tax justice network

Doing SFA for Fair Play?

A report from



tax justice network

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The Tax Justice Network and the Offshore Game

The Tax Justice Network is an independent international network launched in 2003. We are dedicated to high-level research, analysis and advocacy in the area of international tax and the international aspects of financial regulation. We map, analyse and explain the role of tax and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. The world of offshore tax havens is a particular focus of our work.

The Tax Justice Network started the Offshore Game project because of the potential for the toxic combination of poor regulation and financial secrecy (often driven by tax avoidance) to damage the integrity of sport.

In our first report, The Offshore League, we studied the extent of offshore ownership in the UK professional leagues. We found that 25% of British football clubs were significantly owned by offshore entities. In total this accounted for £3bn in investment.

We highlighted a particular issue in that many clubs were overloaded with debt from mysterious offshore creditors. The risk was that fans could not know the financial health of the company lending money to their team. If the offshore entity's circumstances changed, unseen, removal of support for the club could leave it in serious financial difficulty.

For fans of Bolton Wanderers, this happened at the end of 2015, when the Fildraw Trust of Bermuda precipitated a cash crisis that saw the club stop paying its tax and under challenge from HMRC, come seconds away from bankruptcy.

Of course this is not the first time such things have happened. The club at the centre of this report, Rangers, was put into liquidation in 2012 when a tax avoidance scheme went wrong.

Background to this report

In 2015 our project on financial secrecy in sport, The Offshore Game, was provided with a series of documents relating to the collapse of Rangers Football Club, and their tax dispute with the HMRC. Some of these documents originated from Rangers Football Club and a number of them had been made public though a leak on social media. Others came from sources such as court records.

Our interest is not in the role of individual clubs or their staff, but rather in the systemic issues that these documents raised – in particular, how regulatory authorities are able to deal with issues related to financial secrecy in order to protect the integrity of sport for the fans. This analysis therefore focuses on two specific issues raised by the documents, and which confronted the Scottish football regulators as the financial mess at Rangers unfolded.

Authors of this report

George Turner was the lead author of this report, working with Alex Cobham.

Summary of conclusions

Issue 1 – The SPL inquiry into rule breaking at Rangers

The first concerns the judge-led Commission set up by the SPL into alleged rule breaking by Rangers in the run up to their collapse.

The Commission considered whether Rangers should be stripped of a series of league and cup titles. The documents reveal that the then President of the SFA, Campbell Ogilvie, misled the public and the judge presiding over the inquiry, which led them to make a material error of fact in their judgement.

The fact that Mr Ogilvie had previously been one of the longest serving officials in the history of Rangers Football Club clearly raises questions as to the motive behind his statements – since the inquiry's own findings imply that, in full possession of the facts, they would have to have reached a different decision and possibly have stripped titles from Rangers.

Issue 2 – Rangers' licence to play in Europe 2011/2012

The second issue concerns the grant and retention of a licence to play in Europe to Rangers in the 2011/12 season, when the finances of the club suggested it was on the verge of imminent collapse.

UEFA rules are clear that in order to get a licence to play European football a club must prove that it has no overdue payables to tax authorities. Our analysis of the evidence shows that Rangers clearly had an overdue payable as defined in the UEFA rules and could not have met that test.

However, regardless of this, the SFA did grant Rangers a licence. Although the SFA were informed by Rangers of an on-going issue concerning a large tax bill, they accepted Ranger's erroneous argument that this did not break any UEFA rules.

It appears that the SFA did little to test the explanation regarding the status of the bill given by Rangers, and subsequent correspondence reveals an unhealthy degree of co-ordination between Rangers and the SFA over the PR around the decision.

As history unfolded, Rangers were knocked out before reaching the group stages of the Champion's League. Had they managed to achieve victory in the qualifying rounds, they might well have gained the resources they needed to keep the company afloat and pay the overdue tax bill based on Champions League income, thwarting the very purpose of UEFA FFP Articles in respect of overdue tax. Instead, Rangers went into administration and other Scottish clubs were denied a chance to play European football. That was not only unfair, it came at a cost to those clubs. Also, had Malmo and Maribor, not won their qualifying games against Rangers, for them, the consequences of this breach in the fair play rules would have been far more serious.

The crucial role of sport regulators

In sports, regulators have a particular responsibility. Although legally football clubs are structured as any other business, football clubs have a far greater significance and meaning to most people than any other business. If your local supermarket goes bust, you just try the one down the road. Football loyalties are not so easily switched; at The Offshore Game, we are yet to hear of anyone having their ashes scattered in the aisles at Tesco.

