Introduction

This module focuses on two themes: (1) the management of conflicts of interest by organizations, and (2) broader elements of good governance.

Issues related to the (mis)management of conflicts of interest have arisen in sports organizations as varied as FIFA (Fédération Internationale de Football Association) and the NFL (National Football League). Such issues are taking on greater prominence today because of the increasing money found in sports organizations, their greater reliance on independent experts (Module 2) and more attention to the governance of sports organizations by stakeholders. This Module provides a closer look at the management of conflicts of interest.

A push for improved governance of sports organizations gained much more attention following the various allegations of scandal and mismanagement at FIFA since about 2010. Of course, concerns about the governance of sport go back much further than that. Several organizations, such as Play the Game and Transparency International have offered guidance on the elements of good governance. This Module summarizes some of the characteristics.

3.1 What is a conflict of interest?

3.1.1 Conflict of interest defined

An essential aspect of good governance of particular importance to the organizations that govern sports is the management of conflict of interest. As defined in The New England Journal of Medicine, a conflict of interest (COI) is:

> a set of conditions in which professional judgment concerning a primary interest (such as a patient's welfare or the validity of research) tends to be unduly influenced by a secondary influence (such as financial gain) … The secondary interest is usually not illegitimate in itself, and indeed it may even be a necessary and desirable part of professional practice. Only its relative weight in professional decisions is problematic. The aim is not to eliminate or necessarily to reduce financial gain or other secondary interests (such as preference for family and friends or the desire for prestige and power). It is rather to prevent these secondary factors from dominating or appearing to dominate the relevant primary interest in the making of professional decisions. (Thompson, 1993).

The US National Academy of Sciences offers more detail in the context of the committees that it empanels:

> The term "conflict of interest" means something more than individual bias. There must be an interest, ordinarily financial, that could be directly affected by the work of the committee. Conflict of interest requirements are objective and prophylactic. They are not an assessment of one's actual behavior or character, one's ability to act objectively despite the conflicting interest, or one's relative insensitivity to particular dollar amounts of specific assets because of one's personal wealth. Conflict of interest requirements are objective standards designed to eliminate certain specific, potentially compromising situations from arising, and thereby to protect the individual, the other members of the committee, the institution, and the public interest. The individual, the committee, and the institution should not be placed in a situation where others could reasonably question, and perhaps discount or dismiss, the work of the committee simply because of the existence of such conflicting interests. (The National Academies 2003)

To summarize, a conflict of interest is:

- An actual or perceived conflict between a primary interest and a secondary interest.
- COIs are typically considered to be financial, but not always (e.g., nepotism).
- A COI is not an assessment of the integrity of any individual.
- COI requirements are put into place to protect the individual, the organization and the public interest objectives that the organization seeks to achieve.

3.1.2 Examples of conflict of interest policies in and out of sport

We now take a look at several examples of conflict of interest policies found inside and outside of sport. The following examples come from the United Nations, the International Olympic Committee and Nike.

COI Policies of the United Nations (UN)

The UN has a COI policy that explicitly distinguishes organizational from personal conflicts of interest. Here is an excerpt:

> Risks of conflicts of interest can generally be found at two levels:
>
> - As organizational conflicts of interest; and
> - as personal conflicts of interest.
>
> An organizational conflict of interest arises where, because of other activities or relationships, an organization is unable to render impartial services, the organization's objectivity in performing mandated work is or might be impaired, or the organization has an unfair competitive advantage. A personal conflict of interest is a situation where a person's private interests — such as outside professional relationships or personal financial assets — interfere or may be perceived to interfere with his/her performance of official duties.
>
> As staff, we should always strive to avoid situations where we benefit personally or allow others to benefit personally from the decisions we make for the UN. We need to be aware of how our actions, in the absence of an explanation, may appear or be interpreted by others. Sometimes, the perception of a conflict of interest raises as much ethical concern as does an actual conflict of interest. Conflict of interest situations do not necessarily imply wrongdoing. However, if they are not identified and managed appropriately, they can compromise our work and the Organization's integrity. When each of us avoids the perception and the reality of a conflict of interest, we can help preserve our independence and impartiality. One of the key steps in avoiding or resolving a conflict of interest is to ensure that we place the UN's interests above our own.
>
> The UN is sensitive to the ways in which a staff member's private financial affairs could create potential conflicts of interest. Staff must refrain from managing or holding financial interests in any business if either the individual or the business has the opportunity to benefit from such an association by way of the staff member's position with the United Nations. (United Nations, n. d., https://goo.gl/umjMIE).

