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RESEARCH ARTICLE



The ethics of sports integrity investigations and the power of sport integrity bodies to compulsorily demand information and personal devices from athletes

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ABSTRACT

Despite the rise of intelligence and investigation methods in sport integrity policy and practice, there is a dearth of social scientific research around the ethics of their use. We critically examine whether these techniques are a proportionate, and thus ethically justifiable, response to sport integrity threats. The aim of this interdisciplinary investigation was to explore the ethics of intelligence-led investigations, with particular focus on rules that allow integrity organisations to demand athletes' personal information and private objects, such as phones and bank statements, from athletes during investigations. To fulfill this aim, semi-structured interviews with 15 integrity officers and 5 athlete representatives were undertaken. This qualitative study was conducted within a critical realist framework. Some Integrity Officers defended the rules, with the challenge of evidence gathering cited as necessitating them. Others, along with Athlete Representatives, conveyed ethical concerns. These novel findings have implications for integrity policy, education, and athletes' rights. The study concludes that demand rules are not justifiably proportionate for general use in sports integrity investigations since they present athletes with a coercive offer to choose between rule-observance and career success. We recommend that integrity bodies work to develop a harmonised approach, with more precise guidance on the determination of limited situations where these rules should be applied. Furthermore, we call for greater dialogue between athletes and integrity organisations to protect athlete rights and promote trust among stakeholders. Finally, the education of athletes on investigatory powers and potential seizures of personal objects will ensure athletes are aware of their rights.

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1. Introduction

Sport integrity is increasingly considered a critical umbrella term in sport governance that Inter/National sport federations, National Anti-Doping Organisations (NADOs) and event

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organisers seek to preserve and protect. A unified, or even authoritative, definition has not been established, though scholars agree widely on its constitutive policy domains, namely Anti-Doping, Diversity, Equality and Inclusion, Governance, Safe Sport, Sport Competition Manipulation (often referred to colloquially – but imprecisely – as match fixing) (McNamee *et al.* 2020). In addition, it is commonplace to note the analytic distinction between sport integrity and sport betting integrity, the latter being an increasing concern of governments as well as sport institutions (McNamee and Moriconi 2024). Moreover, there is also some consensus around sport integrity's tripartite nature: (i) personal integrity; (ii) competition integrity; and (iii) institutional integrity (McNamee 2013, Archer 2016, Gardiner *et al.* 2017). Each integrity infraction can thus appear in one or more domain, and at one or more levels.

One specific approach to sports integrity policy and practice aimed at discovering and prosecuting integrity violations is the use of intelligence and investigations. The Athletics Integrity Unit (AIU), which manages threats to the integrity of the sport of athletics, employ intelligence methods as part of their investigations, with former World Anti-Doping Agency (WADA) Director General and AIU Chair David Howman, publicly stating 'Traditional approaches to uncovering cheating have often proven to be inadequate and that's why the AIU made the strategic choice of investing heavily in our investigations and intelligence capability' (Athletics Integrity Unit (AIU) 2021, p. 2). While these steps are seen as necessary by some within the emerging sport integrity industry, a diverse range of ethical problems come in its wake. Steps towards an investigative approach are emphasised by the World Anti-Doping Agency (WADA): 'It is now fully recognised that gathering insights, intelligence and information followed by a rigorous investigative approach is one way the Agency and its partners will catch more of those who attempt to undermine the values of fair play and sportsmanship' (World Anti-Doping Agency (WADA) 2018, p. 62). Notwithstanding the increasing use of these methods, positive doping control test numbers remain low, with WADA's 2022 testing figures recording that only 0.77% of all tests were positive (WADA 2024). Moreover, wider threats to sport's integrity, such as sport competition manipulation and abuse, remain and are thought to be on the rise (McNamee *et al.* 2020).

Previous scholarship has explored integrity systems and the associated ethical challenges, such as privacy concerns associated with the whereabouts system (Hanstad and Loland 2009, Waddington 2010, Møller 2011, MacGregor *et al.* 2013) and anti-doping tests that require athletes to provide urine samples under the watch of doping control officers (Elbe and Brand 2014). Research has presented low levels of athlete trust in the effectiveness of the anti-doping system (Overbye and Wagner 2013, 2014), and there have been calls for better perceived legitimacy of the anti-doping system for athletes (Woolway *et al.* 2020), with regular independent evaluations of the integrity system needed (Barkoukis *et al.* 2022).

Among the possible tools for more effective investigative work is the power to demand athletes' objects (e.g. phone and laptops) and information (e.g. bank statements, social media accounts and phone bills) during integrity investigations. While there is limited academic literature specifically discussing the use of intelligence and investigations within sports integrity, Hessert (2020) explored demand rules from a legal standpoint, highlighting issues such as athletes' inability to reasonably refuse demands and not having the protection of non-self-incrimination, which is a right

afforded in criminal law. It is argued that demand rules breach athlete rights, that they are not compatible with fairness, and they are disproportionate for use in sports integrity (Hessert 2020).

Hessert (2021) also examined this issue further, assessing the legality of these investigations for athletes who are minors. Hessert (2021) argued that minor athletes must be protected in their best interest. In cases of competition manipulation and non-analytical doping violations, sufficient protection of minors is not in place during investigations and demands for objects and information cannot be fully justified (Hessert 2021). Minor athletes should be protected against coercive measures seen in investigations (Hessert 2021). Continuing from the legal standpoint, Hessert (2022) argues that intelligence sharing between sports organisations and law enforcement can cause legal tension. This is prevalent in cases where athletes are forced to share information by sports organisations, where demands are used, and then this information is passed onto law enforcement (Hessert 2022). Notwithstanding this, no previous research has examined the ethical concerns associated with rules that allow sport integrity organisations to demand athletes' personal information and private objects.

