effect from August 2011'. It provides:

> "1.1 In the 2011/2012 season …. .
>
> 1.2 To play in the Premier Division in season 2012/2013 a Club must have applied for and met the criteria to hold an A licence by 31 August 2011.

1.3 Details of A and B licences are set out in Appendix A hereto.

1.4 Selection and entry to the Premier Division at the end of the 2011/2012 season shall be determined by way of A Licence criteria, signing and commitment to a Premiership Participation Agreement, and meritocracy formulae as referenced within the League Rules.

2.1 ……

2.2 ….

2.2.3 Works which have not been completed by 31st August 2011 for any reason whatsoever shall not be considered in determining whether the criteria for an A or B licence have been obtained.

3.1 All inspection of facilities will be completed by 31st August 2011. **No re-inspections will be undertaken after 31st August 2011.** [in bold in original]

3.2 Existing Premier Division Clubs will be re-audited between 31st January 2011 and 31st August 2011.

3.3 The results of the audits will be sent to the individual Clubs by 11th September 2011 and a list of those Clubs who have passed the criteria will be published to all member Clubs of the Union by 31st December 2011. However, should there be a requirement to convene a meeting of the Appeals Panel, the notification date of the 11th September 2011 may be extended.

4. 'Entry/Participation Criteria to the Premier Division' means the document which appears as Appendix 'A' hereto.

5. ….

6. This document and the Entry/Participation Criteria to the Premier Division shall form the basis of a formal Participation Agreement to be entered into by all Clubs in the Premier Division which will also form part of the entry/participation criteria.

7. The Premier Division in 2012/2013 will comprise the 10 Clubs who have met the entry/participation criteria as at the 31st August 2011.

This will include meritocracy as determined in accordance with the criterion as set out below."

There is then set out a formula for points over the preceding 6 seasons.

25. Appendix A follows. It is headed '2011/12 A & B Licence Criteria.' Under 'Penalties for non-compliance' it is stated:

> "Where a club is found to be not adhering to the criteria relating to the licence it has achieved at the start of a season, it is provided an opportunity to rectify the fault. If the Club does not comply with the criteria, it automatically revokes its current licence, and in the worst scenario drops to the next Division."

Four sections follow. Section 1 is headed 'Rugby Performance and Development'. It covers such things as coaches, development manuals, records, and player pathways. Section 2 is headed 'Facilities'. Under club requirements reference is made to:

> "a safety management plan,
>
> "a grandstand with a minimum 501 capacity, which can be provided within a maximum of two areas",
>
> "covered terracing for a minimum capacity of 1,000 spectators",
>
> parking, disabled facilities, toilets, catering, scoreboard, floodlighting, programmes, website etc.

Then come 'Rugby Performance and Development Requirements', 'Training Facilities' and 'Match Day Facilities'.

Section 3 is headed 'Administration and Finance'. Section 4 is headed 'Regulatory Compliance'.

26. The next document is Appendix B. There is no reference to it in Annexure 1. It is headed 'Statement of Truth & Declaration of Intent'. Under that is 'WRU – 31 August 2011'. That is the closing date for satisfying licence criteria. It is in the form of an undertaking by deed to be given by a club that:

> "1. all of the information which has been provided to the Welsh Rugby Union Ltd prior to the date hereof on behalf of …. in connection with the Criteria for entry to the WRU Premier Division is true and accurate in all respects; and
>
> 2. all of the information which will hereafter be provided to the Welsh Rugby Union Ltd on behalf of ….. in connection with the Criteria for entry to the WRU Premier Division and all subsequent seasons will be true and accurate in all respects.
>
> 3. In addition we … on behalf of … in our capacity as …. hereby declare that it is the club's intention to be assessed under the A Licence Criteria, at the enhanced standard which will be met in all areas."

