Neutral Citation Number: [2007] EWCA Civ 238

Case No: A3/2006/0713/CHANF

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
THE CHANCELLOR OF THE HIGH COURT
[2006] EWHC 479 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 March 2007

Before :

THE MASTER OF THE ROLLS
LORD JUSTICE WALLER
and
LORD JUSTICE SEDLEY

- -

Between :

PAUL STRETFORD	**Claimant**
- and -	
THE FOOTBALL ASSOCIATION LTD & ANOTHER	**Defendants**

- -
- -

Mr Victor Joffe QC and Mr David Casement (instructed by **Halliwell's LLP**) for the Claimant
Mr David Pannick QC and Mr Adam Lewis (instructed by **Charles Russell LLP**) for the Defendants

Hearing dates: 29, 30 and 31January 2007

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Judgment

Sir Anthony Clarke MR:

This is the judgment of the court.

Introduction

1. This is an appeal from an order made by the Chancellor, Sir Andrew Morritt, on 17 March 2006 by which he stayed this action under section 9(4) of the Arbitration Act 1996 ('the 1996 Act') on the ground that the dispute between the parties is one which has been submitted to arbitration under Rule K of the Football Association Rules. The Chancellor refused permission to appeal but Rix LJ subsequently granted permission to appeal on limited grounds. The appeal has involved much debate as to the relationship between article 6 of the European Convention on Human Rights ('the Convention') and the arbitral process, although the scope of the debate was significantly reduced in the course of the argument. The appellant ('Mr Stretford') says that Rule K is in conflict with his rights under article 6 of the Convention and that, in consequence, the arbitration agreement in Rule K is null and void or inoperative, from which it follows that the Chancellor should not have ordered a stay under section 9(4) of the Act.

2. This appeal was heard at the same time as the appeal in *Sumukan Ltd v The Commonwealth Secretariat* and the application in *Shuttari v The Solicitors Indemnity Fund*, in both of which cases judgment is being handed down today.

The underlying facts

3. We take these almost entirely from the Chancellor's judgment. Mr Stretford is a players' agent. He first applied for a players' agent's licence on 29 June 1995. At that time such an agent had to obtain a licence from the Fédération Internationale de Football Association ('FIFA'), although the preliminary investigations were carried out by the relevant national association, which in this case was the Football Association ('The FA'). The investigation involved an examination of the applicant's criminal record (if any) and an interview to ascertain among other things his knowledge of football regulation and relevant principles of law generally. The terms of any licence granted required the agent to observe the regulations of FIFA and the national associations at all times. A licence was and is crucial because neither players nor clubs can negotiate with each other through an unlicensed agent.

4. Mr Stretford claimed that his knowledge of the relevant rules and regulations, which included The FA Rules, was good. He was interviewed by The FA in July 1995 and in due course FIFA issued a licence to him, which stated that he was "authorised by FIFA to act as a players' agent in compliance with the relevant regulations". On 20 December 2000 FIFA promulgated new regulations which came into force on 1 March 2001. They required the national associations themselves to issue licences after suitable investigations and examinations.

5. On 9 March 2001 Mr Stretford wrote to The FA setting out various concerns he had arising out of the new regulations and asked what he had to do to obtain a licence under them. On 9 August FIFA issued a circular to all agents informing them what to do and on 30 August 2001 he duly applied to The FA for a licence. He was granted temporary authority to act as an agent on 11 January 2002 and was issued with a new

players' licence by The FA on 9 April 2002. He acknowledged safe receipt of his new licence on 23 April 2002. The licence expressly states on its face that "the holder of this licence agrees to abide by the rules and regulations of FIFA, The FA Premier League and the Football League".

6. The FA has for many years issued an annual handbook. Since the 1989/90 season The FA Rules in the handbook have included an arbitration clause under which all those concerned with playing or administering football have agreed that their differences should be referred to arbitration. The Rules were revised for the 1999/2000 season and reordered for the 2000/2001 season. As the Chancellor held, Rule K, which is the relevant arbitration clause, has existed in its present form since the 1999/2000 season.

7. On 17 June 2005 The FA issued disciplinary proceedings against Mr Stretford under Rule G of The FA Rules, which is entitled "DISCIPLINARY POWERS". The allegations relate to events or alleged events in the period July 2002 to June 2003. For present purposes it is sufficient to quote (as the Chancellor did) The FA's description of them:

> "These charges relate to the circumstances surrounding [Mr Stretford's] acquisition of the right to represent Wayne Rooney in 2002/2003, and the evidence he provided in respect of a case heard in Warrington Crown Court in October 2004."

8. As the Chancellor observed in paragraph 7 of his judgment, apart from issues of fact, Mr Stretford's solicitors advanced these contentions:

   a) the disciplinary proceedings did not comply with article 6 of the Convention as applied in the Human Rights Act 1998;

   b) the rule on which some of the charges was based, Annexe B to the Code of Professional Conduct, is in unlawful restraint of trade; and

   c) Rule E3 or the charges made under it relating to Mr Stretford's evidence at the Warrington Crown Court is or are contrary to public policy and void.

9. On 2 September 2005 a meeting took place between representatives of Mr Stretford on the one hand and representatives of The FA on the other which gave rise to one of the issues between the parties before the Chancellor. We will return to this meeting below because the same issue arises in this appeal. On 9 September 2005 Mr Bright, who is the chairman of the Disciplinary Committee of The FA, appointed the lay members of a Disciplinary Commission in accordance with Rule G of The FA Rules. The chairman was to be a QC but no QC had yet been chosen.

10. On 16 September 2005 Mr Stretford commenced these proceedings against both The FA and Mr Bright under CPR Part 8 seeking declarations in the terms of the contentions stated in paragraph 8 above. On 14 October 2005 The FA and Mr Bright applied for a mandatory stay of all further proceedings in the action pursuant to section 9 of the 1996 Act. They also applied in the alternative for other relief to which it is not necessary to refer. No distinction was made between The FA and Mr

Bright before the judge and no distinction has been drawn between them in this court. We shall therefore refer only to the position of The FA.

The issues before and the decision of the Chancellor

11. The questions argued before and determined by the Chancellor were these:

    a) was Rule K incorporated into the contract between Mr Stretford and The FA; if so,

    b) do the events of the meeting held on 2 September 2005 preclude The FA from relying on Rule K; if not

    c) is Rule K null and void or inoperable within the meaning of section 9(4) of the 1996 Act; and

    d) if for any reason section 9(4) of the Act does not require the proceedings to be stayed, should they be stayed as a matter of discretion to await the outcome of the disciplinary proceedings?