Demand rules are not a capability employed by all sport integrity organisations and departments. Rules within sports integrity bodies differ; some have extensive powers to demand objects and information from athletes and others in sport, others have no such powers. Gaining these powers often requires the approval of governing boards, and in some cases the relevant athlete representative bodies. Athletes' refusal to hand over these objects or information can lead directly to sanctions, including bans from participation in sport. There is precedent for the use of these powers in relation to both anti-doping and sport competition manipulation, and may also be the case for corruption and unethical behaviour (Hessert 2022). While acknowledging their potential import for sport integrity protection, the mandatory nature gives rise to several ethical issues, such as privacy, informed consent, and proportionality. Their use, therefore, is not an unalloyed good.

While ethical concerns cast a shadow on such policies, their justification, in part, appears to stem from the fact that current approaches to ensure sport integrity fall short (as is evidenced by the low numbers of positive doping tests noted above). Intelligence and investigations functions are thought to offer a way to provide evidence of doping in the absence of an Adverse Analytical Finding (i.e. a positive doping test), as well as providing critical evidence related to other integrity threats. The severity of some integrity issues could also necessitate further powers. For example, within sports competition manipulation domains, the diverse and dynamic betting markets that facilitate betting on various aspects of a sport event means an athlete does not have to manipulate the result but only micro-events within the event. This outlines the complexity of proving integrity offences, with criminal networks exploiting vulnerable people and taking advantage of such behaviours, with vast sums of money exchanging hands (United Nations 2021). It is against this backdrop that we explore the ethics of intelligence-led integrity investigations, seeking to ethically analyse rules that allow integrity organisations to demand objects and information from athletes if they are subject to an investigation. Integrity Officers who undertake these investigations, and Athlete

Representatives who have knowledge of athlete experiences of investigations, can provide insights to inform that analysis.

2. Methodology

2.1. Study approach and design

The purpose of this research is to identify which powers are available for sports integrity organisations to use in investigations into athlete wrongdoing, and critically analyse the extent to which these powers are ethically proportionate. The methodology is necessarily interdisciplinary, drawing on integrity policy development and critique, along with issues in moral philosophy, and the philosophy of social science.

Chappell (2014) argues that philosophical method in ethics aim at ethical insights that must be supported by real-life examples and careful analogies, rather than the deductive application of moral theories built rigidly around single principle frameworks (respect duties, maximise welfare, etc.) that fail to ‘fit the contours of real life’ (Chappell 2014, p. 2) despite the consistency and clarity they offer. Equally, ethics that are focused on positive behavioural traits (virtue ethics) are often criticised for their underdetermination of justifiable conduct. To explore this real-life ethical pluralism, methods that are sensitive to such complexity are needed. This requires well-constructed, open and pluralistic theory informed questions, and an opportunity to sensitively explore experiences and ideas with relevant stakeholders. This led us to the use of semi-structured interviews to explore the particular issues associated with intelligence and investigations in sports integrity with applicable stakeholders of Integrity Officers and Athlete Representatives.

This approach allowed researchers to gather insider perspectives in a systematic manner and allowed for: the identification of themes and patterns as perceived by the participants in line with institutional norms and expectations; an understanding of how their strategies and policies are conducted; how their stakeholders were to be protected and the issues surrounding them. Semi-structured interviews facilitated this and provided real-life examples and experiences, exploring first-hand beliefs of the actors, institutional expectations, narratives, and policies, as well as the tensions between these levels. A strong element of participant voice was attended to during the interviews, which sought to understand the complexities experienced by participants, with all the attendant tensions and contradictions that inevitably arise when one discusses such sensitive topics.

2.2. Participants

Institutional ethical approval was received¹ from Swansea University, following which 20 participants, who were purposefully sampled due to their knowledge of the specialist area of intelligence and investigations within sports integrity, participated in semi-structured interviews (Smith *et al.* 2010). Integrity Officers and Athlete Representatives who had knowledge of intelligence and investigations were sought, using personal networks of the researchers, each from different integrity organisation or sports around the world. After that a ‘snowball’ sampling technique was utilised (Noy 2008) to access participants beyond personal contacts, to ensure a broader pool of participants were recruited. All

participants were reminded of anonymity procedures. All interviews were conducted in English.

In total, 15 integrity officers were interviewed, each representing either a different National Anti-Doping Organisation (NADO) or sports integrity organisation/department. Here, 'Integrity Officer' is used as a generic term to describe workers currently or previously employed in a sports integrity role. The sample comprised participants who had conducted integrity investigations in Europe, Asia, North America, South America and Africa, across a broad range of sports. The remaining five participants were Athlete Representatives, each representing a different geographical region, sport, or organisation. Four represented athletes globally, and one nationally. Additionally, four of the five were former or current international level athletes (from different nations). Athletes are the main stakeholders of sport, thus our research partly attempted to address the perspective of Athlete Representative participants regarding how demand rules were experienced. Given the invasive nature of the rules, and previous athlete complaints with privacy in the integrity system (Hanstad and Loland 2009, Waddington 2010, Møller 2011, MacGregor *et al.* 2013), it is necessary to gain their insights. While for some organisations these powers can be used to investigate any person affiliated with them (e.g. coaches, administrators, doctors, etc.), in this paper we focus solely on demands issued to athletes, and athlete rights in sport.