27. The next page is a spread sheet headed 'WRU Premier Division, WRU Criteria for entry to the Premier Division'. It lists 30 items. The WRU's written opening

submissions list nine minor matters which are in Appendix A but are omitted from the spread sheet. It may have been included in part as a check list. It may also be included because it also provides the points that are available for certain items for the purpose of a B licence. A number of items are colour coded. Floodlighting is red and red denotes 'Independent assessor to be appointed - Floodlighting.' 'Even full size playing surface' is blue, which denotes 'Independent assessor to be appointed – Pitch Quality'. Seven items are green, which all relate to the facilities at the ground. Green denotes 'Independent assessor to be appointed – Survey, led by Green Guide requirements.' This is the only reference to the Green Guide. One of the 7 items in green is 'Hard-standing covered accommodation for 1,000'. This reflects 'Covered terracing for a minimum capacity of 1,000' in the body of Appendix A.

28. Annexure 2 relates to the Championship.

29. Having set out these provisions it is convenient next to look at Pontypool's case in relation to them. It is said that the Rules constituted a contract between the WRU and Pontypool, with the following, among other, express terms:

    a) to play in the Premier Division a club must have an A Licence, have signed commitment to the Premier Participation Agreement, and have qualified by virtue of the meritocracy criterion;

    b) if more than 10 clubs met the first two requirements, selection of ten would be by the meritocracy criterion;

    c) the criteria for an A Licence must have been met by 31 August;

    d) to get an A Licence a club must have 'hard-standing, covered accommodation for 1,000' as per the spread sheet.

    e) To decide if (d) was satisfied an independent assessor would be appointed by the WRU and the survey would be carried out in accordance with 'Green Guide requirements', as denoted by the green marking on the spread sheet.

30. It is Pontypool's case that there were implied terms of that agreement that:

    a) the WRU would act in accordance with the League Rules in determining the composition of the Premiership for 2012/13;

    b) the WRU would act fairly and rationally in:

        i) determining that composition, and

        ii) determining any dispute or appeal about that composition;

    c) the WRU would investigate fairly credible allegations of non-compliance with stadium safety criteria, would apply League Criteria to the facts found, and would re-determine the composition of the Premiership accordingly;

    d) the WRU would give sufficient reasons when dismissing an appeal for Pontypool to understand why.

31. The WRU deny that 'the WRU is bound by any contractual obligations owed to Pontypool relevant to matters in this claim': WRU's defence, paragraph 35.

32. Pontypool also allege that the WRU owed Pontypool a non-contractual duty arising from its position as a sports governing body to act fairly, rationally and in accordance with the Rules, in accordance with the decision of the Court of Appeal in *Bradley v Jockey Club* [2005] EWCA Civ 1056. The *Bradley* duty, as I may call it, is accepted on behalf of the WRU.

33. The key passage from the judgment of Richards J in *Bradley* quoted with approval by Lord Phillips MR in the unsuccessful appeal is as follows:

> "37. That brings me to the nature of the court's supervisory jurisdiction over such a decision. The most important point, as it seems to me, is that it is *supervisory*. The function of the court is not to take the primary decision but to ensure that the primary decision-maker has operated within lawful limits. It is a review function, very similar to that of the court on judicial review. Indeed, given the difficulties that sometimes arise in drawing the precise boundary between the two, I would consider it surprising and unsatisfactory if a private law claim in relation to the decision of a domestic body required the court to adopt a materially different approach from a judicial review claim in relation to the decision of a public body. In each case the essential concern should be with the lawfulness of the decision taken: whether the procedure was fair, whether there was any error of law, whether any exercise of judgment or discretion fell within the limits open to the decision maker, and so forth . . .
>
> 40. . . The supervisory role of the court should not involve any higher or more intensive standard of review when dealing with a non-contractual than a contractual claim."

It should be borne in mind that *Bradley* was concerned with the penalty imposed by a disciplinary tribunal.