It therefore must be a priority for football regulators to make sure that football clubs are well managed and financially sound, so that they continue to provide joy and disappointment (in unequal measure) to their fans.

Regulators also have a duty to ensure fair play, over and above the usual rules that govern competition between companies. To ensure that competition stays on the pitch and doesn't retreat behind the closed doors of the boardroom, regulators must make rules to ensure clubs do not gain unfair and unsporting advantages over others.

Finally, and perhaps most importantly, in order to execute these functions, a regulator must itself be fair. To preserve the integrity of the system, the regulator must be beyond reproach, and behave in a way which does not produce any suspicion that that they might be exercising their power unfairly, in favour of one team over another.

It is on this last point, that The Offshore Game team have serious concerns about the behaviour and conduct of the Scottish Football Regulator, the Scottish Football Association (SFA).

SFA not fit for fair play

Ongoing court cases prevent comment on a number of aspects of Rangers' liquidation, and the subsequent sale of the assets which allowed a team to play again at Ibrox. It may well be that the current criminal trial concerning some of the former directors of Rangers may bring out more regulatory failings.

The two cases that are dealt with in this report, which have nothing to do with the matter under consideration by the criminal court, call into question whether the SFA can be considered a fair and impartial regulator of Scottish football.

This is a question that the SFA has, thus far, flatly refused to answer. And that itself points to a much bigger question: is the SFA an organisation capable of fixing itself and adopting the required standards of transparency, accountability and fairness that fans of Scottish football deserve?

The evidence presented in this report does not amount to proof of corruption, and we do not allege corruption at the SFA. But the **evidence does strongly suggest that the SFA is unable, if not actively unwilling, to ensure fair play.** Major changes in personnel and governance structures will be necessary if the SFA is to show itself fit for purpose.

The first step to restoring confidence would be for the SFA to engage with UEFA over the clearly misleading returns Rangers' submitted to them in order to get a licence to play European football in 2011. Secondly there needs to be a **fully independent inquiry**, including substantial fan representation, to assess the role of the SFA and the actions of key, senior staff in respect of each issue outlined in this report; and with a mandate to learn from more accountable sports authorities in other fields and to recommend sweeping governance changes to the SFA if deemed necessary.

1. A taxing issue

The financial decline of Rangers, which led to their eventual bankruptcy, has a long and complicated history. But the club's wholesale involvement in tax avoidance was an important factor.

In the late 1990s the club employed the services of a tax advisor called Paul Baxendale Walker. Walker, who later would leave the tax advisory industry to become a porn star and adult publisher advised the club's parent company, owned and run by (now Sir) David Murray, that they could avoid paying income tax if the staff were paid though an offshore trust.

This began life in 1999 as the Rangers Employee Benefit Trust (REBT) that subsequently became part of The Murray Group Management Remuneration Trust (MGMRT) in 2000/2001. Of course, without having to withhold 40% of a players earnings in taxes a much larger pot was left to allow Rangers to pay higher wages and compete with local rivals and other European clubs.

In order for the employee benefit trust (EBT) to work as a tax avoidance scheme, the payments from the trust needed to be independent of the club. If HMRC could see that Rangers players were being paid to play, then they could tax any payments as if the players were being paid directly by the club.

To get around this problem, Rangers' contracts registered with the SFA did not include the EBT payments. However, the players were not going to simply rely on getting the trust payments on trust. The club therefore issued 'side letters' to the players, guaranteeing payment. These letters promised payments but the terms and the existence of the agreement was kept out of the player's contract and away from the eyes of the revenue and the SFA.

Unfortunately for Rangers, HMRC found out about the arrangements after the club had originally denied their existence – a much more grave offence. This precipitated demands for payment of taxes going back years.

Two EBT schemes, two tax cases

Although a very large number of payments to many players over a number of years are now referred to as being made via EBTs, there were in fact two quite different schemes run through the trust. And the difference is fundamental to understanding the issues raised by this report, the failures of the SFA and the consequences for Scottish Football. While the details below are of some interest, the crucial point is a simple one: while there remains dispute about one scheme, **Rangers accepted fully that the other had failed and that a significant tax liability was due**.

The Big Tax Case

The most well-known of the tax avoidance schemes is the subject of the 'Big Tax Case'. This scheme under the MGMRT involved the EBT making a series of loans to other offshore sub-trusts. Usually these trusts would be established for the benefit of the families of players or employees of the club.