It is noted that there are more Integrity Officer participants in this research than Athlete Representatives. The imbalance is in part due to there being significantly less Athlete Representatives who have the knowledge and experience of sports integrity intelligence and investigations than Integrity Officers. Nevertheless, the Athlete Representatives each represent a large number of athletes. In this way, a high number of athlete views and experiences are indirectly represented. When the results are discussed and analysed later in the paper, attention is given to both of the participant groups, with the views of both the Athlete Representatives and Integrity Officers considered for each section.

2.3. Theoretical framework, ethical considerations, and subsequent procedures

Critical Realism (CR) shaped the research design by encouraging the researchers to explore beyond what can be observed and had been officially described, and to uncover underlying causal mechanisms and the structures that cause events. CR is based on work from Bhaskar (1975), which has since been developed by scholars generally (e.g. Bhaskar 1979, Collier 1994, Sayer 1997, Archer 2003) and specifically in relation to sporting practices (Downward 2005, North 2017, Wiltshire 2018, Scambler 2022). In partial opposition to hard constructionist approaches, CR contends that there is a reality that exists beyond and independently of the researcher's or participants' conceptions and perceptions of it. In common with a constructionist world view, CR recognises that human practices and language shape how we experience and know reality, and these give rise to truths that are contextual and influenced by our perspectives.

CR requires the researcher to delve beyond thick descriptions and to look for mechanisms that generate explanations (Tikly 2015).

The three levels of CR exploration and explanation are:

- (1) Empirical: experiences that can be observed

- (2) Actual: objects and events that happen in the real world
- (3) Real: deeper lying structures and causal mechanisms

(Scott 2005, Fletcher 2017).

We utilise this tripartite framework in our presentation and discussion of participant data. That according to the varying abilities, capacities, experience, insights and interests of the participants, to probe each of these levels, which ascend in difficulty to understand. By considering more than just what we can measure and observe, we are able to expand our focus to exploring underlying causes.

One potential downside is that this approach can be intrusive, digging into places that the participants find uncomfortable in search of causal as well as reasoned explanations (Stutchbury 2022).

In practice, CR underpinned the methodology and decision for selecting interviews to understand individuals as they interpret and navigate their social structures and reality, and crucial decision points that are generative of social action and policy (Archer 2003). In the context of the present research, CR facilitated the exploration of the use of intelligence and investigations within sports integrity and the mechanisms underlying these methods. Researcher positionality is also important to note throughout the research process, with researchers bringing their own set of assumptions and beliefs to the research process.

Participants were contacted via email incorporating information sheets and invitations to consent to research participation, and given assurances of anonymisation and confidentiality in order to facilitate more honest and open interviews and maintain ethical principles of good research, safeguarding participants from subsequent harm. Interested participants contacted the research teams to arrange a suitable time for the interview. Written consent and verbal consent were recorded at the start of each interview ensuring informed and voluntary participation, including the right to withdraw at any stage.

Interviews were conducted via online video call software Zoom, with the first author as the interviewer. Zoom was selected due to the international nature of the research, allowing for participants globally to be included, as opposed to using face-to-face meetings which would have been financially and logistically challenging.

Prior to each interview, open-source research was undertaken on the participant and their organisation which ensured that interview questions were relevant to the participant and aided with building a rapport. Questions included the participants' experiences of integrity investigations, the powers their organisation had employed, and their perceptions of demand rules. While a common interview schedule was established for all interviewees, specific questions were written for each participant based on the prior open-source research. The interviewer also adapted the questions during the interview if particularly interesting insights were revealed. Informed by CR, an aim of the interviews was to get below the surface of initial participant perceptions. In order to do this, participants were sometimes challenged on their answers, and opposing suggestions were offered (e.g. when talking about demand rules and how useful they are, participants were asked to consider alternative views of how athletes might feel about them). Discrepancies were also picked up on and explored further.

Each interview was conducted with one participant at a time, to facilitate open conversations, and to allow participants to be at ease when speaking about sensitive topics.

Interviews lasted between 27 minutes and 65 minutes. The average interview length was 46 minutes, with no notable difference in length between the Athlete Representatives and Integrity Officers (the average interview length for Athlete Representatives was 45 minutes and 53 seconds; average interview length for Integrity Officers was 46 minutes and 21 seconds). The interviews were recorded on Zoom and manually transcribed, with all identifiable characteristics removed to ensure participant anonymity.

2.4. Data analysis

Thematic analysis was used by the first author to analyse the data for emergent themes and extract meaning (Clarke and Braun 2021). The qualitative data package NVivo 12 was used to code the interview data, and to develop common themes and subthemes.

Following data collection, first, familiarisation with the data set was undertaken to facilitate depth and critical engagement. Next, the data was coded to capture specific meaning within the dataset. Data was organised into meaningful groups, where patterns and relationships were identified, and which directly linked to the research purpose. Each data item was read closely and tagged with a code level. Themes were then developed and refined, to reflect multiple facets of ideas and concepts. The interviewer focused on commonalities through the data to draw out and identify overlaps and synergies. Themes had central organising concepts and distinct properties, with shared similarities and differences evident, but went beyond this, with embodied meaning related to the research questions. As noted by Clarke and Braun (2021), themes do not passively emerge, but are actively produced. This contributed to the development of three distinct categories representing the reality of lived experience in relation to demand powers and rules. A key theme identified was 'Ethical and practical concerns of powers in investigations'. The three key sub-themes stemming from this were: (i) varying views from athletes; (ii) evidence necessitates these rules; and (iii) the proportionality of the rules. This theme was developed from codes that referenced participant thoughts and experiences of powers within investigations. During theme evaluation, it was asked whether the theme captured something meaningful, whether it was a central idea that represents data and codes, and whether it had clear boundaries.