34. Pontypool allege that the WRU acted in breach of its contractual duty to apply the Rules in determining the composition of the Premiership for the 2012/13 season and its contractual duty to act fairly, and in breach of its *Bradley* duty, as follows (summarised from paragraph 19 of the particulars of claim):

> (a) The WRU did not appoint an independent assessor to inspect the stadia of clubs. Had it done so, Cross Keys, Bedwas and Swansea would not have satisfied stadia criteria and would not have been eligible.
>
> (b) The Regulatory Committee dismissed Pontypool's appeal because 'the Committee concluded that there was no obligation on the part of the WRU to arrange independent assessments of club facilities.' That is a quotation from the WRU's letter to Geldards of 18 April 2012 informing Geldards of the

decision of the Regulatory Committee. It is alleged that in doing so the Committee misdirected itself and acted in breach of the Rules.

(c) Pontypool drew the WRU's attention to evidence from two local authorities showing that the safety requirement safely to accommodate a minimum of 1000 in covered terracing had not been met by at least three clubs selected for the Premiership. The WRU relied on statements of truth from clubs to satisfy itself as to safety requirements, which was outside the scope of the rules.

(d) The WRU persisted in relying on statements of truth despite information showing that safety criteria had not been met.

(e) The Board of the WRU should have given reasons for disagreeing with the Regulatory Committee as to whether the WRU should arrange for independent assessment of the clubs' facilities.

(f) The addition of Carmarthen and Bridgend was in breach of the Rules.

(g) The WRU Board gave no reasons for upholding the Regulatory Committee's decision.

(h) On 20 April the WRU stated that it was 'in the process of investigating' the matters raised by Pontypool as to stadia capacity and safety. The WRU could not determine Pontypool's appeal without considering whether, if a club's facilities were non-compliant as at 31 August 2011, and its statement of truth was incorrect, this would have affected the decision as to its A Licence and the composition of the Premiership.

(i) The WRU failed to consider the issue of the addition of Bridgend and Carmarthen. Carmarthen was unable to satisfy the requirement for an A Licence.

(j) The WRU acted unfairly and irrationally throughout.

35. I have been referred to a number of authorities in connection with the existence or not of contracts with governing bodies of sports. I mention *Lee v Showmen's Guild* [1952] 2 QB 329, *Enderby Town Football Club v Football Association* [1971] 1 Ch 591, *Jones v Welsh Rugby Union* 19 December 1997, Court of Appeal, *Wilander v Tobin* [1997] 2 CMLR 346, *Nagle v Fielden* [1966] 2 QB 633, *Modahl v British Athletic Federation Ltd* [2002] 1 WLR 1192, *Aberavon & Port Talbot Rugby Football Club v Welsh Rugby Union* [2003] EWCA Civ 584. There are broad statements in Sports Law by Beloff, Kerr and Demetriou (1999) at paragraph 3.25 and in Sport: Law & Practice by Lewis & Taylor at paragraph A4.82 which may assist Pontypool. However *Modahl* shows the need for careful analysis of the particular situation before the court. I have not been cited any case which points clearly to the answer here.

36. I will take first a submission made on behalf of Pontypool relying on section 33(1) of the Companies Act 2006. The section provides:

> "33(1) The provisions of a company's constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions."

The effect of the section is considered in, for example, Palmer's Company Law at paragraph 2-1117 and following.

37. Pontypool submits that:

> (a) Article 6(d) of the WRU's articles of association provides that 'each Member shall ..(d) conform with the provisions of those articles and regulations and resolutions of the Board of Directors';
>
> (b) Article 1 of the WRU's articles of association provides that the regulations in Table A in the schedule to the Companies (Tables A to F) Regulations as amended, and as modified by the articles, shall be the regulations of the company;
>
> (c) Table A provides in regulation 72 that 'The directors may delegate any of their powers to any committee consisting of one or more directors', and Article 63 of the WRU's articles of association provides that 'The Board of Directors may delegate any of its powers to any sub-committee … and Regulation 72 of Table A shall be modified accordingly';
>
> (d) The Rules were made by the Regulatory Committee pursuant to power delegated by the Board;
>
> (e) The effect of section 33 is therefore to give contractual force to the Rules as between the WRU and each member as they are 'regulations' of the company.