The Big Tax Case is the subject of an ongoing dispute between HMRC and Rangers in liquidation (Oldco). After losing two rounds in the specialist tax court, which found the scheme to be a legally acceptable means of avoiding tax, HMRC won an appeal at Scotland's Court of Session in November 2015.

The judges in Scotland's highest court found that the payments made by Rangers to the EBT clearly arose out of the player's employment and therefore should have been subject to PAYE.

BDO, the administrators of Rangers (Oldco) have now won the right to appeal the case in the Supreme Court, and so the case continues.

The Wee Tax Case

Before the 'Big Tax Case' was a case that became known as the 'Wee Tax Case'. This scheme also involved the EBT, but was constructed differently. It was called a Discounted Options Scheme (DOS, or DOS EBT) used under the REBT.

The scheme worked by the club creating offshore shell companies which were given to players. The employee benefit trust would put cash in the company but in return would have the option to take control of the company in the future. This made shares in the company technically worthless to anyone other than the trust who held the option on the company.

The 'worthless' shares would then be given to the player and the option to take control of the company would be allowed to expire by the trust. The player would then have ownership of a more valuable company with control over cash.

The REBT Discounted Options Scheme pre-dated the MGMRT scheme in the Big Tax Case and was only used to pay three leading players: Craig Moore, Ronald De Boer and Tore Andre Flo.

We can only speculate as to why this scheme was only used for three players. Perhaps Walker and others at the club quickly realised that the scheme would be much more likely to fail than the scheme they later constructed, and rightly so.

HMRC considered the Rangers DOS scheme to be unlawful. By the time they came to challenge Rangers on the matter they had already successfully defeated a similar scheme run by Aberdeen Asset Management through the courts.

Rangers' tax barrister, Andrew Thornhill QC (currently facing misconduct charges with regard to using charity money to invest in a tax avoidance scheme), advised that the club settle with the HMRC. In his advice to the club, which has been seen by The Offshore Game, Thornhill says[1]:

> *"the deciding factor in favour of settling the matter is the existence of side letters in two instances demonstrating that there was a true intention of putting cash into the hands of the players as part of their remuneration package. It does not help either that the existence of these letters* ***has been denied or not revealed by the club****. In this state of affairs, it would be sensible to seek a settlement. It appears to be HMRC's wish. I would strongly recommend this course."*

The two side letters referred to by Mr Thornhill were with regard to Tore Andre Flo and Ronald de Boer. Correspondence between Rangers and the HMRC from 2011, also seen by The Offshore Game, further confirms that the club had accepted liability in these two cases on 23 March 2011, and that HMRC were seeking a payment of £2.8m.

[1] Thornhill's advice is contained in Annex VI along with correspondence from HMRC concerning the DOS scheme

Echoing the warning from Thornhill that the attempt by Rangers to conceal the side letters would not weigh in their favour, a letter from an HMRC inspector says, “I have decided to make these assessments as it is my view that the amounts reflected in the assessments arise due to the **deliberate failure or fraudulent behaviour** of the company”. The letter goes onto describe the side agreements as a “sham set of arrangements”.

Despite agreeing with the HMRC that they owed them £2.8m in taxes, Rangers continually refused to pay. That compelled HMRC to seek a bankruptcy order from the court, which was one factor which forced the club into liquidation.

The Lord Nimmo Smith Commission

It was not just HMRC who had been kept in the dark about side letters and offshore trusts at Rangers. To reduce the risk that HMRC would find out about the side letters, these documents were also withheld from the SPL and the SFA – even though regulations required all documents relating to player payments to be filed for players to be considered as properly registered.

After the company was put into liquidation, details surrounding the unpaid tax bills, the trust and the side letters emerged, along with accusations that Rangers had broken SPL and SFA rules.

The SPL set up an inquiry led by Lord Nimmo Smith, a retired Supreme Court judge who had presided over the trial of the Lockerbie bombers. Lord Nimmo Smith was supported by two QCs.

The commission was charged to look into the arrangements of a group of ‘specified players’ where it was known that the club had written ‘side letters’ detailing payments from the employees benefit trust, whether the arrangements broke SFA rules and if they did what sanctions should be imposed.

Tore Andre Flo was one of the players listed by the inquiry as a ‘specified player’. He was paid using the DOS scheme and the Big Tax Case scheme, De Boer did not appear on the list of specified players despite the fact that Rangers did have a side letter with the player and that this was known by HMRC and the club. In Craig Moore’s case there was no side letter and he did not appear as a ‘specified player’. His case was not pursued by HMRC because the absence of a side letter meant there was no evidence to show a deliberate attempt by the club to conceal the scheme in his case, and so HMRC was not able to extend the usual six year limit to reopening someone's tax affairs.