12. The Chancellor answered the questions yes, no, no and not applicable respectively. Thus he held that Rule K was incorporated into the contract, that the events of the meeting of 2 September did not preclude The FA from relying upon Rule K and that Rule K was not null and void or inoperable within the meaning of section 9(4) of the Act. He accordingly granted a mandatory stay of the proceedings and held that it followed that the fourth question did not arise.

The appeal

13. As indicated earlier, the issues in this appeal became more refined during the course of the argument. We consider them under these headings in this order, the incorporation and meaning of rule K, the meeting and mandatory stay.

The incorporation and meaning of Rule K

14. Between paragraphs 12 and 27 of his judgment the Chancellor gave his reasons for concluding that, as a matter of English contract law, Rule K was incorporated into the contract between Mr Stretford and The FA. He held, in our view correctly, by reference to *Chitty on Contract*, 29th edition at paragraph 12-015, that the terms of Rule K were not "particularly onerous or unusual" and that, in any event, the terms had been brought fairly and reasonably to Mr Stretford's attention. Indeed, Mr Stretford had himself written to The FA commenting on the new rules in March 2001. In short, the Chancellor held that at all relevant times Mr Stretford was in possession of documentary material which included Rule K and its earlier versions and that, if he did not know of its terms, he could and should have done.

15. The Chancellor summarised his conclusions in paragraph 26 as follows:

> "Counsel for Mr Stretford did not dispute that all the other provisions of the Rules were binding on Mr Stretford. He sought to draw a distinction in respect of Rule K on the grounds I have already mentioned. I do not think that that is a

> distinction which can be validly drawn. Given that Rule K applies to all parties alike and in the way such clauses conventionally operate I do not consider that it required any particular or special notice to be given by The FA to Mr Stretford. But even if it did I conclude that such notice was given. Mr Stretford knew that he was obliged to observe the Rules. The Rules were published by The FA at least once a year in its handbook and were available at all times through its website. At all times a copy of the Rules was in Mr Stretford's possession. It was, and since 1995 had been, his duty to inform himself of their contents. I am not prepared to go further and conclude that The FA had to make Mr Stretford sit down and read it in order to bring Rule K fairly and reasonably to his attention, see Chitty on Contracts 29th ed 2-015."

16. Rix LJ refused permission to appeal on this issue on the basis that the Chancellor's reasoning was not properly open to challenge. Mr Joffe has not renewed Mr Stretford's application for permission to appeal in this regard. It follows that it is not necessary to refer in any further detail to the Chancellor's reasoning, except in so far as it is relevant to the suggested conflict between article 6 of the Convention and the arbitral process. We return to this point below.

17. It is nevertheless convenient to set out here the terms of Rule K1 because, although there was little (if any) dispute between the parties by the end of the argument, there was some discussion during the hearing of the appeal about the true construction of the rule and the jurisdiction of the arbitrators. Rule K provides, so far as relevant, as follows:

> "K. ARBITRATION
>
> Agreement to Arbitration
>
> 1. a) Subject to Rule K1(b) below, any dispute or difference (a "dispute") between any two or more Participants (which shall include, for the purposes of this section of the Rules, The Association) including but not limited to a dispute arising out of or in connection with (including any question regarding the existence or validity of)
>
> (i) The Rules and Regulations of The Association;
>
> (ii) The rules and regulations of an Affiliated Association or Competition;
>
> (iii) The Statutes and Regulations of FIFA and UEFA; or
>
> (iv) The Laws of the Game

> shall be referred to and finally resolved by arbitration under these Rules.
>
> b) Rule K1(a) shall not apply to any dispute or difference which falls to be resolved pursuant to any rules from time to time in force of any Affiliated Association or Competition
>
> c) Rule K1(a) shall not operate to provide an appeal against the decision of a Disciplinary Commission or Appeal Board under the Rules of the Association and shall operate only as the forum and procedures for a legal challenge on the grounds of breach of contract to any such decision."

18. The word "Participant" is defined in the Rules as

> "an affiliated association, competition, club, club official, player, official, match official and all such persons who are from time to time participating in any activity sanctioned either directly or indirectly by the [FA]"

It follows that for the purposes of Rule K the term 'Participant' includes The FA, Mr Bright and Mr Stretford.

19. There was some debate in the course of the argument as to whether each of the contentions advanced on behalf of Mr Stretford which are summarised in paragraph 8 above was a "dispute or difference" (and hence a "dispute") within the meaning of clause K1(a). It was we think accepted by Mr Joffe by the end of the argument that they were. In any event, we are clearly of the opinion that each of the contentions was (and is) such a dispute. The question whether the disciplinary proceedings comply with article 6 of the Convention is plainly a dispute arising out of or in connection with the Rules and Regulations of The FA. So too are the questions whether Annexe B of the Code of Professional Conduct is in unlawful restraint of trade and whether Rule E3 or the charges under it are contrary to public policy and void.

20. It follows that all the arguments which Mr Stretford wishes to raise, whether of principle or fact, are disputes which the parties have referred to arbitration under Rule K1(a) unless they are excluded by Rules K1(b) or (c). Nobody suggested that Rule K1(b) applies. Rule K1(c) excludes from the jurisdiction of the arbitrators appeals against decisions of the Disciplinary Commission or Appeal Board, which cannot arise at present. Although the second part of RuleK1(c) is not absolutely clear, nobody suggested that it has the effect of excluding any of the issues which Mr Stretford wishes to raise in the courts from the jurisdiction of the arbitrators.

The meeting

21. The Chancellor considered the events of the meeting on 2 September 2005 between paragraphs 28 and 38 of his judgment. The question for decision was whether the events of the meeting precluded The FA from relying on the arbitration clause in Rule K. As the Chancellor correctly held, The FA described the purpose of the meeting as

"to discuss matters relating to the composition of the Disciplinary Commission and the related requirements of article 6" and the solicitors for Mr Stretford did not dissent. The meeting took place at The FA's offices at Soho Square. Present on behalf of Mr Stretford were a solicitor, an assistant solicitor, leading counsel and junior counsel. They were Mr Diaz-Rainey, Mr James Martin, Mr Victor Joffe QC and Mr David Casement respectively. Mr Martin took a note, which has been accepted on all sides as broadly accurate, in which the participants are described as JDR, JM, VJ and DC. There were two parts to the meeting, the first downstairs and the second upstairs. During the first part The FA was represented by its senior compliance officer, Mr David Lampitt ('DL'), and by junior counsel, Mr Jonathan Laidlaw ('JL').

