Neutral Citation Number: [2009] EWCA Civ 583

Case No: B3/2008/2540

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM MANCHESTER DISTRICT REGISTRY
MRS JUSTICE SWIFT
6MA90460

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/06/2009

Before :

LORD JUSTICE CARNWATH
LADY JUSTICE SMITH
and
LORD JUSTICE HUGHES

- -

Between :

Gary Smith & Anr	**Appellant**
- and -	
Ben Collett	**Respondent**

- -
- -

Andrew Prynne QC & Oliver Campbell (instructed by **Hextalls Limited**) for the **Appellant**
Richard Hartley QC & Jonathan Boyle (instructed by **Beachcroft LLP**) for the **Respondent**

Hearing date : 6 May 2009

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Approved Judgment

Lady Justice Smith

Introduction

1. This is an appeal from the order of Swift J made on 3 October 2008 on an assessment of the damages to which the claimant, Ben Collett, was entitled following a sporting injury which had occurred during a professional football match in May 2003, for which liability had been admitted.

2. At the time of the injury, Mr Collett was playing in the Reserves team for Manchester United Football Club against Middlesbrough Football Club's Reserve team. As the result of a high tackle, 'over the ball', Mr Collett suffered fractures of the right tibia and fibula.

3. Mr Collett was only 18 years old at the time. He had been 'spotted' by one of Manchester United's scouts at the age of 9 and was recruited for the club's Youth Academy. As a junior player, he had enjoyed considerable success and, at the age of 18, was on the verge of moving into the adult game. Indeed, the match in which he was injured was his first for the adult Reserves team. He hoped and expected to enjoy a successful career as a professional footballer at a high level. However, although he made an apparently good recovery from the fractures, he never regained his former ability in the game and, two/three years after the accident, he gave up professional football and embarked on another career.

4. In his claim for damages against Middlesbrough Football Club, he alleged that he had been deprived of his chance of a lucrative career as a professional footballer. This was a large claim; in the event, the judge awarded him £4,577,323. At the trial, damages for pain suffering and loss of amenity were agreed, as were the past losses. Unsurprisingly, the main issue was the loss of future earnings for which the judge awarded £3,854,328. It is against that award that Gary Smith and Middlesbrough Football Club now appeal.

The judge's calculation of future loss of earnings

5. The judge's task was to assess the value of the respondent's chance of pursuing a career as a professional footballer. That entailed making three types of assessment: at what level he might have been expected to play, at what level of remuneration and over what period of time. It also entailed an assessment of the risk that he would not have achieved the expected level or that his career might not have lasted as long as expected.

6. As to the first issue, the respondent's case was that he would have secured a place in the first team of a club within the Premier League or, if not within that League, at least with a club towards the upper end of the Championship League. By the 'upper end', I mean the kind of club which aspired to and might well achieve promotion to the Premier League but which would not be secure in that League and might be relegated to the Championship after a year or so. Such clubs were described in the evidence as 'yo-yo' clubs. The evidence was that such clubs paid their players significantly more than the average wages paid by Championship clubs.

7. In support of his claim the respondent called a number of witnesses who had watched his development as a junior with Manchester United. These included Sir Alex Ferguson, the Club manager, Mr Gary Neville, the club's present captain and Mr Paul McGuiness, the club's under 18's coach and Assistant Youth Academy Manager, who had coached the respondent from the age of 9 to 16 years. They described the way in which the respondent had succeeded in the rigorous selection processes through which Manchester United's young footballers must go. The respondent had made a major contribution to the club's under 17s and under 19s teams. At the end of the 2002/2003 season, he had been awarded the highly prestigious Jimmy Murphy Award for the Young Player of the Year. The witnesses described the respondent's talent as a footballer in glowing terms. They mentioned that, as a left-footed mid-field player, he had a rarity value. Their opinion as to the future was that the respondent would have played professional football possibly in the Premier League but at least at Championship level.

8. This view was based not only on an assessment of the respondent's technical skills and talent but also upon his personality which was said to be 'self-disciplined, focused and professional, both on and off the pitch'. There was evidence from other sources as to the respondent's personality. After being obliged to give up his career in professional football, the respondent had resumed academic studies which he had given up after GCSE level. In 2007, he had enrolled on an Access course with a view to gaining entry to University. His tutor on this course gave evidence as to his self-discipline and dedication. In the event, he completed that course successfully and is presently studying at Leeds University. He hopes and expects to work as a journalist after graduation.