Thematic analysis, like social constructionist approaches, acknowledges that data does not directly mirror reality, but rather offers a mediated version, shaped by experiences, perceptions and cultural contexts (Clarke and Braun 2021). The researcher(s) interpret these realities, which are influenced by their own perspectives, aiming to give an interpretation that fully represents the participants' realities, but also the limits of their worlds (Clarke and Braun 2021).

3. Context, results and discussion

3.1. Investigation policies

In CR, the first level of exploration pertains to the immediately observable empirical aspects. Within sports integrity, we can see that investigations are increasingly undertaken, according to published policies that outline the regulations integrity organisations must comply with, and published decisions of cases. The rules can be found in several sports' regulations. For example, the World Athletics Anti-Doping Rules state that athletes or other persons may be required to provide data or files, 'such as itemised telephone bills, bank statements, ledgers, notes, files, correspondence, emails, messages, servers, cloud data, cloud services' and provide objects 'for inspection, extraction, copying and/or downloading any Electronic Devices and/or Electronic Services in or on which the Head of the Integrity Unit reasonably believes relevant information may be stored' (World Athletics 2023, p. 30). Additionally, access to their premises can be requested, as well as passwords and login details in order to access electronic data (World Athletics 2023). World Athletics (2023) also considers refusal to comply with such demands to constitute an anti-doping rule violation – specifically 'tampering' – Article 2.5 of the 2021 WADA Code, which can result in a period of up to four years of ineligibility (WADA 2021).

A recent doping case brought the use of these rules to public attention. Blessing Okagbare, an international level track and field athlete who competed for Nigeria, was found to have committed Anti-Doping Rule Violations (ADRVs) Articles 2.1, 2.2, 2.3 and 2.5 (AIU 2022, WADA 2021). During the investigation of these ADRVs, Okagbare was interviewed by the AIU in 2021 and 'refused to comply with the AIU's Demand for the copying and/or downloading of her electronic storage devices (i.e. her mobile telephone), in breach of World Athletics Rule 5.7.7 ADR (anti-doping rules)' (AIU 2022, p. 3). Okagbare was initially banned for 10 years for these ADRVs and breaches of the anti-doping rules including non-cooperation (Rowbottom 2023) and refusing a Demand to hand over her mobile phone (AIU 2022). An additional year was later added to her ban for tampering (Rowbottom 2023). The AIU (2022) case file notes that the Federal Bureau of Investigation (FBI) later obtained her phone, which was examined by U.S. Customs and Border Protection as she returned from the 2020(1) Olympic Games in Tokyo (Rowbottom 2023), and this contained evidence that proved she committed ADRVs (AIU 2022). Given the consistently low rates of catching and sanctioning athletes who have committed anti-doping rule violations, this case stands out for its result, which was produced by the data uncovered in the use of the demand rules.

It is not surprising then that an increasing number of sport governing bodies (e.g. the International Tennis Integrity Agency (ITIA), International Table Tennis Federation, and selected National Anti-Doping Organisations) extol the value in these powers to enhance their investigative capacity. The ITIA Anti-Corruption rules, for example, state that players can be sanctioned for failing to cooperate with investigations into corruption offences with 'a maximum period of permanent ineligibility' (ITIA 2024, p. 34).

On the empirical level, these demand rules appear valuable to integrity organisations. Integrity prosecutions and sanctions have been made possible because of their existence. To go beyond the empirical to the second, actual, level of CR meant talking to participants with real-world experiences of the processes created in and through demand rules.

3.2. Participant responses

When considering the actual level of CR, it is important to understand first how investigations are actually conducted. Thus, the first researcher interviewed Integrity Officers who had conducted and/or overseen sports integrity investigations, and Athlete Representatives with knowledge of athletes' experiences of them. Attentive to CR's commitment to the reality of experience created by the rules, this allows the research to consider data on how the participants' actions are impacted by their experiences and environment, that are not commonly available, and allows for exploration of the complex dynamics in play within investigations.

Athlete Representatives interviewed in this research stated their views on demand rules, which include discontent with the use of investigative powers. Key concerns include a lack of consultation and absence of protection from abuse of these rules. For example, in response to being asked their thoughts on the demand rules, one Athlete Representative stated, 'Obviously if you're the athlete on the receiving end of that you're not going to be happy' (AR3), and another reflected, 'This is absurd, what is the point? It's like a restriction of your freedom' (AR5). Of course, the point here is not about possibility but permissibility. Where integrity organisations have provisions for such powers, then indeed they can insist on handover of information and personal products. The declaration seeks to theoretically raise the normativity of such powers, either in terms of normative (ethical or legal) justifiability. Athlete Representative shared concerns, such as questioning whether athletes had consented to these rules, with one explaining 'I don't think you can really force things like that on athletes and make a negative finding on the basis of them not having provided [their objects or information]' (AR4). Another stated that anti-doping organisations have issues within investigations with an inability to obtain information in the way that law enforcement agencies can, saying 'You have a lot of anti-doping organisations that are trying different ways to get these powers and the issue from my side is that athletes aren't necessarily agreeing to this. We haven't necessarily had a conversation with athletes around whether they are happy with these powers' (AR1).

Athlete Representatives' main concerns appear to centre on the use of the rules, and what can be called the 'coercive offer' underpinning their use. As part of the regulatory environment, athletes are required to accept these rules as a precondition of their participation in what is most frequently their occupation. The rules are not *sui generis* since they are analogous with their required acceptance of the WADA Code and wider integrity rules governing how they train for, compete in, and recover from sporting competition. Athletes are subject to doping control tests if selected by a doping control officer, and if an athlete refuses, they will be sanctioned. Consenting or not, this is part of the responsibility of being an athlete. Indeed, consent to such rules is assumed based upon participation alone.