22. It was an informal meeting. At the meeting Mr Joffe outlined the proceedings which they were contemplating, namely an action for declarations that a disciplinary commission appointed by The FA would not comply with article 6 of the Convention. In paragraph 30 of his judgment the Chancellor quoted part of the note of the first part of the meeting. The essential parts relied upon by Mr Joffe in this appeal were these:

> "JL asked that, apart from looking at the make-up of the Disciplinary Commission, we also look at trying to put in place some kind of timetable for moving the matter forward (which would be, of course, subject to any Court proceedings which we might issue).
>
> VJ pointed out that another matter which would need discussion was our suggestions regarding the E3 charges. He said that we had already referred to public policy aspects, but he thought that The FA should also consider Section 51 of the Criminal Justice Act 1994. We thought that The FA would need to consider the charges it was making against PS in this regard, particularly in light of the section of the Criminal Justice Act. JL said that it was clear that there were inaccuracies in PS's evidence, and that this had been admitted, so he enquired as to what this was all about. VJ stressed that witnesses have to be free to give evidence without fear of sanction. He said that any such sanction would be contrary to public policy, but there would also possibly be difficulties under Section 51. JL said that surely we did not have to go to Court on these issues, but VJ said that he thought this was the simplest way of doing it, by bringing all the issues together before the Court. JL then asked what the situation would be if we fail at Court? He continued saying that we do not know what the Court is going to do and we each have confidence in our own views. He said that if we go to Court there is going to be months of delay. He then said that if we were to succeed at Court on PS's behalf then it is likely that there would be no proceedings against PS and it would bring an end to the whole matter. VJ persisted that, since one of our preliminary points was Rule E3, and we were before the Court on the Article 6 issue anyway. It would be sensible to deal with both issues

> together. He said that if we were to win on the E3 arguments at Court then we could take out the last couple of allegation and carry on with the rest.
>
> JL said that if there was an application to Court we all would have to wait for the Court's decision before anything else could be done on the case. He went on to say that if we should go to Court and fail then this would be a lot of time wasted. He suggested that we could get on with agreeing a timetable for the proceedings, which would be subject to any judicial review challenge. He said that The FA accepted that it would have to wait for a decision from Court, should we choose to go to Court, but he could not see why we could not put a timetable in place now. VJ said that, subject to taking further instructions from JDR, he did not see a problem with setting a timetable now. JDR nodded his approval. VJ then pointed out, however, that it seemed inevitable at this stage that we would have to apply to Court and we would therefore have to factor that into our thinking. VJ suggested that we indicate to The FA within 14 days whether we will be making an application. JDR indicated that we should certainly be in a position to confirm within 14 days.
>
> …
>
> As regards the main hearing, it was suggested that we look for dates available around 2 weeks after we had sent our supplementary bundle. It was then confirmed that this was, of course, all subject to our deciding not to make an application to Court."

It is not necessary to quote any other part of the note.

23. Although Mr Joffe submitted that the agreement was reached during the first part of the meeting, he also relied upon the note of the second part of the meeting, which was joined by Mr Bright, Mr John Mason and Mr Alan Wilkes, who were referred to in the notes as 'BB', 'AM' and 'AW' respectively. Mr Mason was counsel advising Mr Bright in his capacity as chairman of the disciplinary committee and Mr Wilkes is a disciplinary manger with The FA. Mr Bright referred to the preliminary issues relied upon by Mr Stretford, which were principally those set out in paragraph 8 above. The relevant parts of the note are these:

> "JL went on to say that the Defence is presently considering whether they will make an application for judicial review if they fail to persuade BB that there should be an Independent Commission appointed. That is why he had asked BB if he would make a decision. BB confirmed that he understood the situation.
>
> JL went on to say that he was keen that, at the same time, there should be some sort of timetable put in place (which would be

subject to the application for judicial review if permission was granted). He said that he wanted to make sure that a timetable was put in place now rather than trying to impose one later.

JL then went on to explain that it had been discussed and broadly agreed that The FA would serve a bundle within 5 weeks of the meeting. He went on to say that the Defendants had confirmed that they would want 6 weeks thereafter to prepare a bundle of their own. On the issue of the E3 charges, he felt that this could be dealt with at a day-long directions hearing and then a substantive hearing on the main issues could be held a couple of weeks later. JL them confirmed again that this was all on the premise that the judicial review application has failed.

…

As regards Article 6, we were considering a challenge on this point. VJ confirmed that if we were to challenge it, it would be our intention to raise the E3 challenge for the Court to determine at the same time.

…

VJ said that we also were anxious to move forward so we have been able to agree a timetable [for the disciplinary proceedings] in principle (although this is based on the scenario where we do not go to Court). There was, of course, always a possibility that any application to Court would be struck out and any agreed timetable could be resumed.

VJ then said that, if we go to a hearing at Court, it is then likely that the matter would be listed before November. Any agreed timetable would therefore have to be shifted accordingly. VJ then confirmed that there were two circumstances in which we could apply to Court for a declaration. Firstly, we could go to Court before a Disciplinary Commission had been appointed. Second, we could go once a Disciplinary Commission has been appointed in accordance with the rules (as this would give us a concrete basis for going). VJ confirmed that we were happy to indicate, within 14 days, whether we were going to apply to Court or not.

…

John Mason then asked for clarification of our procedure for seeking judicial review of the decision to appoint the Disciplinary Commission. VJ explained that the application to Court would not be for judicial review, but instead it would be a straight-forward application to Court for a declaration. We

would say the Court had to determine this rather than a Disciplinary Commission."

24. The meeting concluded with Mr Bright promising to decide within 7 days whether to appoint a disciplinary commission in accordance with Rule G and if so who. He said he would also lay down a timetable. Accordingly on 9 September Mr Bright wrote the letter referred to above saying that he would appoint three existing members of the Disciplinary Committee and a QC. Mr Joffe relied upon the fact that in the letter Mr Bright said that the had promised to give his decision by 9 September

> "in sufficient time to allow those representing Paul Stretford to take a decision as to whether or not they will make application to the Courts for an order concerning the composition of the Tribunal."

25. In paragraph 35 of his judgment the Chancellor noted that the submissions made on behalf of Mr Stretford were:

i) that a clear agreement was made at the meeting that if Mr Stretford instituted proceedings the disciplinary proceedings would be stayed pending the court's substantive determination of the substantive issues raised in the proceedings;

ii) alternatively, that there was a representation made by The FA or a convention to which all relevant parties adhered to the like effect; and

iii) that the premature determination of the court proceedings by reliance on Rule K was necessarily inconsistent with what had been agreed or represented at the meeting.