38. As I have set out, Article 1 of the WRU's articles of association states that the Table A regulations as modified shall be the regulations of the company. The WRU submit that 'regulations' as referred to in paragraph 6(d) is to be read in that sense. I consider that is correct. In my view paragraph 6(d) is to be as if it were set out as follows: the member shall conform with the provisions of these Articles and regulations, and with resolutions of the Board. The association of regulations with Articles indicates the meaning. I should note paragraph 6(e), which provides that each member shall 'conform with all IRB [International Rugby Board] bye-laws, regulations and resolutions relating to the Game and the Laws.' It appears here that 'regulations' must be being used in a wider sense. A second reason for rejecting Pontypool's submission, which is independent of the first, is that the obligation to conform is laid on the members and not on the company.

39. I think it appropriate to deal next with the requirement that members of the new Premiership enter into a Participation Agreement. For this is an important part of the picture. The preamble to the Participation Agreement sets out that the WRU has agreed to grant certain rights to the clubs in return for which the clubs have agreed to perform the obligations set out in the agreement. Clause 2 provides that it shall only come into effect when the WRU notifies the club in question that its application for

admission to the Premiership has been successful. The club agrees to participate in the Premiership and to comply with 'the Regulations', which are defined so as to include the League Rules. The 'Criteria' are defined as the criteria designated by the WRU for entry to and participation in the Premier Division as set out in Schedule 2. Schedule 2 reproduces much of Appendix A to Annexure 1 to the Rules, including section 2, Facilities. It does not include the spread sheet. Clause 10 provides for the review of the Criteria by the Criteria Review Panel on an annual basis, subject to the decision of the Board. Clause 12 provides that the participation of the club shall terminate immediately upon it becoming no longer eligible to compete in the Premier Division. There is no obligation directly imposed on the club to comply with Schedule 2. Clause 5.2 sets out the obligations of the WRU under the agreement. Clause 5.2.3 provides that, subject to the club complying with the 'Regulations' (which include the Rules), and meeting the terms of the agreement, the WRU will include the club in the Premier Division.

40. The agreement is clearly intended to be legally binding. This shows that the court is in an area where legally binding agreements may be appropriate. The agreement is, of course, dealing with the situation of clubs which have qualified for the premiership. It is not dealing with what they have to do to qualify. It is nonetheless part of the circumstances in which the legal questions relating to the qualification stage have to be considered.

41. I will next consider what contractual terms relevant to Pontypool and the WRU and binding in law, if any, are to be derived from the Rules themselves and their circumstances.

42. The Rules are not in the form of an agreement. Any agreement between a club and the WRU in relation to them has to be inferred from the terms of the Rules and the circumstances. The starting point must be whether there is to be inferred a legally binding agreement that, if a club meets the three matters required for the new Premiership, namely an A Licence, commitment to a Participation Agreement, and qualification on the basis of meritocracy, the WRU will admit it to the new Premiership. There is a broadly equivalent obligation in clause 5.2 of the Participation Agreement itself. In order to be in a position to attain the A licence requirements, a club is likely to have to spend money, perhaps substantial money. It might have to do so even if it already had an A Licence because its situation might have changed since it got the licence. This is the world of sport, but of commercial sport. I conclude that such a promise is to be inferred from the Rules and that it is one which the parties are to be taken as intending to have legal effect. The situation here is very different to that in *Modahl*, but I gain some encouragement towards reaching that conclusion from the judgments of Latham and Mance LJJ.

43. Does the meritocracy requirement mean that if a club does not come within the first ten it is automatically excluded from the Premiership regardless of whether clubs above it fail to obtain A Licences and are excluded? The WRU contended that it did. It submitted that if a club in the top ten by meritocracy failed to obtain an A Licence, even if the eleventh club had a licence and was prepared to enter a Participation Agreement it had no right to play in the Premiership. It was said that, although it had no right, it would probably be admitted as a concession. If that had been the intention, it would have been easy and important to have said so. It is significant that meritocracy is the last of the three requirements to be mentioned. The natural reading