Specific concerns were voiced by athletes in connection with the mandatory surrendering of personal devices. One Athlete Representative remarked, 'I think initially it probably scares you going I don't want to hand over my phone, it's a very personal item, there's all sorts of stuff in there athletes might not want people to see' (AR3). Notwithstanding the awareness that an athlete may have that their phone could be

demanding by an integrity organisation during an investigation, the contacts in their phones may not, nor have they given their consent for their messages, etc., to be analysed. Anecdotally, some integrity officers assert what is widely believed, that athletes who are engaged in competition manipulation have more than one phone and surrender only the 'clean' device.

Athlete Representatives also called for protections from abuse of these rules, with one suggesting that there are no protections in place to prevent abuse of the rules. It is worth quoting at length:

I don't think the [WADA] Code at the moment is set up well enough for WADA to, as the global regulator, to regulate this space. And that's what I would like to see. I guess a corresponding regulation from WADA or oversight from WADA to make sure that these things aren't being abused, that athletes do have a level of protection. Because yeah, as we know from recent history, not everyone in this space is a good person. And without having that oversight that I would expect in a Western country is that you lose this right but you gain this right. It's that balance. And I'm concerned at the moment that that doesn't happen or it's not happening at the moment. (AR1)

Concerns with abuse of the rules – data being mined without clear justification, or with justification but without proper guard rails as to what the investigator will search for, are particularly poignant when the history of sporting misconduct is considered. Corruption has been seen at the highest level, such as in athletics where bribes were taken by high-ranking officials for covering up positive doping tests (Ingle 2020, WADA 2023) and in football, which saw US authorities indict FIFA officials and associates on corruption charges (Office of Public Affairs 2015, BBC 2015). This has understandably made athletes wary of abuse of powers by those in positions of authority.

Other concerns expressed by Athlete Representatives included sanctions for athletes who do not cooperate with demand rules, with one sharing,

[Athletes] should be given every opportunity to give anything that has any supporting information that they have. I don't think we can really delve too far beyond the sporting part of it for in the case of forcing them or punishing them not to produce it or forcing them to produce it and punishing them if they don't. (AR4)

This point draws comparison with Hessert (2020) who highlighted an issue with demand rules overriding athletes' ability to reasonably refuse the demand. Within sport rules, athletes do not enjoy the protections of non-self-incrimination, which is a right afforded in criminal law. If athletes refuse, they can be sanctioned, even banned from sport. Serious issues may, however, be foreseen if the devices taken from a compliant athlete include data from what is a private sports investigation uncovers criminality which then becomes the concern of public law enforcement agencies (Hessert 2020). It is notable that the World Athletics Anti-Doping Rules explicitly state that athletes being investigated for wrongdoing forfeit rights, defences and privileges normally afforded to them in legal situations (World Athletics 2023). This seems to leave little scope for athlete agency when combined with the limited scope for exercise of athletic labour. AR2 emphasises this precariousness:

From a procedural fairness point of view I think there needs to be at least a threshold of evidence that there was a certain wrongdoing for that to happen and we see that in criminal procedures are happening as well, but there needs to be some supporting evidence and then

basically the case can't be made by only being based on the results of that search of the bank accounts and the phones ... and there needs to be a possibility to challenge that so I think there's a procedural fairness element to it. (AR2)

In their defence, some Integrity Officers in this study noted that there must be evidence of wrongdoing before objects and/or information is demanded. Yet it is difficult to see how the proper objects of scrutiny could be cauterised from other personal information. Thus, the proper limiting or circumscription of such investigation, where no criminal behaviour is suspected, seems to be a priority. Moreover, distinctions must be drawn among the powers of private bodies employees (such as Integrity Officers) and law enforcement personnel. Nevertheless, there is a lack of consensus over the thresholds or oversights in place to determine the initiation of the demands. Rather, integrity organisations each decide upon their own rules and regulations, leading to differences between organisations, and the potential for abuse of these powers.

While Athlete Representatives in our research expressed dissatisfaction with demand rules, Integrity Officers, those who are working in the sport and implementing policy, unsurprisingly stated that the powers afforded were a particularly useful tool in investigations. Integrity Officers frequently stated that these rules were necessary due to their ability to provide evidence of integrity issues. One stated:

[Object and information demand rules are] the most significant area of finding what you're looking for. A lot of the cases that I deal with, by the time we get to a disciplinary hearing, there's very little they [the athlete] can do or say because we found all the WhatsApp messages, the images of betting, the transfer of the money from their bank account to the betting operators. (IO8)

The usefulness and need for these rules is supported by another, who stated 'It's where you go from intelligence to evidence. Text messages between people arranging to fix an event, and they arranging to bet on something, arranging to purchase drugs is evidence, and that is the ultimate aim of an investigation' (IO5). The need for evidence was echoed by more integrity officers, with one explaining that integrity organisations did not have many powers, which could limit them, adding 'We lack the resources to gather information' (IO4).

Other Integrity Officers supported the notion that the rules are needed to gain evidence, with one explaining, 'It goes back to the evidence issue, if an athlete is saying I have nothing to do with this, why would I give you my phone and that's a difficult burden and we don't have that many solutions' (IO9) and another stating, 'It's not an ideal scenario to ask someone for their phone but the point about it is that it is where you get the main evidence' (IO8). While these rules pose ethical challenges, they are seen as an important evidentiary tool to prove wrongdoing, which can support stronger sanctioning of those who commit integrity violations.