26. In paragraph 35 the Chancellor noted that the submissions in response made on behalf of The FA were:

i) that there was no express agreement that if Mr Stretford commenced court proceedings the disciplinary proceedings would be stayed for so long as the court proceedings were still effective;

ii) that nothing had been said or could be implied with regard to how the court proceedings should be processed or determined;

iii) that in the discussion at the meeting Mr Joffe accepted that the proceedings might be struck out; and

iv) that Mr Stretford had not established that he relied on any representation or convention or that he sustained any detriment in consequence, since on the one hand, if (as he claimed) Mr Stretford did not know about Rule K, it was not easy to see how he relied on the alleged representation and, on the other hand, if he did know of Rule K he must have decided to institute the proceedings without regard to its application and effect.

27. The Chancellor expressed his conclusions thus in paragraph 37:

> "I can deal with this issue quite shortly. It is clear from the note of the meeting in the context of the correspondence leading up to it that the agreement, representation or convention, whatever term is used to describe the outcome, involved two elements. The first was the condition that Mr Stretford instituted court proceedings to determine the three points he had raised in the earlier correspondence, see paragraph 7 above. The second was that if that condition were satisfied then the disciplinary proceedings would be stayed until the court proceedings had been disposed of. There was no agreement, representation or assumption that they should be disposed of on their merits, the recognition that they might be struck out demonstrates the opposite, or in any particular manner. Still less was there any agreement, representation or assumption that the court proceedings would not be stayed by reliance on Rule K and s.9 Arbitration Act 1996, neither of which was even mentioned. No such an agreement could be implied on any of the bases on which terms may be implied into an express agreement. Accordingly, in my judgment, the evidence does not establish the facts needed for this contention and the questions of reliance, detriment and authority do not arise."

28. Mr Joffe submitted to us (as he had submitted to the Chancellor) that the note shows that the parties agreed that the disciplinary proceedings should be stayed until after final disposal of the court proceedings on their merits. He submitted that Mr Laidlaw, as counsel on behalf of The FA, asked Mr Stretford's representatives to agree a timetable for moving the disciplinary proceedings forward, but subject to any court proceedings which Mr Stretford might issue. Mr Laidlaw also accepted that, if court proceedings were commenced, the directions for the disciplinary proceedings would have to be stayed pending the resolution of the court proceedings. It was submitted that there was either a binding agreement to that effect or, in any event, that The FA made a representation to like effect which was relied upon by Mr Stretford or both parties proceeded on the assumption that that was the case such that The FA is estopped by representation or convention from seeking a stay of the proceedings under section 9(4) of the 1996 Act.

29. Mr Joffe submitted that the Chancellor's reasoning and conclusions were against the weight of the evidence. In particular he submitted that the Chancellor was wrong to place reliance upon the reference to the possibility of the proceedings being struck out. He gave three reasons. The first was that the agreement had already been reached during the first part of the meeting, whereas the reference to the possibility of strike out was in the second part of the meeting. The second was that the reference to strike out emphasised the fact that it was agreed that the challenges were to be determined by the court, albeit if necessary by strike out. The third was that, in any event, the whole of the note confirms that what was contemplated was court proceedings and not arbitration proceedings.

30. It is common ground that nobody on either side referred to the possibility of arbitration proceedings. There was thus no reference to the possibility of The FA making an application for a stay of the court proceedings under section 9 of the 1996

Act or at all. Mr Joffe's point is that there was an agreement that the disciplinary proceedings would be stayed until after the determination of the Court proceedings, which (as Mr Joffe put it in his skeleton argument in this appeal) necessarily entailed an agreement that The FA would await the outcome of those proceedings and not rely upon Rule K.

31. We are unable to accept Mr Joffe's submissions. It is true that, as can be seen from the note, there are many references in it to the possibility of court proceedings and let it be assumed that it was agreed that the disciplinary process would not proceed pending the determination of court proceedings. Such an agreement does not necessarily entail an agreement that The FA would await the outcome of those proceedings and not rely upon Rule K. Nor does it follow from the many references to court proceedings. We agree with the Chancellor that there was no express agreement to that effect and no basis upon which such an agreement could be implied. Nor was there either a representation that The FA would not rely upon the arbitration clause in Rule K or a common assumption to that effect. There is nothing in the exchanges between the parties which suggests that either party had Rule K in mind. If Mr Stretford or his advisers had wished to persuade The FA to waive its rights under Rule K they could (and no doubt would) have done so expressly. Not having done so expressly, there is no basis for implying such an agreement.

32. In short, we agree with the Chancellor that there is nothing in the exchanges which supports an agreement, representation or understanding that The FA had waived its right to make any application open to it in the court proceedings, including an application for an order that the action be struck out or an application for a mandatory stay under section 9(4). Nor is there anything in the letter of 9 September to support Mr Joffe's submissions. We accept Mr Pannick's submission that the purpose of the meeting was to address the progress of the disciplinary proceedings and not to discuss how any court proceedings which might be issued might be answered by The FA. Moreover, we see nothing in the exchanges which makes it in any way unjust or unconscionable for The FA now to do so. It follows that we dismiss the appeal on this ground.

Mandatory stay

33. Section 9(1) of the 1996 Act provides that any party to an arbitration agreement against whom legal proceedings are brought in respect of a matter which under the agreement is to be referred to arbitration may apply for a stay of the proceedings. This is such a case. Section 9(4) provides:

> "On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed."

The Chancellor rejected Mr Joffe's submission on behalf of Mr Stretford that the arbitration agreement contained in Rule K is null and void and therefore inoperative by reason of the provisions of article 6 of the Convention, which provides, so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a

> reasonable time by an independent tribunal established by law. Judgment shall be pronounced publicly..."

Mr Joffe submitted to us, as had been submitted to the Chancellor, that Rule K is in conflict with article 6 and with the principles of natural justice. It is common ground that, as a public authority, the court is bound to give effect to Mr Stretford's rights under article 6.

34. The question is therefore whether Mr Stretford will be deprived of any of those rights if the proceedings are stayed under section 9(4) of the 1996 Act. It is not in dispute that the arbitrators will be determining his civil rights and obligations. It follows that, on the face of article 6, Mr Stretford is entitled to a fair and public hearing by an independent tribunal established by law, which must pronounce its judgment publicly. By the end of the argument there was much common ground between the parties.