COI Policies of the International Olympic Committee (IOC)

In its conflict of interest policy, the IOC lists specific instances in which an actual or perceived conflict might exist:

> In the following non-exhaustive list of examples, the circumstances in which a conflict of interests could arise are:
>
> – personal and / or material involvement (salary, shareholding, various benefits) with suppliers of the Olympic party concerned;
> – personal and / or material involvement with sponsors, broadcasters, various contracting parties;
> – personal and / or material involvement with an organization liable to benefit from the assistance of the Olympic party concerned (including subsidy, approval clause or election).
>
> It is the personal responsibility of each person to avoid any case of conflict of interests. Faced with a situation of a potential conflict of interests, the person concerned must refrain from expressing an opinion, from making or participating in making a decision or accepting any form of benefit whatsoever (International Olympic, 2016).

COI Policies of Nike

COI policies are also found in the private sector. Like the UN and the IOC, Nike focuses on actual or perceived conflicts between the individual and the goals of the organization. Here is an excerpt:

> Conflicts of interest arise when an employee uses his or her position at NIKE for personal gain or when the employee's personal interests conflict with NIKE interests. All employees must avoid any actions or relationships that could conflict with, or appear to conflict with, the interests of NIKE. For example, having a substantial investment or position in any business that deals with NIKE, doing NIKE business with close friends or relatives, supervising family members, relatives, or those with whom you are romantically involved, using NIKE's name or reputation to gain personal favors, and accepting or offering payments, gifts or favors from or to companies doing business with NIKE are situations that could result in an actual or the appearance of a conflict of interest. (Nike, 2011).

COI policies such as those of the UN, IOC and Nike are not broadly found across sports organizations. For instance, in a 2015 report, Play the Game, a Danish sports governance watchdog, found that of the 32 international federations for which data was available, only 6 had clear conflict of interest rules in place that includes disclosure requirements (Geeraert, 2015).

Simply having a policy in place is of course not by itself sufficient. Organizations with strong COI policies typically require that its employees and advisors disclose potential conflicts and establish a committee to evaluate those disclosures for actual or potential conflicts. Such committees often involve

independent advisors or board members. These policies and procedures are often publicly available.

For instance, US Track and Field (USATF) has a dedicated website for its Ethics Committee). 1That site includes links to policies and procedures, and it also includes a list of sponsors and vendors to USATF, as well as event organizers, for which relationships with these organizations would raise questions of a conflict of interest.2 This list includes dozens of companies, some as large as Nike and ESPN (Entertainment and Sports Programming Network) but also a printing company and limousine service. The site has a FAQ (Frequently Asked Questions) and invites whistleblowers to report COI issues to its independent Ethics Committee, not to the organization's staff or leadership).3

Although many sports organizations do not have well-developed COI policies, they do have a large basis of experience to draw upon from businesses, government and even other sports bodies. In the 21st century all international sports organizations should have an effective conflict of interest policy in place, to protect their employees, the organization and sport itself.

We no turn to several examples which illustrate some of the downsides of the failure to have effective COI policies in place. We first take a look at the NFL and then the IAAF (International Association of Athletics Federations).

[1] For further information see: http://www.usatf.org/about/policies/ethics/
[2] For further information see: http://www.usatf.org/about/policies/ethics/nationalOfficeCOIPolicy.asp
[3] For further information see: http://www.usatf.org/about/policies/ethics/FAQ.asp

3.1.3 Case study: The NFL and Concussion Research

In 2016 staff of the US Senate's Energy and Commerce Committee alleged that the National Football League sought to influence research funding decisions of the National Institutes of Health related to concussions (U. S. House of Representatives, 2016). The health effects of repeated blows to the head have been an increasingly important subject in American football.