9. The opinion evidence of the manager, captain and staff of Manchester United was supplemented by consideration of the career patterns of the respondent's contemporaries and of other young players who had received the Jimmy Murphy award. They had done well and were now playing at a high level.

10. In addition, the judge heard evidence as to the respondent's prospects from three experts. In particular, Mr Howard Wilkinson, who after a career as a professional footballer, manager and coach, worked as Technical Director of the Football Association, gave evidence for the respondent. The judge accepted his evidence, which was that the respondent would have played for the whole of his career in either the Championship or Premier Leagues. He had had 'too much in his locker' to have played only at League One or League Two level.

11. The appellants tested the evidence of the Manchester United witnesses in cross-examination but called no evidence of its own from any witness who had seen the respondent play. It called two expert witnesses, Mr Nigel Spackman and Dr Bill Gerrard. In his report, Mr Spackman, who had seen DVD film of the respondent on the pitch took a less sanguine view of the respondent's prospects. He also said that he thought it was impossible to predict the future of a footballer with any degree of confidence until he was established in the adult game. From what he had seen of the respondent's pre-accident game, he thought he would have struggled to get into a Championship club, let alone the Premiership. However, in his oral evidence, he altered that view substantially in the light of the oral evidence he had heard from witnesses who had seen the respondent in action. For reasons she gave, the judge preferred the evidence of Mr Wilkinson and there is no appeal from that.

12. Dr Gerrard's evidence was designed to demonstrate that the available statistics showed that a very small proportion of the players who joined Manchester United on scholarships at the age of 16 or 17 went on to enjoy a career in the top level professional game. The judge did not doubt the accuracy of the statistics so far as they went. However, for reasons she gave, she regarded them as of little assistance in her task. In particular, the statistics could not take account of the golden opinions of the respondent's game and personality as to which the evidence was virtually all one way. There is no criticism of the judge's approach to that evidence.

13. The judge discussed the law relating to the assessment of damages for the loss of a chance of future earnings, which, she said, was not controversial. She noted that, where there was significant uncertainty about the course of future events, it would be appropriate to apply a discount to the notional loss of earnings to allow for the risks that events might not have turned out as well as expected. However this was not necessary or appropriate where there was no significant uncertainty. Accordingly, the judge's proposed course was to assess what would probably have happened in the respondent's career and to calculate the earnings he would probably have received but for the injury. Then she would apply such discounts as she thought right to reflect the contingent risks inherent during the relevant periods. Although the only aspect of the judge's award which is challenged in this appeal is her estimate of the respondent's loss of earnings after the date of trial, it is helpful to examine her approach to the respondent's loss of earnings during the pre-trial period as well.

14. The judge began by assessing the respondent's career path during the period between the date of the injury and the date of trial. She found that, in the 2003/4 season, he would have played for Manchester United. There was no loss of earnings for that year. In the 2004/5 season, he would have stayed with Manchester United, playing mainly in the Reserves team and occasionally in the First team. She assessed his net notional earnings for that year at just below £59,000. She held that, in the following season, 2005/6, the respondent would probably have been sent on loan to an aspiring Championship club while remaining in the employment of Manchester United. This would have been done in order to provide him with first team experience which would not be available to him with Manchester United because the position in which he played was taken at that time by Ryan Giggs. The judge assessed the respondent's net notional earnings for that year at just over £65,000. For the 2006/7 season, the judge held that the respondent would probably have been sold to an aspiring Championship Club. That was because, as Sir Alex Ferguson had explained, there would have been no opening for him in the First team for the foreseeable future. The judge assessed the respondent's notional earnings for that year at just under £190,000. For the following year, 2007/8, the judge held that the respondent would have remained with the same Championship club where his earnings would have increased to nearly £236,000. No part of that assessment, whether as to the course of events or as to the level of remuneration is challenged on this appeal.

15. The judge then considered whether to apply a discount for contingencies during this period. She decided not to apply any discount for the first three post-injury years. That was because she regarded the respondent's position with Manchester United during that period as secure. Even if he were to have suffered an injury, he would still have received his salary; his only potential losses would be bonuses. For the last two pre-trial seasons, the judge discounted the losses by 5%. She recognised that this was

a small discount but she considered that 'the risk of the (respondent's) career being disrupted by contingencies other than injury at this stage was remote'. Thus the pre-trial loss was estimated at £456,095. There is no appeal from that holding.