35. Thus it was common ground that the 1996 Act will apply to the arbitration. Section 1 of the Act lays down general principles and provides:

> "The provisions of this Part are founded on the following principles, and shall be construed accordingly –
>
> (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
>
> (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;
>
> (c) in matters governed by this Part the court should not intervene except as provided by this Part."

36. Section 4 provides for mandatory and non-mandatory provisions. The latter allow the parties to make their own provisions, whereas the former have effect notwithstanding any agreement to the contrary. They are the provisions listed in Schedule 1, which include sections 24, 33, 67, 68, 70 and 71. Section 24 gives the court power to remove an arbitrator on grounds which include justifiable doubts as to his impartiality, incapacity, and refusal or failure properly to conduct the proceedings, provided in each case that substantial injustice has been or will be caused to the applicant. Section 33 expressly provides that the tribunal shall act fairly and impartially as between the parties. Sections 67 and 68 provide for challenging an award on the ground of lack of substantive jurisdiction and serious irregularity respectively. Serious irregularity is defined in section 68(2) as one or more of the specified kinds of irregularity which the court considers will cause substantial injustice to the applicant and includes failure of the tribunal to comply with section 33. Sections 70 and 71 contain provisions supplementary to section 67, 68 and 69.

37. Section 69 provides for the circumstances in which an appeal can be brought to the High Court from an award, although in it's case an appeal is excluded by the agreement of the parties in Rule K5(c). Section 69 is discussed in our judgment in the *Sumukan* case. It provides that the parties can exclude an appeal by agreement

Otherwise, save to the extent that the parties can agree that an appeal may be brought, section 69 requires permission to appeal to the High Court to be obtained. Section 69, like many other provisions of the 1996 Act, restricts the jurisdiction of the Court of Appeal to hear appeals from a decision of the High Court.

38. These provisions of the 1996 Act are important in the context of article 6 of the Convention because they provide for a fair hearing by an impartial tribunal. Moreover, the mandatory provisions ensure that the High Court has power to put right any want of impartiality or procedural fairness, so that the only provisions of article 6 which could arguably be said not formally to be met by the Act are the requirements that the hearing be in public, that the members of the tribunal be independent, that the tribunal be established by law and that the judgment be pronounced publicly.

39. As to independence, we note from paragraph 101 of the Departmental Advisory Committee ('DAC') Report on the Arbitration Bill that the DAC expressly considered whether to include justifiable doubts as to the independence of the arbitrator as grounds for his removal. It decided not to do so because arbitration is consensual and "lack of independence, unless it gives rise to justifiable doubts about the impartiality of the arbitrator is of no significance". It added that there would be no point in adding lack of independence as a separate ground unless it could entitle the court to remove an arbitrator where the lack of independence did not give rise to justifiable doubts about the impartiality of the arbitrator. Thus lack of independence is only relevant if it gives rise to such doubts, in which case the arbitrator can be removed for lack of impartiality.

40. In any event, on the facts of this case nobody has suggested that there is any risk of the arbitrators lacking either impartiality or independence. By clause K3(a), a tribunal of three arbitrators shall be appointed unless the parties agree otherwise. By clause K2(a)(iv) and (b)(iv), each party is to appoint an arbitrator and by clause K3, the parties must agree to appoint a third arbitrator, who is to act as chairman. Further, by clause K3(d)(i), each arbitrator must be and remain impartial and independent of the parties to the arbitration at all times. It follows that the parties have agreed that the provisions of article 6 as to impartiality and independence will be satisfied.

41. As to the requirement that the tribunal be established by law, on the assumption that an arbitral tribunal is not established by law within the meaning of article 6, the question is whether by agreeing to arbitration the parties waived that requirement. As to the requirements that there be a public hearing and that the judgment be pronounced publicly, the question is whether, on the facts of this case, first, the parties have agreed either that the hearing be in public or that the award be published and, secondly, if not the parties have waived the requirements.

42. Rule K6(b) provides:

> "Except with the prior agreement of the parties to the arbitration, no disclosure shall be made to any third party of.....[the Tribunal's] award..."

Mr Joffe made it clear that Mr Stretford wants both the hearing to be in public and the award to be published. Mr Pannick indicated that The FA agreed to publication of the award, subject to redaction, if appropriate, for commercial confidentiality. There is

no real suggestion that there might be an element of commercial confidentiality on the facts of this case, so that the parties have in effect agreed to the publication of the award, as Rule K6(b) contemplates they could.

43. As to the hearing, The FA does not consent to the hearing being in public but submits that, by agreeing to arbitration, the parties have waived their rights to a public hearing under article 6. It follows from the above that the only question for decision is whether the parties have waived their rights to a hearing in public and to the tribunal being established by law. We have no doubt that they have done so as a matter of English law. The incorporation of Rule K into the contract in the circumstances explained above leads to the conclusion that the parties have waived any rights that they would otherwise have had to rely upon article 6. There is no question of duress, undue influence or mistake which might invalidate the agreement to arbitrate in Rule K. The very fact of the agreement to arbitrate is inconsistent with any suggestion both that the hearing must be before a court and that the hearing must be in public. The question is therefore whether there is any principle adopted by the European Court in Strasbourg which leads to any other conclusion.

44. We were referred to a number of Strasbourg decisions, both of the European Court of Human Rights and of the Commission. We note at the outset that it is well settled that in deciding whether there has been a breach of article 6.1 the European Court has regard to the proceedings in the national court as a whole, including the decisions of the appellate courts: see eg *Edwards v United Kingdom* (1992) 15 EHRR 417.

45. In our judgment the cases support the general proposition that, where parties have voluntarily or (as some of the cases put it) freely entered into an arbitration agreement they are to be treated as waiving their rights under article 6. This can be seen from the earliest case to which we were referred, namely Application no 1197/61, which was decided by the Commission on 5 March 1962 and is reported in Yearbook 5: see pages 88, 94 and 96, which are referred to in a number of the later cases.

46. For example this passage is quoted in *R v Switzerland*,, which was a decision of the Commission made on 4 March 1987 in application no 10881/84.

> "…whereas the inclusion of an arbitration clause in an agreement between individuals amounts legally to partial renunciation of the exercise of those rights defined by Article 6 para. 1; whereas nothing in the text of that Article nor of any other article of the Convention explicitly prohibits such renunciation; whereas the Commission is not entitled to assume that the Contracting States, in accepting the obligations arising under Article 6 para. 1, intended to prevent persons coming under their jurisdiction from entrusting the settlement of certain matters to arbitrators; whereas the disputed arbitration clause might have been regarded as contrary to the Convention if X. had signed it under constraint, which was not the case" (No 1197/61, Dec 5.3.62, Yearbook 5 pp 89, 95."