Strangely, between the initial investigation being announced and consequent terms of reference being established, the time period that the Commission would cover was changed. The effect of this was to exclude De Boer and Moore and the irregular nature of their EBTs from the inquiry. We asked the SFA why this change was made, they refused to answer.

The result

The inquiry found that although Rangers had broken SPL/SFA rules by not declaring payments to the SFA, there should be no sporting sanction imposed. Rangers would not see any points penalty imposed for the time they were breaking the rules and would be allowed to keep their titles. The decision of the commission is Annex II to this report.

It was a controversial decision. In 2002 Rangers had won the Scottish Premiership on goal difference. Ronald de Boer, who was paid by the club's DOS EBT, but was strangely left off the list of specified people was the club's top scorer.

Key to the ruling that no sporting sanction should be imposed was the finding made by the commission that the payments to players were legitimate in tax terms – so that in theory at least, any other club could have made the same arrangements, and no sporting advantage accrued. This finding was made after a tax tribunal in the Big Tax Case had found in Rangers' favour, and the commission specifically referenced the tribunal findings.

That finding has now been overturned by Scotland's Court of Session and awaits a further appeal to the Supreme Court. The ruling of the Court of Session has led some people to call for Rangers to be stripped of their titles, or have the inquiry reopened. However, the original finding by the commission was wrong in any event. As is described above, the Big Tax Case concerned only one of the tax avoidance schemes operated by Rangers. *Rangers had accepted as unlawful t*he DOS scheme in use by the club during the period covered by the inquiry. The inquiry was simply wrong on the central fact that the EBT scheme used by Rangers was legal and open to any other club.

It appears that commissioners were aware that there was at least one other trust being used by Rangers to pay players, however the inquiry's conclusions assumed that there was no difference in the way payments were made. It is clear that the inquiry was not made aware of the agreement between HMRC and Rangers on the DOS scheme but instead believed that all payments were made using the second scheme which the tax tribunal had upheld as lawful.

The Commission document states:

> *"We note that the Murray Group Management Remuneration Trust was preceded by the Rangers Employee Benefit Trust, but we are not aware that they were different trusts. We shall treat them as a continuous trust, which we shall refer to throughout as the MGMRT."*

The cover-up

The crucial information about the DOS scheme was apparently unknown to the commission, yet it should have been well known to people giving evidence to the commission – people who appear to have withheld that information from the inquiry.

One man who could certainly have told them about the DOS scheme was Campbell Ogilvie. Ogilvie had been one of Scotland's longest serving football administrators having become assistant company secretary at Rangers in 1978, rising to company secretary a year later. He was a director of the club when the employee benefits trusts were being set up. By the time he gave evidence to the inquiry he had become president of the Scottish Football Association.

He was the only person to give evidence in person to the commission on the introduction and administration of the tax avoidance scheme. Two others, Andrew Dixon and Douglas Odam, both Rangers officials, did not appear before the commission but their evidence appeared in writing.

Ogilvie was later put under considerable pressure when it was revealed that he had himself been a beneficiary (to the tune of £95,000) of the employee benefits trust, and

after the payments to players were held to break SFA rules faced calls to resign as President.

However, before the inquiry and in a number of public statements since Ogilvie claimed not to know any details of the trusts. He said to the inquiry that he had only been made aware of the existence of the employee benefits trust in 2001 or 2002 when a payment was made to him though the trust. He understood the payment to be non-contractual and only after that did he discover that the trust was also making payments to players. He said he did not know any of the details about how they operated as the EBTs were not within the remit of his role. He told the inquiry that he had not been involved in preparing documents relating to player's contracts since the early 1990s. The inquiry decision quotes Mr Ogilvie as saying:

> *"Nothing to do with the contributions being made to the Trust fell within the scope of my remit at Rangers".*

Douglas Odam, finance director at Rangers (EBT: £119,000), supported Ogilvie and told the inquiry in his written statement that although the concept of the employee benefit trust had been discussed at a meeting of the board of Rangers he could not remember which board members were present and details of player contracts were not normally discussed at board meetings.

However, documents seen by The Offshore Game show that Mr Ogilvie not only was aware of the arrangements set up by the club, he was in fact a central figure in establishing the discounted options scheme used to pay Craig Moore.