Gathering adequate evidence is a key challenge that was identified by Integrity Officers during interviews, and it was argued that rules, such as issuing demands for objects and information to those suspected of wrongdoing, can provide evidence that allows them to prove this wrongdoing, and lead to a sanction.

Only insiders to the rarefied world of elite sport are likely to appreciate the nuances of integrity operations beyond media messages of integrity protection. CR is not alone in

attempting to unpack what is not immediately obvious. It can, however, help us towards an understanding of underlying mechanisms (regulatory powers) that can lead to events (e.g. demand rules being implemented) over athletes who may not even be aware of their presence or their powers to strongly shape their (non-)compliance or the powerful sanctions that can follow.

Some Integrity Officers also displayed concerns with these rules, such as acknowledging the difficult choice faced by athletes: 'It is a big ethical concern. And obviously, the players consent to it when they sign up to be a professional [sport athlete], because it's written in the [organisations' rules]. But because the choice isn't really there, they sign up or there can't be a professional [athlete]' (IO2), with another sharing:

It's a whole new level of, I don't want to use the word invasion, but I think it would be that in a way, because as an athlete you're never being asked permission for that [demand rules]. You're never being told that the possibility that that might happen even exists. You know you have to pee in a cup, or people will draw your blood for exams once in a while, but having to check your bank account, submit statements, phone records and all that, that's never discussed until they see themselves in a situation like this. (IO15)

Another reported: 'I would be very sort of sympathetic to the argument that this is not right fundamentally' (IO10) and another reflected: 'This is a massively controversial and challenging area ... It is invasive and I can't definitively say to you it's the right thing to do' (IO8).

Several Integrity Officers also noted that they would not be willing to hand over their own phones and associated data. Integrity Officers acknowledging athlete concerns is a positive finding for athlete rights and could ensure these rights are upheld and protected within policy.

The range of views voiced in this research by both Athlete Representatives and Integrity Officers highlights the ethical tensions of these powers, and the need for harmonised regulations to ensure fair policies for athletes globally. National and international differences within the application of the rules mean that athletes living and training in different parts of the world will be treated differently. This is problematic and might expose some athletes to greater risks than others. Moreover, it might also mean that some athletes are not appropriately protected. A key aim of the WADA Code is to ensure harmonisation across anti-doping, and yet the difference in implementation of demand rules appears variable. It should however be noted that there are some objections to harmonisation that cannot be overcome, such as legal matters pertaining to different nations.

In a similar vein, Woolway *et al.* (2020) call for better perceived legitimacy of the anti-doping system for athletes, by means of making it more effective as well as equal, stating that the regulations and how they are implemented need better international harmonisation. A unified way for ADOs to collect and share anti-doping knowledge would better the system and allow those with the power to act on the information to do so more effectively (Marclay *et al.* 2013). In wider integrity matters beyond anti-doping, the International Olympic Committee (IOC) states when integrity is breached, thorough investigations and appropriate sanctions are vital and contends that sanctions imposed are currently not harmonious (IOC 2018). Kuwelker *et al.* (2022) highlights that consistency across sports is

needed, which would be helped by federations having uniform regulations and sanctions, graded by severity of the offence.

By hearing from participants with real-life experiences within sports integrity investigations (Chappell 2014), this research has been able to uncover more than just the observable, empirical level. The actual level has been accessed and has presented different sides to this ethical debate – one from athletes who feel as if they have not been consulted, have not consented and do not agree with demand rules, and the other side from those working within the sports integrity industry, many of whom say these rules are needed in order to gain enough evidence to sanction wrongdoing in sport, with others conceding unease at their use.

A review of methods such as demand rules and in which situations they would be necessary and proportionate, as well as the thresholds that must be met, are needed. Unifying rules and powers globally, with a clear framework for integrity organisations to follow could enhance athlete legitimisation of integrity systems, alongside ensuring proper oversight of these rules to ensure athletes are protected against abuse of these powers.

Demanding objects and information are powers usually reserved for law enforcement investigating possible crimes. There is a criminal element to some wrongdoing in sport, for example, both doping and match fixing can involve criminality, so too can corruption and discriminatory behaviours, but in the latter cases here the criminal/civil law distinction can become blurred. Certainly, not all sport integrity issues entail criminal activity. For example, one Integrity Officer said demand rules had been implemented within an investigation into an athlete who tested positive for a substance that they had unintentionally ingested. Thus, the justification of such rules in these situations appears less defensible and ethically problematic. When considering that these powers are usually reserved for law enforcement, one Integrity Officer put the matter succinctly: 'People cheating at sports aren't usually criminals, they're people cheating at sports' (IO6).

Very few careers have such demands. Outside of elite sport, if a superior was to ask for a workers' object, such as their personal phone, to investigate suspected wrongdoing in the workplace, it is unlikely that it would be accepted. Yet, athletes are expected to accept these demands or leave the sport. Integrity Officer (15) worked for an organisation that has strong law enforcement partners and high levels of support to enact these rules, something that the organisation made use of. When asked if they thought these rules were justifiable, they replied, 'No. Not really' (IO15). They continued:

I don't think we can justify having that [rules that allow demands for objects and information] for athletes using substances. I think it's important if we're trying to protect athletes from abusive coaches or doctors that are prescribing them stuff that they don't even know what effect that's going to have in their bodies ... If we have their [athletes] well-being in mind when we're investigating doctors or let's say compounding pharmacy that is adding stuff to their supplements that are not even allowed for human consumption in their country, then yes, I think that having some extra resource to assist in the events, in the investigation, makes sense. But not if we're going after athletes. Yeah, not just because of their results or their competitions, then no. (IO15)

The above response also suggests that more exploration into how these rules are implemented is needed. Athletes' rights to participate in sport free from integrity issues must also be weighed up against their human rights such as privacy. This research has highlighted athlete concerns over the use and potential abuse of demand rules, as

outlined by participants in their interviews. Yet even some Integrity Officers challenge the legitimacy of the use of these powers in cases of cheating such as doping. The actual level of the use of demand rules is complex and contested, even by the actors that stand most to benefit from them.