47. The same point was also made in *R v Switzerland* by reference to paragraph 49 of the decision of the court on 27 February 1980 in *Deweer v Belgium (*1980) 2 EHRR 439.

In the report of *R v Switzerland* in Decisions and Reports for April 1987 the Commission said at pages 100-101:

> "In the present case arbitration was not required by law. In signing an arbitration agreement, the applicant waived his right to bring the dispute before an ordinary court. In addition, the right of access to a national court – a guarantee implicitly arising from Article 6 para 1 (cf Eur Court HR *Golder* judgment of 21 February 1975, Series A no 18 para 36) – does not, in civil matters, entail an obligation to apply to a national court for settlement of a pecuniary dispute between private individuals. In the *Deweer* case, the Court, considering that the applicant "waived his right to have his case dealt with by the tribunal", noted that:
>
> > In the Contracting States' domestic legal systems a waiver of this kind is frequently encountered … in civil matters, notably in the shape of arbitration clauses in contracts … the waiver, which has undoubted advantages to the individual concerned as well as for the administration of justice, does not in principle offend against the Convention."

That was a quotation from paragraph 49 of *Deweer*. See also to the same effect the decision of the Commission on 27 November 1996 in *Nordstrom-Janzon v The Netherlands*, Application no 28101/95 at p 115.

48. The general principle is thus that an arbitration agreement operates as a waiver of some at least of the requirements of article 6. The Strasbourg jurisprudence has, however, also made it clear that the arbitration agreement must be voluntary and not compulsory. By compulsory in this context is meant required by law. This can be seen from this further passage from *X v Switzerland*:

> "… A distinction must be drawn between voluntary arbitration and compulsory arbitration. Normally Article 6 poses no problem where arbitration is entered into voluntarily (cf Application No. 1197/61, Yearbook 5 pp 88, 94 and 96). If, on the other hand, arbitration is compulsory in the sense of being required by law, as in this case, the parties have no option but to refer their dispute to an arbitration board, and the board must offer the guarantees set forth in Article 6 para 1" (*Bramelid and Malmström v. Sweden*, Comm Report 12.12.83, para 30, DR 38 pp 18, 38)

49. In the instant case the inclusion of Rule K was not in any sense required by law or compulsory. An arbitration clause has become standard in the rules of sporting organisations like The FA. The rules regulate the relationship between the parties, which is a private law relationship governed by contract: see eg *R (Mullins) v Jockey Club* [2005] EWHC (Admin) 2197, applying *R v Jockey Club ex p Aga Khan* [1993] 1 WLR 909, *Bradley v Jockey Club* [2005] EWCA Civ 1056 and, in the context of The FA, *R v Football Association ex p Football League Ltd* [1993] 2 All ER 833.

Clauses like Rule K have to be agreed to by anyone, like Mr Stretford, who wishes to have a players' licence, but it does not follow that the arbitration agreement contained in them was required by law or compulsory. To strike down clauses of this kind because they were incompatible with article 6 on that basis would have a far-reaching and, in our opinion, undesirable effect on the use of arbitration in the context of sport generally.

50. The Strasbourg jurisprudence does, however, support the conclusion that, in order to be an effective waiver, the arbitration agreement must also be agreed without constraint and not run counter to any important public interest. This is reflected in the actual decision in *Deweer*, which was not an arbitration case but was a case in which a 'friendly settlement' was held not to be agreed without restraint in the context of an order by which the applicant's shop had been compulsorily closed and which might have remained closed for a considerable period before an alleged criminal offence was determined. We agree with the Chancellor's view expressed in paragraph 45 of his judgment that the agreement to arbitrate in the instant case is very different from the 'Hobson's choice' in *Deweer*.

51. The general principle can be seen from the decision of this court in *Di Placito v Slater* [2004] 1 WLR 1605, [2003] EWCA Civ 1863, where Potter LJ, with whom Laws and Arden LJJ agreed, said at paragraph 51:

> "It has been held that in order to be effective, a waiver must be made without undue compulsion (*Pfeifer and Plankl v Austria* (1992) 14 EHRR 692 at para 37) and "must be made in an unequivocal manner and must not run counter to any important public interest", *Hakansson v Sweden* (1991) 13 EHRR 1 para 66). Subject to those qualifications "neither the letter nor the spirit of [Article 6(1)] prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to have his case heard in public" (*ibid* para 66). It is also clear that arbitration proceedings agreed to by contract or in some other voluntary manner are regarded as generally compatible with Article 6(1) on the basis that the parties have expressly or tacitly renounced or waived their right of access to an ordinary court: see *Suovanieni v Finland* Application No. 31737/96, February 23, 1999. In my view there is no reason why the principle of waiver should not extend to circumstances where, without compulsion or constraint, a party voluntarily contracts with another party in the course of litigation that he will not proceed to trial upon a dispute between them unless he has issued proceedings by a particular date. Article 6 is principally concerned with questions of access. Where, in a case involving litigation of a private right, the claimant voluntarily limits his own right of access by agreement with the other party to the dispute, the considerations of justice arise simply as between the parties to the dispute; no additional public interest element falls to be considered. In my view no breach of Article 6(1) can be demonstrated in this case."

52. The principle underlying the doctrine of constraint appears to us to be essentially the same as the principle that the waiver must be voluntary in the sense that the arbitration agreement must not be compulsory as being required by law. In both cases the principle is that the waiver must be voluntary in the sense that the parties have voluntarily (or freely) entered into the arbitration agreement. Thus, if there is duress or undue influence or mistake which invalidates the arbitration agreement there will be no waiver of relevant rights under article 6.

53. The Strasbourg jurisprudence does not explain precisely what is meant by constraint but it appears to us that existing principles of the common law and equity fully protect the proferee. They include the principles of duress, undue influence and mistake. They also include the principle referred to in paragraph 14 above, which is stated in *Chitty on Contract*, 29th edition at paragraph 12-015, and which is illustrated by the decision of this court in *Interfoto Library Ltd v Stiletto Ltd* [1989] 1QB 433 (discussed in our judgment in *Sumukan*), that onerous and unusual terms must be brought to the attention of the proferee. Thus, as we see it (at any rate at present), English law protects parties from the risk of being compelled to enter into an arbitration agreement by what the Strasbourg jurisprudence calls constraint. In any event there is no question of constraint on the facts of the instant case.