In a letter dated 3 September 1999 signed by Campbell Ogilvie on behalf of the club, Rangers took control of an Isle of Man company called Montreal Limited. The company was managed by the Jersey branch of the Allied Irish Bank.

The letter from Mr Ogilvie makes it clear that the purpose of the company is to provide remuneration to a valued employee of Rangers Football Club.

Just over two weeks later, on September 16th the Board of Directors of Rangers Football Club met. The only board members present were David Murray, the Chairman (EBT: £6.3m), Campbell Ogilvie and MacDonald. Douglas Odam also attended although he was not a member of the board.

The minutes of this meeting, also seen by The Offshore Game, show that the only item of business discussed was "remuneration planning for the company's employees". The minutes note that Mr Ogilvie had taken control of Montreal Limited on behalf of the club and the three board members then resolved to give ownership of Montreal Limited to Craig Moore: the key transaction in the DOS EBT scheme. The correspondence from AIB revealing Mr Ogilvie's role is contained in Annex III to this report.

Although it appears that HMRC did not take action with regard to the Craig Moore discounted option scheme, it was the same scheme that was used to pay Tore Andre Flo and Ronald de Boer. In those cases the club accepted that the payments were unlawful due to the existence of the side letters. Crucially, payments into this scheme was made by the Rangers Employee Benefits Trust.

Although we have seen no evidence that Mr Ogilvie played a similar role in setting up the schemes for Ronald de Boer and Tore Andre Flo, his statement to the inquiry that "nothing

to do" with contributions to the employee benefit trust came under his remit at Rangers, is clearly false.

Mr Odam certainly did know about the agreement with Ronald de Boer. A letter from HMRC to Rangers notes that Mr Odam wrote to him setting out the exchange rate between Dutch Guilders and Euros that would be used to make payments to him though the discounted options scheme after Holland switched to the Euro in 2001.[2]

Finally there is the Barrister for Rangers (oldco) James Mure QC. He represented the club to the inquiry. HMRC had rejected attempts to take Rangers out of administration and forced the club into liquidation. Mr Mure was instructed by the administrators of Rangers to represent the club. Is it really plausible that he knew nothing about the DOS scheme?

Questions and no answers

We put questions to Campbell Ogilvie, the SFA and James Mure QC about these issues. Mr Ogilvie simply didn't reply to our attempts to contact him. The SFA declined to comment and Mr Mure cited client confidentiality in his refusal to answer questions. The correspondence is included in Annex I.

Conclusions on the issue concerning the inquiry into rule-breaking

It seems scarcely credible that Campbell Ogilvie, President of the Scottish Football Association, could not have been aware of the differences between the two tax schemes, or of any details surrounding the DOS scheme when he gave evidence *on behalf of the SPL* to the judge-led inquiry. Perhaps he simply forgot, and by chance that forgetfulness saved his longstanding club and employer from being stripped of many titles.

What is not credible is the SFA's response. When presented with evidence that the inquiry into the breaking of *their* rules had been misled by *their own* former President, with the result that a club they regulated may have wrongly held won championships, it cannot be acceptable that the SFA say nothing.

Changes are clearly needed in relation to the handling of conflicts of interest within the governing body, and to the processes of member club accountability for malfeasance. In relation to the specific case at hand, it is difficult to see a continuing role for those involved in the decision-making at the time, and in the subsequent failure to address the demonstrated errors of the inquiry's findings.

[2] Included in correspondence between HMRC and Rangers, Letter from Douglas Odam to De Boer which can be seen in Annex VI to this report.

2. Did the SFA wrongly grant Rangers a licence to play in European competition?

The 2011/12 season presented particular difficulties for the board of Rangers Football Club. The club was already losing money and had received a demand for payment from HMRC over the unpaid tax bill in the DOS case. It was also shortly after UEFA's Financial Fair Play regulations came into force.[3]

Financial fair play was designed to limit the compensative advantage that clubs could gain though money. The most high profile rules were the obligation not to run large losses, which compels clubs to live within their means.

However, other rules included as part of the financial fair play package compelled clubs to be up to date with payments to players and to tax authorities. The principles behind these rules are clear: it is wrong for clubs to gain an advantage over their opponents by dodging their tax obligations, and it is wrong for the sport as a whole to condone any such undermining of the social contract.

Documents we have seen show that Rangers failed to report an outstanding tax liability to the relevant authorities when obtaining a licence to play in Europe for the 2011/2012 season. Had UEFA known about this the European place may well have gone to another club.