Here is what the Senate report says about a professor and doctor at the University of Washington who was alleged to have a conflict of interest in his role as a paid advisor to the NFL and his role as a researcher who studied concussions:

> Dr. Ellenbogen is a primary example of the conflicts of interest between his role as a researcher and his role as an NFL advisor. He had been part of a group that applied for the $16 million grant. After his group was not selected, Dr. Ellenbogen became one of the NFL's primary advocates in expressing concerns surrounding the process with [another team's] grant selection. (U. S. House of Representatives, 2016, p. 27).

The Senate Committee concluded:

> Although he did not violate any specific NIH rule we are aware of, Dr. Ellenbogen's participation in these discussions contravenes the spirit of the NIH conflict of interest rules, which are designed to ensure that individuals who have a financial interest in the outcome of a grant award are not involved in the decision-making process to award such a grant. (U. S. House of Representatives, 2016, p. 27).

The University of Washington later conducted an internal investigation and found that no rules were violated (ESPN, 2017). But the situation does raise some questions, such as:

- Was there a perception of COI in this instance?
- Might have it been better managed?
- What could have been done differently?

3.1.4 Case study: The IAAF and its Sponsors

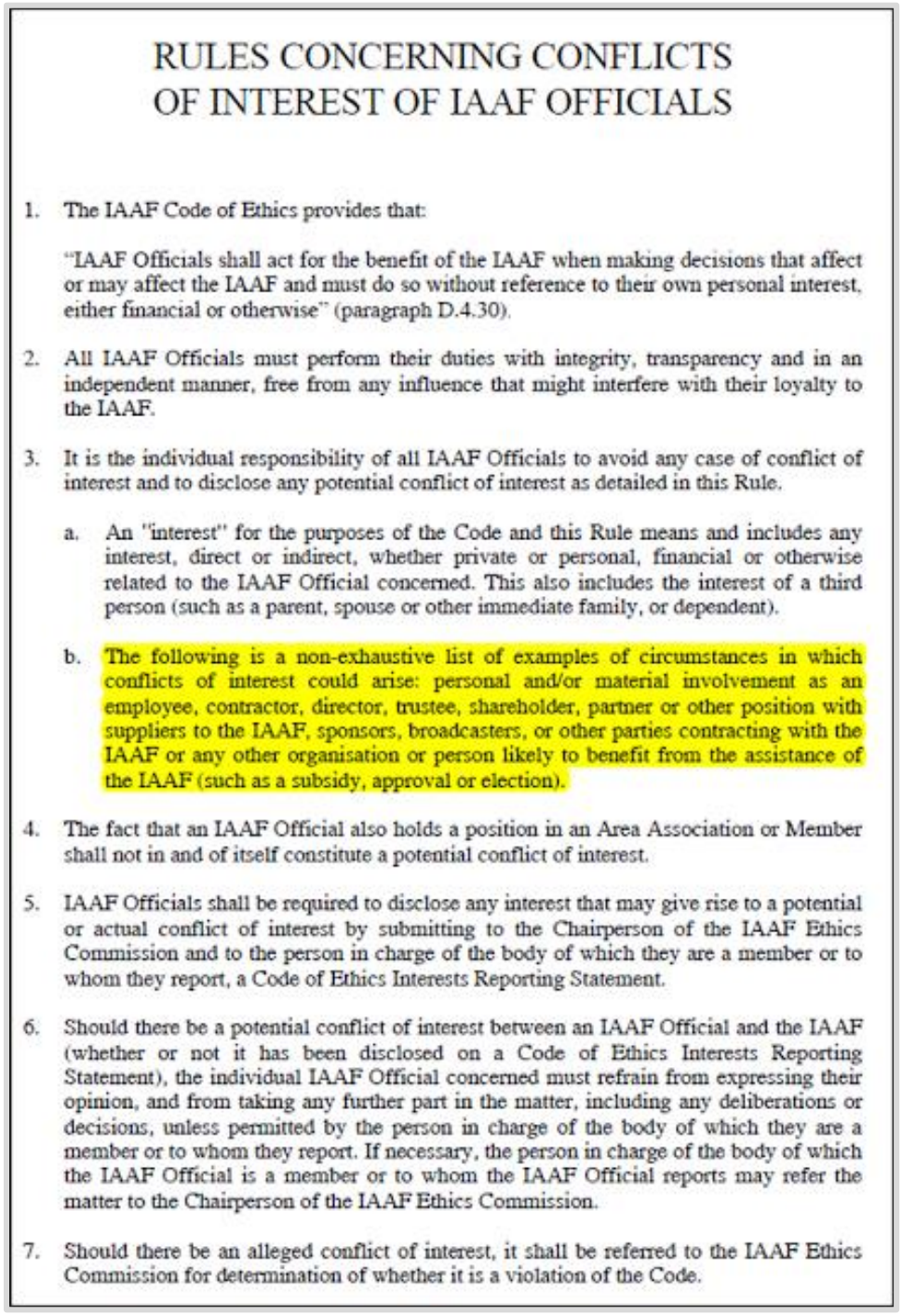
When Sebastian Coe was elected president of the IAAF in 2015, his long-term relationship with Nike was raised as a potential conflict of interest. Coe was reportedly paid in the six figures by Nike.