54. Equally, there is in our judgment no question here of Rule K running counter to any important public interest. As has been seen, the Strasbourg jurisprudence encourages arbitration; it certainly does not discourage it. An arbitration agreement thus naturally waives a right to a tribunal established by law, if such a tribunal would otherwise have to be a court. As to the right to a hearing in public, the European Court has recognised that a party may readily waive it, provided of course that the waiver is unequivocal. This can be seen from *Schuler-Zgraggen v Switzerland* (1993) 16 EHRR 405, where the issue was whether the applicant had waived her right to a public hearing of a social security dispute.

55. In paragraph 58 of its judgment in that case the court first emphasised the importance of the public character of court hearings. It said:

> "The Court reiterates that the public character of court hearings constitutes a fundamental principle enshrined in Article 6(1). Admittedly, neither the letter nor the spirit of this provision prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to have his case heard in public, but any such waiver must be made in an unequivocal manner and must not run counter to any important public interest."

The Court then observed that, as proceedings in the relevant national court general took place without a public hearing, the applicant could be expected to apply for one if she attached importance to it. The court added:

> "She did not do so, however. It may reasonably be considered, therefore that she unequivocally waived her right to a public hearing in the Federal Insurance Court.

> Above all, it does not appear that the dispute raised issues of public importance such as to make a hearing necessary."

56. We should note in passing that there is some discussion in the cases whether there are aspects of the rights conferred by article 6 which cannot be waived, although we think that the only one so far suggested is the right to an impartial court. The possibility was touched on but not decided in *Pfeiffer and Plankl v Austria* (1992) 14 EHRR 692, which was not an arbitration case. The court returned to it on 23 February 1999 in *Suovaniemi v Finland*, which was an admissibility decision and which seems to us to demonstrate the approach of the European Court to arbitration.

57. On page 5 of the report of the decision the court first observed that according to the established case law the waiver of a right, in so far as it is permissible, must be established in an unequivocal manner. It referred in that regard to *Oberschlick v Austria,* 23 May 1991, Series A no 204, p 23 at para 51 and to *Pfeiffer and Plankl v Austria*. It added that in the case of procedural rights a waiver requires "minimum guarantees commensurate with its importance" in order to be effective for Convention purposes. The court then said this:

> "There is no doubt that a voluntary waiver of court proceedings in favour of arbitration is in principle acceptable from the point of view of Article 6 (cf No 8588/79 and 8589/79 *Bramelid and Malmström v Sweden*, Dec 12 December 1983, DR p 38). Even so, such a waiver should not necessarily be considered to amount to a waiver of all the rights under Article 6. As indicated by the cases cited in the previous paragraph, an unequivocal waiver of Convention rights is valid insofar as such waiver is "permissible". Waiver may be permissible with regard to certain rights but not with regard to certain others. A distinction may have to be made even between different rights guaranteed by Article 6. Thus, in the light of the case-law it is clear that the right to a public hearing can be validly waived even in court proceedings (see, Eur Court HR, *Hakansson and Sturesson v Sweden* judgment of 21 February 1990, Series A no 171, pp 20-21, §§ 66-67). The same principle applies, a *fortiori* to arbitration proceedings, one of the very purposes of which is often to avoid publicity. On the other hand, the question whether the fundamental right to an impartial judge can be waived at all, was left open in the *Pfeifer and Plankl v Austria* case, as in any case in the circumstances of that case there was no unequivocal waiver."

58. Having noted in that paragraph that the question whether the impartiality of the tribunal could ever be waived had been left open in *Pfeifer and Plankl v Austria*, the court turned to the facts. It concluded in the next paragraph that on the facts of that case there was during the arbitration proceedings an unequivocal waiver within the meaning of the case law. The arbitration was voluntary and the applicants lost their right to object to the impartiality of the arbitrator because they did not object to him despite having full knowledge of the grounds for challenging him. It then turned to the question left open in *Pfeifer and Plankl*.

59. It expressed its conclusions as follows:

> "In deciding this question the Court limits itself to the particular circumstances of the present case, which concerned arbitral proceedings. In doing this it takes account also of the applicable legislative framework for arbitration proceedings and the control exercised by the domestic courts within that framework (cf No 28101/95, *Nordström-Janzon and Nordström-Lehtinen v the Netherlands*, Dec 27 November 1996, DR 87-A, pp 115-116).
>
> The Court considers that the Contracting States enjoy considerable discretion in regulating the question on which grounds an arbitral award should be quashed, since the quashing of an already rendered award will often mean that a long and costly arbitral procedure will become useless and that considerable work and expense must be invested in new proceedings (see also the above-mentioned *Nordström-Janzon* case, p 116). In view of this finding of the Finnish court based on Finnish law that by approving M as an arbitrator despite the doubt, of which the applicants were aware, about his objective impartiality within the meaning of the relevant Finnish legislation does not appear arbitrary or unreasonable. Moreover, considering that throughout the arbitration the applicants were represented by counsel, the waiver was accompanied by sufficient guarantees commensurate to its importance. The Court furthermore notes that in the proceedings before the national courts the applicants had ample opportunity to advance their arguments, inter alia, concerning the circumstances in which the waiver took place during the arbitration proceedings. Without having to decide whether a similar waiver would be valid in the context of purely judicial proceedings the Court comes to the conclusion that in the circumstances of the present case concerning arbitral proceedings the applicants' waiver of their right to an impartial judge should be regarded as effective for Convention purposes. Therefore the refusal of the Finnish courts to quash the arbitral award on the ground of M's participation in those proceedings does not disclose any appearance of a violation of Article 6 of the Convention."

60. That decision supports the conclusion that there are circumstances in which the European Court has upheld the waiver of the requirement of impartiality. Any such waiver must be unequivocal, as was emphasised by the judgment of the Privy Council in *Millar v Dickson* [2001] UKPC D4, [2002] 1 WLR 1615. However, no problem arises in respect of impartiality in the case of an arbitration under the 1996 Act because it expressly provides by section 1 that the tribunal must be impartial and by section 31 that the tribunal must act impartially and it expressly provides by section 24 that one of the grounds on which an arbitrator can be removed is where there are justifiable doubts as to his impartiality.