16. For the post-trial period, the judge assessed the respondent's probable career path as follows. She accepted Mr Wilkinson's opinion that, barring injury, the 'worst case scenario' was that the respondent would have played throughout his career for a Championship club. This would have been with a team towards the upper end of that League. She also held that the respondent had a good chance of playing in the Premiership and estimated that he had a 60% chance of playing in the Premiership League for one third of his playing career.

17. The judge assessed the sums (at present day values) which the respondent would probably have earned as a member of the first team of an upper end Championship club and a Premiership club. The evidence came in part from published material, in part from the present earnings of the respondent's contemporaries at the Manchester United Youth Academy and in part from an expert witness Mr Melvyn Stein. After a career in sports law and management, he is now a consultant to a company which represents, as agent, a large number of professional footballers. The judge accepted that he has extensive experience of the football industry, in particular its financial aspects. She accepted some aspects of his evidence and rejected others.

18. The data relating to footballers' basic wages came from surveys published by The Independent newspaper in 2002 and 2005. The survey for 2005 (which covered the 2005/6 season) showed that the average basic salary of Premiership player was £676,000 per year and that of a Championship player was £195,750. Between 2000 and 2005, the average Premiership salary had risen by 65% and the average Championship salary by 53%. It was common ground that the basic salary would be supplemented by substantial bonuses and other payments. According to The Independent these were usually between 60% and 100% of basic salary. It appeared to be common ground that bonuses were usually of the order of 50% of the basic salary and that there would be other additional payments besides. Also, it was common ground that agent's fees would have to be paid by a player and therefore would have to be deducted in the calculation.

19. The other source of published material was the annual reviews of football clubs' total wage costs conducted by the accountants Deloitte. The most recent available review, published in 2008 covered the 2006/7 season. This showed that Premiership clubs' wage costs had increased by 13% in that year and Championship clubs' costs by 14%. The review predicted an increase of 18-22% for Premiership clubs for 2007/8 but no prediction was offered for Championship clubs. Although incomplete, this was the best evidence available as to the effects of inflation since the 2005 Independent survey.

20. The Deloitte review showed that there was considerable fluctuation between the wage costs of the different clubs in both leagues and, significantly, the figures showed that the teams at the top of the Championship had the highest wage costs. The judge considered that this supported Mr Stein's evidence that 'aspiring' Championship clubs are prepared to pay high wages to attract players who might help their promotion prospects.

21. For the earnings which the respondent could have expected to earn while playing in the Championship League, the judge took the basic salary from The Independent survey, increased it by 14% for 2006/7 (as per Deloitte) and increased it again by 15% for 2007/8. This was an estimated increase, more modest than that predicted for the Premiership clubs. She then added a further 15% (again estimated) for 2008/9 because, at the date of trial, the 2008/9 season had just begun. That came to £295,047.

22. The judge then applied an uplift of 25% to take account of the fact that the respondent would have been playing for an 'upper end' or 'aspiring' Championship club rather than an average one. This produced a basic salary of £368,809 before deduction of tax and National Insurance contributions. The judge was able to apply a cross-check between this figure and the basic salary of a contemporary of the respondent who had been playing for Derby County Football Club.

23. To this figure, the judge added 60% for bonuses and additional payments. The result was £590,094 gross or £354,125 net per annum. From that the judge deducted 4% for agent's fees, producing £338,635 per annum, which the judge considered was a fair average of the respondent's likely earnings (while playing in a Championship club) at any time in his career.

24. The judge assessed the evidence as to the probable length of the respondent's career as a player and concluded that he would have been likely to play until the age of 35. There is no challenge to that finding. In effect, from the date of trial, he would have expected to play for another 11 years for which the judge took a multiplier of 9.63. Applying that multiplier to the multiplicand, the judge held that if the respondent were to have played for the whole of the rest of his career in the Championship League, he would probably have earned £3,261,055.

25. The judge then assessed the respondent's likely earnings if playing for a Premiership Club. From The Independent survey for 2005/6, she took the average basic salary for a midfield player. To that, she added annual increases (based on the Deloitte figures) of 13% for 2006/7, 20% for 2007/8 and 15% for 2008/9. To that annual basic salary she added 60% for bonuses and additional payments to produce a gross figure which was then reduced for tax and National Insurance. She then deducted 4% for agent's fees. The result was £1,066,531 per annum net. The difference between the net annual earnings in the Premiership and Championship Leagues was £727,897. Applying her holding that the respondent had a 60% chance of playing in the Premiership for one third of his career (represented by a multiplier of 3.21), the judge held that the respondent's additional earnings in the Premiership would be £1,401,930. There is no criticism of the methodology or the arithmetic.