The rules

UEFA's financial fair play rules govern how a licence to play European football is given. The licensing authority is the national football association – in Scotland, the SFA; overseen by UEFA.

The relevant reporting dates under the rules are 31st March, 30th June and 30th September. At these dates a club must prove that they do not have an outstanding tax liability, or 'overdue payable' as they are referred to in the rules.

The obligations about what constitutes an outstanding tax liability, or overdue payable, are clearly set out in the UEFA Financial Fair Play Rules. Under the rules a payment is overdue if it is not paid by the usual deadlines. However, if a club receives a written agreement from the tax authorities that it can pay later, or if the club is in a legal dispute with the tax authorities over the bill, the rules do not apply.

The rules were tested in the courts after Malaga went to the Court of Sports Arbitration after they received a ban from European competition in part due to an unpaid tax bill. The court in the end found in favour of UEFA.

The judgement confirmed that in order to meet the rules a club must have a written agreement in place to pay any outstanding tax liability. Ongoing discussions do not count, and crucially for the Malaga case, the UEFA rules have primacy over any national legislation about how tax liabilities are paid. Even if the national law doesn't require a written agreement between the parties as discussions are ongoing, UEFA rules do, and they take precedence.

[3] The relevant extracts from the UEFA rules are included in this report as Annex IV/ The Malaga ruling is Annex V

Rangers, and the timing of unpaid tax bills

Since it is still, years later, the subject of an ongoing dispute in the courts, the Big Tax Case clearly falls outside of the UEFA rules.

The Wee Tax Case (the DOS EBT), however, does not. This is because Rangers had accepted this liability, and then refused to pay. In fact, their continuing refusal subsequently led HMRC to send around the Sheriff to collect the bill on the 10th August 2012.

The issue becomes one of timings. When did the liability become overdue? Did Rangers report their tax obligations correctly at the relevant dates?

Timings: 31 March deadline

Rangers had been in discussions with HMRC about the DOS scheme since at least November 2010. The dispute with HMRC related to tax years 2000-2003, and HMRC had looked into the issue in 2005. At that time, Murray Group specifically denied the existence of the side letters. These letters would however later be disclosed (presumably by mistake) when HMRC started looking into the Big Tax Case.

The tax in question was Pay As You Earn. Rangers failed to withhold income tax from payments made to players and to pass them on to HMRC. PAYE returns are due shortly after the tax year ends, and so by 2010 Rangers were already a decade overdue with their payments.[4]

On 26th November 2010 HMRC offered to settle the matter on the same terms as Aberdeen Asset Management had settled their DOS liability.

In a meeting with HMRC on 10 February 2011 Rangers said that they would make a decision over whether to settle on those terms by the end of the month. So at the very least, by February 2011 HMRC thought there was an overdue tax liability and no written agreement in place on when it should be paid.

On 3 March, Andrew Thornhill QC, barrister for Rangers strongly advised the club to settle for the amount proposed by HMRC. His advice was that Rangers had little chance of a successful appeal, particularly in the circumstances when Rangers had been caught deliberately misleading HMRC over the nature of its agreement with players.

On March 21st a hand written note on a spreadsheet detailing tax liabilities suggests that the proposal to agree a settlement of £2.8m had been put to HMRC by Mike Mcgill of Rangers and HMRC had accepted the proposal on the same day. However, there is no specific mention of this anywhere else in the documents. This correspondence can be seen in Annex VI.

However, in May HMRC issued a formal offer to settle and pay within 30 days. In that letter it was said that Rangers had already accepted the liability.

By March 31st, the deadline for reporting an overdue tax liability, Rangers did report that they had a 'potential' liability to HMRC arising out of the DOS scheme in their declaration to the SFA. The SFA issued a UEFA licence to Rangers on the basis that the 'potential' liability was not an overdue payment under the terms of the UEFA rules.

This description of the liability being ‘potential’ appears to be at the very least misleading. The liability went back 10 years. Rangers were aware of their liability since at

[4] This point is acknowledged in the proposed settlement document which states that the tax became due in 2000 for Craig Moore.

least 2005 when they attempted to conceal the payments. Rangers had been in discussions over the amount due since later 2010 and the club had been advised the settle the matter by their barrister before 31st March. It appears that the club had taken that advice and told HMRC that they accepted the liability either before or shortly after 31st March.

Interestingly, in January 2012, when the HMRC claim had become public knowledge Stewart Regan, CEO of the SFA, suggested on Twitter that a licence had been granted to Rangers because the bill was being disputed. That was clearly not the case.