3.3. *Lack of athlete voice*

The empirical and actual levels having been presented, we turn to discuss the real level. Here we attempt to identify underlying mechanisms and structures that can shape integrity investigations including both the regulatory framework as well as the hierarchical structures and powers in sports integrity and how these shape or – to coin a term that Scambler (2022) adopts from Archer (2007) – ‘fracture’ athlete agency. By this is meant not the dominant narratives prior to action, causal to it, or reflective of it, but rather ‘those whose internal conversations intensify their distress and disorientation rather than leading to purposeful courses of action’ (Scambler 2022, p. 58). This seems an apt characterisation of athletes who are the subject of potentially powerful regulatory mechanisms such as demand rules. One could add here the more widely applied collective powers of the anti-doping system regarding the notification of athlete whereabouts, which is critical for system maintenance of anti-doping but which critics have often characterised as a Foucauldian panopticon (Møller 2011).

Hatton (2020) argues that athletes can face economic coercion in situations where they face the threat of losing income, and status coercion when they have the threat of losing their employment status. It can occur wherever an employer ‘has power over a worker’s social position – not their immediate income but their status in society’ (Hatton 2020, p. 16). Status coercion exists when groups are classed as not ‘real workers’ which can lead to additional regulation, surveillance and discipline (Hatton 2020). Elite athletes who are not professionally employed fit this latter category. Junior athletes or semi-professionals scraping a living are particularly vulnerable to approaches by illegal betting syndicates to supplement their meagre financial status. Athletes can face status coercion in the integrity system, such as with the aforementioned whereabouts system and the demand rules, which present athletes with a coercive offer to choose between rule-observance and career success – or even threats of violence or extortion from criminal actors.

The quotations presented in this research from Athlete Representatives paint a picture of anxiety and dissatisfaction over the powers afforded by demand rules. They have not as yet led to particular actions on behalf of individuals nor those collectives representing individual athletes. Yet as the use of demand powers is likely to increase given its demonstrable effectiveness we can aptly label their stance a powerful ‘fractured reflexive’ (Archer 2007). These powers are not just a tool for integrity investigations in a vacuum, rather, they affect athletes and their lives in broader ways. Previous research has argued that the athlete voice needs to be incorporated into the integrity system, such as Willson *et al.* (2022) who suggested that safe sport policies have been implemented via a top-down approach which is driven by those in power in sports, but in order for these policies to benefit athletes, their perspectives must be considered and incorporated (Willson *et al.* 2022).

In recent years, scholars and activists have begun to focus on athlete voice, highlighting collective understanding and representation to empower individual

athletes (Weissensteiner 2015). Within the safe sport field, the VOICE research project focused on listening to individuals who have been affected by sexual violence in sport (Hartill *et al.* 2019), and this approach was chosen based on the following justification: ‘policy and initiatives generated from the accounts of those that have experienced sexual violence in sports settings will be highly valued and, therefore, most effective in “reaching” the sports community and promoting knowledge-transfer, education and development’ (VOICE 2018, para 1). Furthermore, empowering athletes and involving them in decision making could aid with addressing power imbalances that can underpin integrity issues (MacGregor 2021). McNamee *et al.* (2023) undertook a survey of Athlete Representatives, which uncovered that between 15 and 20% of those surveyed are not formally involved within decision-making processes, despite their athlete representation role. Additionally, these Athlete Representatives reported that they are not able to propose their own ideas and agendas, are not given information about decision-making processes, and are not able to appeal the decisions, policies or rules that impact athletes. Athletes are not guaranteed to influence policy just by involving them in decision-making processes (McNamee *et al.* 2023). Clearly, an open dialogue between athletes and those leading integrity bodies or functions in sports (whether national or international, single or multi-sport) can help to diminish the sense of disempowerment and vulnerability expressed by athlete participants. The Athlete Representatives in this research confirmed what is widely held that athlete panels and commissions can sometimes lack engagement, even from those elected to them (McNamee *et al.* 2023). One Athlete Representative asserts in exasperation: ‘Some of the other [Athlete Representatives] wouldn’t do anything’ (AR3). Ways to further engage athletes and athlete representatives should be explored to facilitate meaningful dialogue and more effective advocacy (McNamee *et al.* 2023).

Given the strength of our Athlete Representative views, and the acknowledged challenges and tensions expressed by Integrity Officers, it would seem that greater input would lead to less concerns around proportionality and in its wake, one might reasonably expect higher acceptance. Further, if independent evaluation of these methods was initiated, it is reasonable to assume too that integrity officers might better understand the limits of their powers, which in turn would help to protect athletes. Clearly, some independent oversight or audit of the demand powers would allay the classic Platonic question: ‘who guards the guardians?’ Deeper consultation with athletes could also support the increasing legitimisation rules, listening to and after critical dialogue incorporating their views and implementing changes *mutatis mutandis*. This is not an uncritical or excessively athlete-friendly peroration. To the contrary, Integrity Officer 15 highlights the need to listen to the athlete voice and for the integrity system to better represent athletes, saying:

How can you expect athletes to believe in a system that has never worked in their favour, that does not take their realities into consideration, that was not built by them and for them? (IO15)

This confession raises important points about the consolation, operation, and governance that secures athletes representation and power to affect decision making, and ensure that they feel valued and protected within the system.