is that those clubs which can satisfy the first two conditions will be selected in order of meritocracy. As I have set out, page 2 of the Rules states under the heading of numbers of clubs 'Up to 10 Clubs'. But paragraph 7 of Annexure A states 'The Premier Division in 2012/13 will comprise the 10 Clubs who have met the entry/participation criteria as at 31 August'. That is a fuller statement. Then follows the meritocracy criterion. There was never any suggestion in the discussions concerning the proposed reduction from 14 clubs to 10 that there might be less than 10. The meritocracy standings were known to the clubs on 9 May. If the WRU is right, from then on only the top 10 had a right to be in the Premiership. Nonetheless applications were sought and accepted from clubs outside the 10 including Pontypool. Ms Paterson was in close communication with Pontypool over its application for an A Licence. I am satisfied that she knew that it was wanted because Pontypool hoped that despite its position by meritocracy it could squeeze into the Premiership. She never told the club that it was misunderstanding the position. The WRU's understanding is shown by the minutes of the Executive Board meeting on 31 August 2011:

> "If formal planning consent for the stand built at Bedwas RFC [10th in the meritocracy] is not available by the 31st August, then subject to the outcome of the Club's right of appeal, Bridgend RFC [11th in the meritocracy] would secure a place in the Premier Division from the start of the season 2012/13."

It appears that this contrary argument has been developed in the light of the dispute with Pontypool.

44. It is a term of the agreement which I consider exists between the WRU and a club that the WRU shall assess the club for an A Licence in accordance with Appendix A. Having set out what is to be taken into account, the WRU would not be entitled to take into account matters not set out as a reason for refusing a licence. But as between a club and the WRU it is clear that the WRU could waive a requirement and grant a licence. Thus, on the assumption that Appendix A does provide for independent inspection of a club facility, the WRU is entitled to waive the requirement and to grant a licence even if there has been no such inspection. That is straightforward as a matter of contract law. It might be said that the WRU should not do so because there requirements are there for good 'benefit of rugby' reasons: but that is not a matter of contract but of discretion. Further, it is important that the Criteria Appeals Panel provides a means of obtaining extensions of time and of exemptions, a position which was well known to the clubs and utilised by Pontypool as I have set out.

45. The next question is whether it is a term of the agreement with a particular club that the WRU shall assess the other clubs strictly in accordance with the rules. Once it is accepted that as between the WRU and a club the WRU may waive a provision, or the Criteria Appeals Panel may act as I have set out, the answer to this question must be no. However that is not the end of the matter. It could, I emphasise 'could', be grossly unfair to waive a requirement in relation to one club but not in relation to another. So it is necessary to imply a term to the broad effect that there shall be fairness as between clubs in this respect. This would not, I think, add anything to the *Bradley* duty, a duty which the WRU accept. I would add that there might well be valid reasons to treat two clubs in different ways. It is important that the WRU's discretion to deal with a situation should not be usurped by the court. As to the latter important principle I refer to *Bradley* and to *Stevenage Borough Football Club v Football*

League Limited, Court of Appeal, 6 August 1996, pages 5 and 6, where a number of cases are cited in which this well-established principle was stated. In paragraph 16 of the WRU's closing submissions it was submitted that there was no obligation on the governing body of a sport to act fairly between its members. It was said that the court's intervention was limited to checking unreasonable or capricious behaviour and upholding procedural fairness in the context of disciplinary matters. In my view this is an area where the court's approach is particularly sensitive to the factual situation before it, and I suspect that there will be little difference in most cases between the position as I have set it out and that contended for by the WRU.

46. The provision as to the 31 August date is in strong terms. But it was apparent from Ms Paterson's evidence as to the Criteria Appeal Panel which I have mentioned, that this was in practice more a matter of bark than bite. As between a club and the WRU the requirement could in law be waived, but in practice the Appeal Panel appears the route which was used to grant an extension as I have described. As regards one club and the WRU's treatment of another club, again a broad requirement of fairness equivalent to the *Bradley* duty is to be implied. This is likely to be met by the Criteria Appeals Panel being available to all.