One British newspaper explained why there is at least the appearance of a conflict of interest:

> But the association with Nike is more of an issue when there are other areas of concern. For instance, the decision by the IAAF to award Eugene — close to Nike's headquarters in Beaverton — the 2021 World Athletics Championships without a formal bidding process. The president of European Athletics, Norway's Svein Arne Hansen, complained of a 'complete lack of process' on behalf of Gothenburg, who at least wanted the chance to bid. (Lawton, 2015, https://goo.gl/hpKCLx).

Coe's situation did not result from the lack of a strong COI policy for IAAF, but rather, an issue over how it would be enforced. The full IAAF COI guidelines can be seen below.

Figure 1: Rules Concerning Conflicts of Interest of IAAF Officials



RULES CONCERNING CONFLICTS OF INTEREST OF IAAF OFFICIALS

1. The IAAF Code of Ethics provides that:

   "IAAF Officials shall act for the benefit of the IAAF when making decisions that affect or may affect the IAAF and must do so without reference to their own personal interest, either financial or otherwise" (paragraph D.4.30).

2. All IAAF Officials must perform their duties with integrity, transparency and in an independent manner, free from any influence that might interfere with their loyalty to the IAAF.

3. It is the individual responsibility of all IAAF Officials to avoid any case of conflict of interest and to disclose any potential conflict of interest as detailed in this Rule.

   a. An "interest" for the purposes of the Code and this Rule means and includes any interest, direct or indirect, whether private or personal, financial or otherwise related to the IAAF Official concerned. This also includes the interest of a third person (such as a parent, spouse or other immediate family, or dependent).

   b. The following is a non-exhaustive list of examples of circumstances in which conflicts of interest could arise: personal and/or material involvement as an employee, contractor, director, trustee, shareholder, partner or other position with suppliers to the IAAF, sponsors, broadcasters, or other parties contracting with the IAAF or any other organisation or person likely to benefit from the assistance of the IAAF (such as a subsidy, approval or election).

4. The fact that an IAAF Official also holds a position in an Area Association or Member shall not in and of itself constitute a potential conflict of interest.

5. IAAF Officials shall be required to disclose any interest that may give rise to a potential or actual conflict of interest by submitting to the Chairperson of the IAAF Ethics Commission and to the person in charge of the body of which they are a member or to whom they report, a Code of Ethics Interests Reporting Statement.

6. Should there be a potential conflict of interest between an IAAF Official and the IAAF (whether or not it has been disclosed on a Code of Ethics Interests Reporting Statement), the individual IAAF Official concerned must refrain from expressing their opinion, and from taking any further part in the matter, including any deliberations or decisions, unless permitted by the person in charge of the body of which they are a member or to whom they report. If necessary, the person in charge of the body of which the IAAF Official is a member or to whom the IAAF Official reports may refer the matter to the Chairperson of the IAAF Ethics Commission.

7. Should there be an alleged conflict of interest, it shall be referred to the IAAF Ethics Commission for determination of whether it is a violation of the Code.

Source: IAAF, 2016. Highlighting added by author.

Lord Coe eventually resigned his position with Nike, but after much discussion and controversy. This situation also raises some important questions:

- Was there a perception of COI in this instance?
- Might have it been better managed?
- What could have been done differently?