Timings: 30 June deadline

Whatever the position on March 31st, by the time that the second reporting deadline of 30th June was reached there can be little doubt that Rangers had an overdue payment to HMRC.

In the letter of May 5th HMRC say that they will start formal enforcement proceedings against the club if they do not receive an agreement to pay the bill by May 16. Then in a letter dated May 20th, HMRC issued a formal determination of the tax to be paid under regulation 80 of the PAYE regulations. The letter notifying Rangers of the determination cites two previous letters issued on 23 February and 16 May, which clearly indicates that no agreement had been reached. Correspondence from HMRC to Rangers on this issue is included in Annex VII.

Normally, under PAYE, an employer calculates the tax due, withholds it from an employees pay and pays it to HMRC shortly after the tax year. If HMRC dispute the amount this can be adjusted at a later date.

Regulation 80 permits HMRC to determine for themselves the amount of tax which is due from an employer. Regulation 80 determinations are issued in cases where no agreement has been reached with the employer over how much tax is owed. It is an important stage in proceeding to enforcement because it establishes the liability which can later be recovered through compulsion if necessary.

Employers can appeal a determination and have thirty days to do so. Otherwise the determination becomes final. Rangers did not appeal.

Rangers did not appeal, and continued to accept that it needed to pay HMRC for its liability arising from the DOS scheme. On 3rd June in a circular to Rangers shareholders it was confirmed that the terms of the acquisition by Craig White included a commitment to pay the club enough money for them to settle 'a liability' arising from the DOS scheme. The circular is included as Annex VIII.

Instead of settling, on June 6th, MCR Consulting, on behalf of the new ownership of Rangers wrote to HMRC offering to contribute £200,000 towards the bill. In the letter MCR committed to come forward with a further proposal for how the rest of the bill would be paid by June 17th. There is no record of that proposal being put to HMRC, however, on June 30th, the day Rangers is supposed to report to UEFA any unpaid tax bills, an email from Keith Olverman, the finance director of Rangers wrote in an email that the liability would be disclosed to the SFA in the June 30th return, but it would be marked as awaiting scheduling of payments. Correspondence on this issue is included as Annex IX.

This suggested that the club was waiting to hear from HMRC about when payments should be made, however, in reality, HMRC had already been seeking full payment since at least February of that year and would reject a later offer from Rangers to spread the payments over three years.

It is beyond doubt that there was no written agreement in place between HMRC and Rangers at the time of the 30th June deadline, as would be required under the Financial Fair Play rules. That HMRC were choosing not to enforce the debt, giving Rangers the opportunity to put forward further proposals is immaterial.

In the end, no agreement was reached and HMRC started court action to recover the debt in August 2011.

Role of the SFA

That the SFA appear to have been negligent in dealing with Rangers' licence to play in Europe in the 2011 season is one thing. However, there appears to be evidence that the SFA colluded with the club to cover up their failings after news of the dispute between Rangers and HMRC became public.

By December 2011 there was growing speculation about the tax position of Rangers and whether the club would be given a licence to play in Europe the following season. Stewart Regan, Chief Executive of the SFA met with Andrew Dickson and Ali Russell of Rangers on 6 December to discuss the matter.

On 7 December Regan drafted a statement for the press based on the conversation he had had with Rangers and sent it to Dixon and Russell for their approval.

That statement acknowledged that in their March 30st UEFA declaration, Ranger's accountants had submitted to the SFA that the club had a potential tax liability of £2.8m arising out of the DOS scheme and that the club remained in discussions with HMRC over the matter.

The statement went onto say that as the potential liability was under discussion with HMRC it could not be considered an overdue payable.

However, as is clear from the chronology above, that was not an entirely accurate account of events. In reality, Rangers had accepted liability (i.e. it was *actual* rather than potential) either before or very shortly after the March deadline. This liability was for taxes which had become due ten years earlier, for payments which the club had deliberately concealed from HMRC. Although there may have been ongoing discussions about how Rangers was to pay, no written agreement had been made with HMRC about payment.

The email from Regan caused panic at Rangers, who feared it would create more questions than answers. Given the answers that some of those questions may have revealed, they were right to be worried. Ramsay Smith, from the club's PR advisors advised that directors at Rangers should 'put pressure' on the SFA not to say anything at all unless asked directly by the media.

In the end the statement was dropped after protests from Ali Russell. As a result of the exchange, Stewart Regan and Campbell Ogilvie then subsequently agreed to go for dinner at the Hotel du Vin with Craig Whyte and Ali Russell to discuss 'bigger issues'.