26. Although the respondent had also claimed that he would have had a career as a manager or coach after retiring as a player, the judge rejected that claim as too speculative. Thus the total prospective earnings as a footballer to the age of 35 were £4,662,985.

27. Logically, at that stage, the judge should have applied whatever discount she thought appropriate for the risks. However, before doing so, she assessed and deducted the earnings which the respondent is likely to receive as a journalist after leaving university up to the age of 35. This came to £128,482, so that the loss of prospective

earnings to the age of 35 was reduced to £4,534,503. It was to that slightly reduced figure that the judge applied the discount which lies at the heart of this appeal. Although, as I have said, the discount should logically have been applied to the figure before deduction of actual earnings, no point is taken in the appeal and there is no need to say more about it.

28. The judge discussed the discount at paragraphs 140 to 142 of her judgment. She said:

> "140. It is necessary to apply to that total a discount to reflect the risk of injury and other contingencies. The risk of injury reflects only the risk that the claimant might have sustained an injury that prevented him from playing at all or playing at the expected high level. Injuries with only temporary effects would not necessarily result in significant loss of earnings. The risk of injury should be viewed over the whole of his playing career.
>
> 141. The other contingencies must reflect the risk (which I regard as small) that the career path on which I have based my calculations *might for some reason not have materialised at all* or might have been cut short by circumstances other than injury. However, in considering the discount to be given for the various risks, it seems to me that I must also bear in mind the possibility (which I have not yet taken into account in my calculations) that the claimant **might have had an even more successful career** than that on which I have based my findings.(*emphasis added)*
>
> 142 Doing the best I can to balance the various relevant factors, I regard it as appropriate to apply a discount of 15% to the figure of future loss of earnings to take account of the risk of injury and of the various other contingencies. A discount of 15%, when applied to loss of earnings of £4,531,429 results in a figure of £3,854,328."

29. That was the sum awarded for future loss.

The appeal – Ground 1

30. The first ground of appeal relates to the discount of 15% just referred to. Andrew Prynne QC for the appellant submitted that this discount was quite inadequate to reflect the real uncertainties about the respondent's future career. His submissions fell into two parts. First, he submitted that, when assessing the respondent's chance of playing in the Championship League, the judge had treated that chance as a certainty, subject to the 15% discount for all contingencies. This was wrong. The correct legal approach was to assess the chance of achieving that level of career on a percentage basis, whereas the judge had made a finding as the likely course of his career and had then treated it as a certainty. She should not have found that the respondent was certain to achieve a place with a Championship Club; he had only had a chance of that and the judge should have assessed the appropriate percentage chance. Although she had later applied a discount, she had considered only the risks that his career would be prematurely terminated; she had not taken account of the

risks that his career might not have turned out as well as expected. This was an error because even the respondent's own witness, Sir Alex Ferguson, had agreed in cross-examination that it was not possible accurately to predict the future career of a footballer until he was established in the adult game.

31. Mr Richard Hartley QC for the respondent submitted that the judge had been entitled to take the approach she took; indeed on the evidence before her, the only conclusion sensibly before her was that the respondent's 'worst scenario' was a career in the Championship League. The evidence was all one way. The opinion of Mr Wilkinson, supported by the witnesses from Manchester United, was that, barring a premature termination of his career, the respondent would have achieved a regular place in the Championship League. The uncertainties in the case (which were accepted) arose from the prediction as to how much *further* he would have gone and for how much of his career, if any, he would have spent in the Premier League.

32. Mr Hartley accepted that the judge's task was indeed to assess the chance which had been lost by the injury. But, he submitted, the judge was well aware of that at all times (witness for example her treatment of the pre-trial losses) and the careful consideration of the discount which she eventually applied to probable loss of future earnings. The evidence had entirely justified her in treating the probability of the respondent playing in the Championship as very high. The risk of him not achieving this was properly taken into account in the overall discount of 15% applied at the end.

33. I accept Mr Hartley's submission. I am quite satisfied that the judge was aware at all times that her task was to assess the lost chance. She said so in terms more than once. When directing herself as to the law, she said that, if there was no real uncertainty as to the future, there was no need to apply a discount and, in respect of the first three post-accident years, she declined to apply any discount at all. She applied only a modest discount for the risk of injury for the last two years pre-trial. In short, she was there saying that, barring injury, there was no real risk that the respondent would not have followed the course she had described. No criticism is made of her for that; nor could it be.