Whilst the main goal of these policies to protect the integrity of sport, which is undoubtedly critical, athletes and collective athlete bodies should be offered support and the chance to engage with policy makers to ensure they are consulted within decision-making processes so some sort of balance can be struck between integrity and athlete rights and views. It is not contended that this alone would significantly reduce the number of integrity violations, moreover it is argued to ensure athletes have a voice in the system, and are afforded the chance to compete in a sporting environment that is safer, fairer and more equitable.

3.4. Recommendations

Demand rules are an increasingly key part of the sports integrity system. They allow sports organisation to access information that can powerfully assist investigations that lead to sanctions, and they can play a vital part in integrity organisations responses when wrongdoing occurs. While there are situations where demands are proportionate for use within sport, closer and immediate attention must be given to their justification and implementation. This is pertinent when it is considered that i) that athletes must accept the rules or cannot be a professional athlete; ii) most wrongdoing by athletes is not criminal in nature; and ii) Athlete Representatives have stated concerns with the use of these rules. Attention must be given to which situations are severe enough to warrant these intrusive methods. Here there are already legal frameworks outlined, which could help to protect athlete rights. Additionally, it must be considered what the precise 'demand' asks for, whether this be access to data on mobile phones or entry to premises, which are different to a demand to present oneself for an investigatory interview.

While we acknowledge that these powers are useful mechanisms for investigators who often struggle to gain adequate evidence, their use must be balanced against athletes' rights. These powers, it seems fair to assert, are not proportionate for the investigation of lower-level wrongdoing in sport, especially under the conditions of a coercive offer. We acknowledge that further argument and evidence will be needed to drive that ethical challenge. Yet while the gathering of adequate evidence is a clear challenge in integrity operations, other methods that are also available to investigators should be more fully explored. Not all will be ethically proportionate and justifiable. Some of these methods would be even more extreme, even if some athletes would consider them acceptable, such as tracking athletes 24/7 via GPS (Borry *et al.* 2018). Others are fairer to athletes, such as interviewing them always with a legal representative available to them. This serves as a point to show that there is a spectrum of methods available that could aid investigators, however, the rules cannot just be about what is best for investigators and integrity organisations. Athletes are the key stakeholder of sport, and their rights, along with their views and voice, should better be taken into account. A compromise position might be that these demands are only used for athletes in limited and specific circumstances. These could include suspected criminality that is also breaking sports rules, and for the severest levels of wrongdoing in sport such as widespread abuse, manipulation, or doping scandals. A threshold for evidence of suspected integrity violations for before

these rules are employed must also be established. Greater global oversight of these rules, with clearly defined regulations for all integrity organisations to follow, would assist with this.

4. Conclusion

There is a dearth of studies exploring the ethics of intelligence and investigations within the sports integrity landscape. This research examined the perceptions of Integrity Officers and Athlete Representatives to help determine whether investigative powers, such as rules and regulations that allow organisations to demand objects and information, can be ethically justified. We employed a critical realist framework in order to move beyond the empirical levels of experiences that are able to be seen and measured, such as publicly available policies, to access the actual level and see events that occur in the real world, as detailed by the thick descriptions of the research participants. The real level, consisting of causal mechanisms and deeper underlying structures, has been explored through ethical analysis. CR can aid in understanding the underlying mechanisms that lead to events, such as demand rules and powers being introduced, despite athlete and Integrity Officer unease. We acknowledge the complexity and covertness of actions that form integrity breaches means that Integrity Officers face significant obstacles gathering evidence and this can provide explanations as to why the rules are implemented. These challenges form part of an explanation for the rise of demand powers across sport integrity, though the causes are multiple, complex and contested.

We have argued that the rules that allow integrity organisations to issue mandatory demands for information and devices are not wholly proportionate for use with athletes, who must choose between accepting the rules or not competing in their sport. Some ethical concerns stem partly from the nature of sports themselves, where breaches of integrity do not typically reach to the depths of wrongdoing of some criminal acts. For athletes who do indeed break criminal laws, there appears to be stronger justification to warrant additional investigative powers including those around demands for personal information and devices. For athletes who merely break sporting rules, however, the rationale is less compelling. Demand powers are usually reserved for law enforcement and very few other careers have such demands, nor would they be accepted in other workplaces. While sport is a high-stakes, financially lucrative business, and a unique industry, athlete rights must be considered and greater protections ought to be discussed to safeguard this population. Consideration also must be given to the need for these rules to provide evidence of integrity issues, which could lead to sanctions of those responsible.

Finally this research has shown that Athlete Representatives, who speak for and represent athletes, are dissatisfied with the existence and use of these rules and associated powers. Furthermore, some Integrity Officers also declared unease at their use. Future research should engage further with athletes, and extended dialogue between them and integrity organisations is needed to enhance athlete rights and trust. Educating athletes on these rules could ensure they are aware of their rights as well as their responsibilities. This could also serve as an effective deterrent. Athlete panels, commissions and unions must be a necessary element in the democratic and

legitimate construction of integrity policies and procedures. Further work should be done to ascertain exact situations where these rules would be proportionate, which could advise policy. Clearly defining the threshold of evidence of a suspected integrity violation that is needed before these rules can be used by integrity organisations should be outlined. Global oversight of these rules and unified regulations, with integrity organisations working more closely together, should be further explored.

Note

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Due to the nature of the research and ethical restrictions, supporting data is not available.

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