61. In the context of arbitration the decision of the Commission in *Nordstrom-Janzon v The Netherlands* in 1996 seems to us to be instructive as to the role of the national courts. The parties had settled an earlier dispute under a joint venture agreement on terms which included a provision that disputes between them should not be settled by the ordinary courts but by a special arbitration procedure. The arbitrators rejected all the claims advanced by the applicants. The applicants challenged the award in the Dutch courts on the ground that one of the arbitrators was not independent and impartial. The challenge failed in all the Dutch courts, including the Supreme Court (the Hoge Raad). They argued that the award should be quashed as being contrary to public order interests.

62. The Commission referred to the passage in *Deweer* quoted above at page 115 and noted that constraint was not alleged. On page 116 the Commission observed that account must be taken, not only of the nature of the arbitration agreement and of the private arbitration proceedings, but also of the legislative framework providing for such proceedings, in order to determine whether the national courts retained a measure of control and whether that control was exercised on the facts. There follows this paragraph :

> "The Commission observes that the grounds on which arbitral awards may be challenged before national courts differs among the Contracting States and considers that it cannot be required under the Convention that national courts must ensure that arbitral proceedings have been in conformity with Article 6 of the Convention. In some respects – in particular as regards publicity – it is clear that arbitral proceedings are often not even intended to be in conformity with Article 6, and the arbitration agreement entails a renunciation of the full application of that Article. The Commission therefore considers that that an arbitral award does not necessarily have to be quashed because the parties have not enjoyed all the guarantees of Article 6, but each Contracting State may decide itself on which grounds an arbitral award should be quashed."

63. The Commission then referred to the principles of Dutch law and summarised the decision of the Supreme Court, concluding that the mere appearance of a lack of independence or impartiality on the part of an arbitrator did not lead to the quashing of an award under Dutch law, which required either that there was in fact a lack of independence or impartiality or that the doubts in that regard were so grave that the disadvantaged party could not be required to accept the award. The Commission expressed its conclusion as follows:

> "[The Commission] considers that Article 6 para 1 of the Convention does not require the Dutch courts to apply a different criterion in determining whether or not to quash an arbitral award. It finds it reasonable that in this respect Dutch law requires strong reasons for quashing an already rendered award, since the quashing will often mean that a long and costly arbitral procedure will become useless and that considerable work and expense must be invested in new proceedings.

> The Commission furthermore notes that in the proceedings before the national courts themselves the applicants were provided with ample opportunity to state their case and to challenge the arguments of the adverse party."

64. The Commission thus stressed the pivotal role of the national courts in considering whether there has been a breach of article 6 in a particular case relating to arbitration. Moreover it is clear from its reasoning and that of both the Commission and the Court in the other cases to which we have referred that the more important the article 6 right the greater the scrutiny to be expected. Thus it is easier to waive the requirement that the arbitration proceedings be in public than the requirement that the arbitrators be impartial.

65. In our judgment the provisions of English law contained in the 1996 Act amply satisfy the principles in the Strasbourg cases. We set out them out in paragraphs 34 to 38 above. In particular the mandatory provisions require the arbitrators to be impartial and to act fairly and impartially as between the parties. They allow for the removal of an arbitrator, for example, if there are justifiable doubts as to his impartiality or if there is a refusal or failure properly to conduct the proceedings. The court has power to set aside the award on the grounds of lack of substantive jurisdiction or serious irregularity, which includes a failure to act fairly and impartially between the parties. Moreover section 69 of the 1996 Act permits an appeal to the court from an award in some circumstances: see for example our judgment in *Sumukan*. We note in this regard that in this respect the 1996 Act permits greater access to the courts on appeal from an arbitration award than many other countries: see paragraphs 284 and 285 of the DAC Report, where it was said that the proposition that to substitute the decision of the court on the substantive issues (whether of law or fact) would be wholly to subvert the agreement made by the parties to refer their disputes to arbitration is accepted in many countries. Thus section 69 affords greater access to the court by way of appeal than is permitted in many countries and, indeed, by many standard forms of arbitration such as arbitration under the ICC Rules.

66. In all these circumstances, we see no basis upon which the court could properly hold that Rule K or any arbitration held under it, which will be subject to the detailed provisions of the 1996 Act, will or might give rise to an infringement of Mr Stretford's rights under article 6. In this regard we entirely agree with the Chancellor for the reasons he gave in paragraphs 45, 46 and 48 to 50 of his judgment. Rule K was incorporated into the contract between Mr Stretford and The FA. In agreeing to Rule K both parties waived their right to a hearing before the courts (except in accordance with the 1996 Act). They also waived their right to a public hearing. No question of constraint arises here. Nor is there any relevant public interest consideration to stand in the way of arbitration. On the contrary, it seems to us that the public interest encourages arbitration in cases of this kind.

67. For these reasons we reject Mr Stretford's challenge to the Chancellor's decision granting a mandatory stay. There is no basis on which we could hold that the arbitration is or would be null or void or inoperative. In this regard we should note that The FA put a written document before the court signed by Mr Pannick and Mr Lewis on its behalf, paragraph 2 of which is in these terms:

> "The FA accepts that the Arbitration Tribunal will be in the same position as the Court for the purpose of determining whether the Disciplinary Process under The FA Rules satisfies Article 6 standards. The FA reserves all its contentions as to why there is no breach of the Article 6 standards or indeed as to whether the Article 6 standards apply to the Disciplinary Process."

Thus, as we see it, questions such as whether the disciplinary proceedings involve a determination of the parties' civil rights and obligations and, if so, whether any of their rights under article 6 have been validly waived and/or, in the absence of waiver, whether any of Mr Stretford's rights have been infringed, are all within the jurisdiction of the arbitrators and thus for them to determine. In short the issues referred to in paragraph 8(a) above are matters for the arbitrators, while reserving all its contentions as to why there is no breach of those standards or as to whether the article 6 standards apply to the disciplinary process.

68. So too are the issues in paragraph 8(b) and (c). It is because the issue in paragraph 8(c) is a matter for the arbitrators that we have said nothing about it. When the matter was before the Chancellor it was said that it was contrary to public policy to allow allegations to be pursued against Mr Stretford based on his evidence at the Warrington Crown Court. That submission relied upon the decision of Collins J in *Meadow v GMC* [2006] EWHC Admin 146, [2006] 1 WLR 1452. Although that part of Collins J's decision was reversed by this court, (see [2006] EWCA Civ 1390) Mr Joffe maintained the submission. Tempting though it is, we do not think that it would be right to express a view on a point which the parties have agreed should be determined by the arbitrators.

CONCLUSION

69. For the reasons we have given we have reached the conclusion that the appeal should be dismissed and that the stay of these proceedings ordered by the Chancellor should be maintained.