34. In respect of her finding as to the lost chance of earnings in the post-trial period, the judge did not lose sight of the fact that she was still assessing a chance. The evidence that the respondent would have achieved at least Championship level was very strong, as was the evidence that he would have played for a club at the upper end of that League. However, the judge did not ignore the risk that he might not have achieved that level; she just thought that the risk was small and could most conveniently be considered together with the other risks, such as the risk of premature career termination. It is clear from her words in her paragraph 141 (which I have italicised) that she intended to take into account the risk that the respondent's career might not have turned out as well as expected. She also included in her assessment the risk of premature termination for whatever reason. Thus I would reject the submission that the judge misdirected herself and failed to make any allowance for the risk that the respondent might not have achieved a place in an upper end Championship Club.

35. Mr Prynne's second submission under this first ground was that, assuming that the judge was indeed taking into account the risk that the respondent's career might not have turned out as well as expected, the discount she applied was far too low. He accepted that the assessment of risk is a matter of judgment with which this Court will

not lightly interfere. But, he submitted, this discount was so far below that which was reasonable that we should say that it was manifestly wrong. I confess that it was in respect of this argument that I granted permission to appeal after consideration of the papers. It did seem to me, at first sight, that the discount was lower than I would have expected.

36. Mr Hartley had two answers to this submission. First, the judge had been entitled to hold that the risk of the respondent not achieving a career with an upper end Championship club were small, given the evidence before her which has already been discussed. There was no evidence of the frequency with which the careers of professional footballers were terminated prematurely for injury or for other reasons. The judge considered the discounts for such risks which had been applied by other judges in other cases; these were small. Moreover, she was entitled to take the view, in the light of the evidence about the respondent's steady character, that the risk of him 'going off the rails' was very low indeed.

37. Mr Hartley submitted that there was an additional factor which the judge had been entitled to take into account. She had said, rightly in Mr Hartley's submission, that in assessing the risk that the respondent might not have done as well as she had held, she must put into the other side of the scale the possibility that he might have done even better. The judge had assessed the respondent's chances of playing in the Premiership as a 60% chance of playing there for one-third of his post-trial career; taken together he had a 20% chance of a career in the Premiership. Earnings in the Premiership were very substantially higher than in the Championship, even at the upper end, and if the respondent had spent even a little longer in the Premier League, the effect on his earnings would have been very considerable. When it was appreciated that the judge's task was not merely to assess the risk of potential shortfall but also to take account of the potential for even higher earnings, it could be seen that the overall discount of 15% was not at all unreasonable.

38. Here again, I accept Mr Hartley's submissions. In particular, in respect of his second point, at paragraph 141, in the section that I have emphasised in bold, the judge has put into the balance the possibility that the respondent might have done better than she had predicted. She was entitled to take that view. She had not assessed the respondent's chances of playing in the Premier League on the basis that this was the best he could hope for; rather that was what she thought was most likely. But there were clearly possibilities in both directions. The arithmetic is such that a small possibility of a longer period in the Premiership would have quite a marked effect on the lost earnings. The respondent's Premiership earnings would have been about 4 times his earnings in the Championship. So a 1% increase in his chance of playing in the Premiership would counterbalance a 4% chance of his not achieving a career in the Championship League. Once that is appreciated (and I had not appreciated it when I gave permission to appeal) it is clear that the 15% overall reduction is entirely reasonable. I would not be prepared to interfere with it.

Ground 2

39. The remaining grounds of appeal concerned the judge's assessment of the prospective annual earnings of a player belonging to a club at the upper end of the Championship. It will be recalled that the judge took the average basic salary from The Independent

survey for 2005/6 and increased it three times to reflect the actual or estimated increases for the ensuing years when setting the average basic salary for 2008/9.

40. Mr Prynne made no complaint about the rates applied for 2006/7 and 2007/8. His complaints related only to the judge's approach to the final or current year, 2008/9. Initially, Mr Prynne suggested that the judge had not been entitled to make any increase for the year 2008/9 because that would, he suggested be applying future inflation. The 2008/9 football season had not begun at the date of trial. However, he abandoned that submission when it was appreciated that, for professional football players, the pay year begins on 1 July. As the trial took place from 30 June to 4 July and as judgment was issued on 11 August, Mr Prynne accepted that future losses had been properly based on the 2008/9 rates and confined his submission to the complaint that the increase of 15% for the year 2008/9 was unfounded in evidence and was in any event excessive.