47. The spread sheet which is the last page of the Appendix refers to the use of an independent assessor to check club facilities marked in green (which include 'hard-standing covered accommodation for 1000'). The parties were disagreed as to the standing of this page. In my view the spread sheet has a triple function; first as a check list, second to set points for B Licence purposes; third to warn where independent inspectors might be used. It created no obligation on the WRU. It is also indicating that reference may be made to the Green Guide. It is not by this remote means importing the Green Guide as an additional requirement to be met for obtaining an A licence.

48. There was also a difference as to the meaning of 'independent'. It was submitted for the WRU that because the WRU used its own compliance department for facility inspections, 'independent' was to be given the meaning 'independent of the club'. I reject that. The use of 'independent' in a two party situation is well-established: it means independent of either party.

49. As I have said, it was not the WRU's practice to appoint an independent assessor to check the standing facilities for spectators. What was done according to the evidence of Ms Paterson was that a member of the Compliance Department would visit the club and make an inspection. It seems that it would be of a cursory kind. No attempt would be made to calculate how many could stand in an area. The club's word would be taken as to that. This was the position for all clubs.

50. Apart from the spreadsheet's reference to the Green Guide the only reference to safety in Appendix A is at the start of the facilities section, which refers to 'a safety management plan'. Nothing in the case has turned on safety management plans, and I heard no evidence as to what was involved. It is important in the context of this case to appreciate that the law does not place responsibility for spectator safety at club grounds on the WRU. Under the Fire & Safety of Places of Sport Act 1987 it is the responsibility of the local authority. Part of that responsibility is the granting or refusal of safety certificates. In *Stevenage Borough Football Club Ltd v The Football League Limited*, the Times , 1 August 1996, Carnwath J stated:

> "It is to be noted that the admission criteria developed by the League are not directly related to the statutory provisions governing safety of sports grounds. As is well known, these controls were considerably strengthened following the Hillsborough disaster in April 1989, and Lord Taylor's report (final report January 1990)."

In cross-examination Mr Stanton accepted that safety certificates requirements are a matter between the operator of a stadium and its local council. If the WRU took on a duty to check that safety requirements were satisfied, they would be usurping the functions of the local councils. That is not to say, of course, that the WRU should not act responsibly in any situation where issues of safety arose in accordance with what the situation required. But that cannot be anything to do with any contract between the WRU and a club.

51. With these conclusions as to the contract in mind I return to Pontypool's allegations of breach. I will take them as set out in paragraph 34 above:

> (a) and (b) There was no breach in not appointing an independent assessor to inspect club facilities for standing spectators. If an assessor had been appointed, he would have had no obligation to apply the Green Guide. Apart from the requirement for a safety management plan the Rules are not concerned with stadium safety. The Regulatory Committee did not misdirect itself as to this. It can be suggested that the WRU's letter to Geldards of 18 April 2012 did not accurately report the decision of the Regulatory Committee. If it did, as I have said, the Committee did not misdirect itself. If it did not, the Committee misdirected itself in favour of Pontypool. So that does not help Pontypool. If, as I canvass in paragraph 18, the committee held that, simply because Pontypool was not in the top ten by meritocracy, it was necessarily out, the Committee was wrong. This is not a point pleaded by Pontypool. But that is not something that can help Pontypool because the Committee should properly have held that Pontypool's points as to inspection of facilities did not provide a basis for allowing the appeal.
>
> (c) and (d) The WRU used statements of truth signed on behalf of the clubs to satisfy the WRU of matters which the WRU considered were appropriate to be dealt with in this way. The practice was well known and was recognised by the inclusion of a draft statement of truth as Appendix B to Annexure 1. On 6 April 2011 a meeting was held by the WRU which the Premiership clubs including Pontypool attended. It was known that the intended new criteria assessments were required by 31 August. The previous assessments had been undertaken prior to 31 January. At the meeting the clubs asked if it was necessary for further site visits to take place and whether submissions under finance, administration and structures had to be resubmitted. It was decided at the request of the clubs that clubs with A Licences need not have their facilities re-assessed. But any club whose situation had altered was required to inform the WRU. Otherwise, as I understand it, the position was to be covered by statements of truth. Clubs who did not have an A licence were necessarily in a different position because they had not previously been assessed, or at least successfully assessed, for an A Licence. This was a way of proceeding that was open to the WRU and was not in my judgment open to any objection

on the ground of unfairness. The case is that this practice failed to uncover alleged breaches of safety requirements. But, as I have stated, that is a matter for the relevant local authorities and does not arise under the Rules.