Conclusions on the UEFA issue

It is important to bear in mind what was at stake when Rangers applied for a licence to play in European competition.

In the years leading up to the 2011/2012 season Rangers had become dependent on Champions League revenue for financial survival. As became apparent later, losing out on the revenue could have catastrophic consequences for the club.

In that situation, there were huge incentives for representatives of the club to do everything they could to ensure entry into Europe was not derailed by any administrative procedures.

It is also obvious, that if the rules had not been met, and Rangers had gained entry to Champions League qualifying rounds when they should not have done, then that unfairly denied another club revenue and the chance of Champions League glory.

We cannot say, that if UEFA had been fully informed about the situation at Rangers regarding their tax liabilities on the DOS scheme they would have banned the club from European competition. They did take that step with Malaga, but it was a far greater liability, and there were other irregularities with the Spanish club too.

It is, however, beyond doubt that the returns filed by Rangers were not accurate with regards to their tax liability. That is as serious an issue as if Rangers had gained entry to the Champions League against the rules, because it denied the authorities the opportunity to make the correct decision, and as a result potentially excluded other clubs from a shot at the vast wealth of the Champions League.

On top of that, Scottish football was represented by a weakened club with limited prospects of success – so that Rangers' obtaining of a licence contributed, in effect, to damage the national UEFA coefficient on which the future qualification of Scottish teams for European competition depends.

It is unclear how far the SFA were themselves misled. What appears to be obvious, is that the SFA asked few if any searching questions to test Rangers' tax status, when it should have been their duty to do so once they had found that Rangers were having issues with their tax affairs.

The close relationship between the SFA and the club is also a concern. It is difficult to imagine any regulator, in any other sector, running press statements past the people they were regulating for approval. It is even more difficult to understand how a regulator can be seen to be impartial if it drops public statements it was planning to make about a company they regulate on the request of the company and arranges a private dinner between the chief executives in the following weeks.

The key point is this: the SFA had the right to check with HMRC directly the status of Rangers in respect of tax liabilities (that is, of overdue payables). From public information alone, no regulator could possibly have argued against carrying out such a check. And such a check could only have provided the answer that there were indeed overdue payables – either at 31 March, 30 June or both.

We do not know if those checks were not carried out, or if they were carried out and the results ignored. In either case, **there was a fundamental failure by the SFA to meet its responsibilities towards Scottish football**.

Findings and recommendation

Effective regulation is of fundamental importance to any sport. In all sports there will always be pressures to try to gain an unfair advantage through off-pitch activities. For this reason it is crucial that regulators are fair, effective and impartial. And since public confidence is critical for fan support and the viability of sports, regulators must also be *seen to be* fair, effective and impartial.

The cases analysed here shows the Scottish Football Association's involvement, as regulator, in important decisions that had wide and far reaching impacts on competition in the Scottish game. The stakes could not have been higher. When Lord Nimmo Smith was investigating allegations of rule breaking at Rangers, the club might have been stripped of a number of titles. In the second case, the issue was the club's entry into the Champions League – with implications for other clubs that might have competed instead, and for the national coefficient that determines future European access for all clubs.

The way in which the SFA dealt with these cases, which saw it present misleading evidence, hold obvious conflicts of interest and engage in inappropriate behaviour with regard to its regulated clubs, raises real questions as to whether the SFA is fit for purpose, or capable of being considered a fair and impartial regulator.

For too long, the response of the SFA and its senior staff to questions of this nature has been silence. Rather than ignore the obvious issues raised by the evidence highlighted in this report, the SFA should immediately take action to rectify their previous failings. This includes reporting to UEFA the inaccurate returns made by Rangers with regard to their European licence.

But the issues raised by this report can't be dealt with by fixing past mistakes alone. We therefore recommend the establishment of a **fully independent inquiry**, as a crucial step to begin the slow process of re-establishing the legitimacy of Scottish football's regulatory body. Such an inquiry should:

- Include in its governance structure, respected figures from outside of football who can bolster the independence of the process;
- Include in its governance structure and through submissions a substantial fan and club representation, from across all levels of Scottish football;
- Have a two-part mandate:
    - Firstly, to assess the role of the SFA and the actions of key, senior staff in respect of each issue here, of wider issues of financial transparency, and others as deemed appropriate by the inquiry itself; and
    - Secondly, to learn from more accountable sports authorities in other fields and/or countries, and to recommend sweeping governance changes to the SFA if deemed necessary.