41. It was common ground that there was no direct evidence of what increases had recently been awarded and were being brought into effect as the trial was taking place. That was hardly surprising. Indeed, there had been no direct evidence of the average increases awarded for the year 2007/8. The judge had applied an estimated increase of 15% based upon the Deloitte review, which had predicted in early 2008 that Premiership salaries would rise by between 18-22% that year. No prediction was given for Championship clubs. Mr Prynne did not criticise the judge's estimate of 15% for 2007/8 but submitted that she should not, without better evidence, have applied the same uplift for the following year.

42. Mr Prynne quoted to us the average changes which had been applied in the Championship in the years since 2002/3. These were an increase of 6% in 2002/3; a decrease of 9% in 2003/4; an increase of 5% in both 2004/5 and 2005/6; and an increase of 14% in 2006/7. In the light of that record, he submitted that an increase of 15% for 2008/9 was obviously excessive.

43. However, as Mr Hartley pointed out, the judge had heard evidence about the past history of salary increases, including an explanation for the drop in salaries in 2003/4. Moreover, she had heard oral evidence from Mr Stein that salaries were increasing to rise markedly and that the gap between wages paid by clubs at the top of the Championship and the bottom of the Premiership was narrowing. The judge accepted that evidence, although she had rejected other aspects of Mr Stein's evidence for reasons she explained. Mr Prynne suggested, somewhat faintly, that the judge should not have accepted Mr Stein's evidence on this topic as she had rejected him so roundly on other issues.

44. In my judgment, there is nothing in this point. The judge had very little by way of published figures on which to go. She was however entitled to accept Mr Stein's opinion on this issue, even though she had rejected him on another issue. I note that, in any event, Mr Stein's opinion about the narrowing of the gap was supported by Mr Wilkinson. In my view, the judge was entitled to hold that there would have been an increase and to do her best on the material available when assessing the amount.

The third ground

45. Mr Prynne's final submission attacked the judge's decision to uplift the annual salary to reflect her finding that the respondent would have played for a club at the upper end of the Championship League. Mr Prynne did not suggest that clubs at the upper end did not pay more than average salaries for the League but submitted that there was no evidence to support the substantial uplift of 25%.

46. Mr Hartley told us that he had invited the judge to apply a 33% increase to reflect the effect of being at the upper end of the League and showed us a table which, in his submission, justified that invitation. This was table 3.2 in the Deloitte review, which showed the total wage costs of each Championship club in the order of their positions at the end of the 2006/7 season. This table showed that the clubs in the first 6 places had wage total costs well over 50% above the average for the whole league. Mr Hartley accepted that the table did not provide ideal information in that it was based on total wage costs rather than actual salary levels. However, it was the best information available to the judge and well justified the judge's uplift of 25%.

47. In my judgment, there is no merit in this ground. Far from there being no evidence to support the uplift of 25%, the evidence was, in my view, ample to justify the judge's approach. I note that the judge also said that, on reaching a figure for the 2008/9 basic salary level for the respondent while playing in an upper end Championship club, she had cross-checked this figure with the actual basic salary of Mr David Jones, for 2007/8. Mr Jones was at that time playing for Derby County, an upper end Championship club. The judge concluded that this comparison showed that the uplift of 25% had been realistic. Mr Prynne had attempted to attack this cross-check but, in my judgment, failed to demonstrate that the comparison had not been a reasonable one for the judge to make.

48. For the reasons I have given I would dismiss this appeal and would confirm the judge's award.

Lord Justice Hughes:

49. I agree.

Lord Justice Carnwath:

50. I also agree that the appeal should be dismissed for the reasons given by Smith LJ.

51. I was at first concerned that the discount applied by the judge reflected an unrealistically optimistic view of the risks of professional football. However, in the end I am satisfied that her conclusion is supportable on the very special facts of this case. As Smith LJ has made clear, the evidence in support of the claim was exceptionally strong, and hardly disputed. I agree also with Smith LJ (para 38) as to the significance of the possibility of even higher achievement by the claimant. Finally, I note that both parties accepted, before the judge and before us, that the assessment should follow conventional principles applied in cases such as *Langford v Hebran* [2001] PIQR Q160. Although we were referred to criticisms of that case in McGregor on Damages (17th Ed) para 8-048 (see also supplement para 8-049A, citing *Gregg v Scott* [2005] 2AC 176), neither side based any argument on that commentary.