(e) The Regulatory Committee's recommendation was not part of the appeal process. It was within the power of the Board to accept or reject the recommendation.

(f) I will come back to the position relating to Bridgend and Carmarthen.

(g) It was not explained why a process was gone through whereby the Regulatory Committee's decision on Pontypool's appeal was submitted to the Board and upheld. I have not identified any provision to that effect. What was submitted for the WRU was that under rule 9(i) of the League Rules Pontypool had a further right of appeal and so had failed to exhaust its domestic remedies. That further right of appeal is to 'a Sub Committee appointed by the Board'. In view of the manner in which the decision of the Regulatory Committee was dealt with by the Board and the passage of time I do not think that Pontypool's failure to take advantage of this further appeal should be held against it.

(h) It is always open to the WRU to make such enquiries as to grounds as it sees fit. The first problem with Pontypool's argument is that it supposes that any non-compliance with an Appendix A requirement by a club automatically invalidates the licence. Once the A Licence has been obtained, the licence requirement for playing in the Premiership has been satisfied. It remains satisfied until it is established that the Licence should be withdrawn. The second problem is that the enquiries relate to safety matters which are outside Appendix A.

(i) It is wholly understandable that the Regulatory Committee did not consider the effect of the addition of Bridgend and Carmarthen. It does not seem to me that they were asked to. But one way or the other that does not affect the rights of the parties as they may be decided by the court, and Pontypool has had the opportunity to present its arguments to the court.

(j) This is a sweep up claim which adds nothing of substance.

52. In the previous paragraph I have considered the allegations of breach of contract and of duty as they are set out in the particulars of claim. However I think that the nub of the case may be found in the following. The court has not conducted an enquiry into whether clubs have submitted statements of truth to the WRU which were in error. Nor has it conducted an enquiry as to whether facility inspections carried out prior to 31 January 2011 were properly carried out and came to correct conclusions. It has not been provided with the evidence to do so. Evidence was submitted which showed that there was a question whether Swansea, Cross Keys and Bedwas – all in the top 10 by meritocracy, had included deregulated stands in order to meet the Appendix A requirement of covered hard standing for 1,000 spectators. A deregulated stand is one which the local authority has determined does not have a capacity of more than 500. That means that the stand does not need a safety certificate. If this has happened, and I repeat that I do not know if it has, it is a matter of concern. It is a matter which the

WRU are looking into. There is also a question with Swansea whether it has included seating which is additional to the seating required by Appendix A (described as grandstand seating for 501) as standing. (It might be thought that as seating is at first sight better than standing, this would not matter, and an exemption might be obtained to the appropriate extent. But that is not a matter for the court, and there may be other factors.) The position of Swansea is still under consideration as is set out in paragraph 65 of Ms Paterson's witness statement. The consequences of the outcome of its enquiries will be for the WRU to determine. The crucial point for the purpose of Pontypool's claim is that Swansea and Cross Keys held A Licences which had been granted in accordance with procedures which were well known to the clubs and which were fairly applied between them. Likewise with Bedwas and the acceptance that it met the requirement to have hard standing for 1,000.

53. It is unfortunate that having set up the Premiership for 2012/13 with 10 clubs in April 2011, in the following November as a result of pressure from two of the Regions in particular the WRU decided to add Bridgend and Carmarthen. It is, of course, correct that the addition of the two clubs was not provided for by the Rules as they then stood. A change of the Rules was required. New Rules have been prepared but have not been given effect pending the resolution of Pontypool's case. It must be accepted that the WRU has power to change the Rules. Nonetheless late changes of this nature might give rise to various arguments depending on the circumstances. But the issue as between the WRU and Pontypool here must be whether the late change involved unfairness to Pontypool such that the court should intervene. The answer to that is in my judgment plainly that it did not. This is because Bridgend and Carmarthen were 11th and 12th in the meritocracy. It was not unfair to Pontypool to enlarge the Premiership. It was not unfair to enlarge it by adding the next two clubs by meritocracy. The fact that they were added because they were Bridgend and Carmarthen does not change that. Pontypool's position was unaffected. If Pontypool had been ahead of them or one of them by meritocracy, then quite different arguments would have been open. It is, however, clear that the decision was to add these two particular clubs. If Carmarthen cannot obtain an A Licence, it will not be included. Bridgend already has an A Licence. I understand that Carmarthen's application for an A Licence is currently on hold pending the outcome of these proceedings.

54. It was submitted for Pontypool that the effect of what happened on 24 November 2011 was to increase the Premiership to 12 clubs so that if either or both of Bridgend and Carmarthen failed to meet the Criteria there would be a place for Pontypool. That was not the decision. The decision was to add the two clubs if they met the Criteria, and additional time was granted for them to do that.

55. I conclude that Pontypool has failed to establish any breach of contract or breach of duty on the part of the WRU and that there are no grounds for the intervention of the court.

56. In parallel with this case the English club, the London Welsh, which had won the English Championship, was trying to establish its right to play in the English Premiership as a consequence of its win. On 23 May 2012 the Rugby Football Union held that the club had failed to meet the relevant criteria for promotion because it could not meet the requirement as to primacy of tenure of its stadium. London Welsh appealed and its appeal was heard by a panel of three Queen's Counsel. The written reasons for the decision became available during the course of the preparation of this

judgment, and were provided to me by the parties. The club which would move down if London Welsh established its right to move up was Newcastle Falcons. It was agreed that Newcastle should participate in the hearing. That is in contrast with the present action - in which the clubs the subject of Pontypool's allegations have not been represented. (In fairness to Pontypool I should mention that if they had been made defendants the costs would have been greatly increased: Pontypool has not found it easy to fund the action as it stands.) The main argument before the panel was as to whether the rules as to the primacy of tenure requirement infringed applicable EU and UK competition law. It was held they did. The greater part of the Panel's 38 page ruling deals with this.

57. In addition to resisting the competition law argument Newcastle raised other arguments. These included a contractual argument that nonetheless London Welsh was not entitled to promotion because the club had failed to satisfy other "A" Criteria under the Minimum Standards Criteria promulgated by the Professional Game Board of the RFU, the MSC – paragraphs 11.2 and 83 of the panel's decision. The Criteria had to be met by 31 March 2012 – MSC 1.5 and 1.6. It was argued by Newcastle that London Welsh had failed to meet that date and under the MSC the RFU could not waive the requirement as the MSC specifically dealt with the circumstances in which waiver was permitted. The panel held that the RFU was entitled under the MSC to exercise a discretion to promote a winner if the winner had addressed its non-compliance to the satisfaction of the RFU – paragraph 88 of the decision. The decision does not address the contractual basis for the argument. It may be that this was not in dispute. As was stated in paragraph 2 of the decision the reasons for the decision were necessarily shortly expressed by reason of the urgency arising from the need of all parties to know where they stand.

58. In paragraph 3 of its decision the panel stated that the appeal engaged two general principles. The first was that promotion and relegation should be determined, so far as possible, by performance on the pitch. The second was that the rules governing the game and its organisation should be respected and applied by everyone. I would add that it is part of the latter that the rules governing the organisation of a sport should be both clear and comprehensive. By comprehensive I mean that the situations which may arise and how they are to be dealt with should be sufficiently covered. A balance is to be struck between legalistic drafting which seeks to address every possibility (and which thereby invites unwelcome legalistic dissection) and the insufficient and unclear. I suspect that the WRU will be looking at what has happened in the Pontypool case to see what is to be learned as to its practices, procedures and rules.

59. The decision in this case has been a matter of urgency. I have not dealt fully with every submission made on behalf of Pontypool, but only with those which are relevant to my conclusions. But I trust that my reasons for refusing Pontypool's application for the court's intervention are clear and sufficient.