



Arbitration CAS 2007/A/1298 Wigan Athletic FC v/ Heart of Midlothian & CAS 2007/A/1299 Heart of Midlothian v/ Webster & Wigan Athletic FC & CAS 2007/A/1300 Webster v/ Heart of Midlothian, award of 30 January 2008

Panel: Mr. Quentin Byrne-Sutton (Switzerland), President; Mr. Jean-Jacques Bertrand (France); Mr. Michael Beloff QC (United Kingdom)

Football

Contract of employment

Unilateral termination of the contract without just cause outside the protected period

Applicable law

Invalidity of a decision that does not contain the reasons for its findings

Interpretation of the bylaws of an association under Swiss law

Consequences of the pacta sunt servanda principle

Relations between compensation for damages and compensation for training

Primacy to the contractual agreement in terms of stipulating types and amounts of compensation

The law of the country concerned as a factor to consider when determining the compensation for damages

The specificity of sport as a factor to consider when determining the compensation for damages

The relation between the other criteria to consider when determining the compensation for damages

The other criteria: 1) the market value of the player

The other criteria: 2) the fees and expenses paid by the former club

The other criteria: 3) the remuneration and benefits due under the new contract

The other criteria: 4) the residual value of the contract

Joint and several liability of the new club

1. **The reference in article 17 par. 1 of the FIFA Status Regulations to “*the law of the country concerned*” does not detract from the fact that according to the clear wording of article 60 par. 2 of the FIFA Statutes, the FIFA intended the interpretation and validity of its regulations and decisions to be governed by a single law corresponding to its law of domicile, i.e. Swiss law. Moreover, article 25 par. 6 of the FIFA Status Regulations and the reference in article 17 par. 1 to the “*law of the country concerned*” are not, properly speaking, choice-of-law clauses.**
2. **Several mandatory principles of Swiss law limit the regulatory and decisional freedom of an association in order to protect its members. One such principle is that an association must correctly apply its own regulations, another being that its regulations must be applied and its decisions made in a predictable and cognisable manner, notably to ensure equality of treatment and due process.**
3. **In keeping with the practice under Swiss law relating to the interpretation of the bylaws of an association, a Panel shall have regard first for the wording of an article, i.e. its literal meaning, and if this is unclear shall have regard to the provision’s**

internal logic, its relationship with other provisions of the regulations as well as its purpose revealed by the history of its adoption.

4. Article 17 of the FIFA Status Regulations is not a provision that allows a club or a player unilaterally to terminate an employment contract without cause. On the contrary, any such termination is clearly deemed a breach of contract. This is a logical consequence of article 13 which underlines the principle *pacta sunt servanda*. Thus, unilateral termination must be viewed as a breach of contract even outside the Protected Period.
5. Article 17 of the FIFA Status Regulations is not intended to deal directly with compensation for training. Therefore, in determining the level of compensation for damages payable under article 17 as a result of a player's unilateral termination without cause, the amounts having been invested by a club in training and developing the player are irrelevant.
6. Article 17 of the FIFA Status Regulations gives primacy to the parties' contractual agreement in terms of stipulating types and amounts of compensation, since according to article 17 par. 1 the criteria for calculating compensation only apply if not "... otherwise provided for in the contract" and article 17 par. 2 provides that the amount of compensation "... may be stipulated in the contract or agreed between the parties".
7. Article 17 par. 1 of the FIFA Status Regulations does not require that compensation be determined in application of a national law or that the rules on contractual damage contained in the law of the country concerned have any sort of priority over the other elements and criteria listed in article 17 par. 1. It simply means that the decision-making body shall take into consideration the law of the country concerned while remaining free to determine what weight, if any, is to be given to the provisions thereof in light of the content of such law, the criteria for compensation laid down in article 17 par. 1 itself and any other criteria deemed relevant in the circumstances of the case.
8. In light of the history of article 17 of the FIFA Status Regulations, the specificity of sport is a reference to the goal of finding particular solutions for the football world which enable those applying the provision to strike a reasonable balance between the needs of contractual stability, on the one hand, and the needs of free movement of players, on the other hand.
9. Independently from the specificities of a given case, the criteria listed in article 17 of the FIFA Status Regulations need to cope with a number of categories of cases,

notably those where unilateral termination occurs inside the protected period as distinct from those where it occurs outside such period and those cases where unilateral termination is by the Player as distinct from those where termination is by the Club. It is therefore logical that article 17 par. 1 includes a broad range of criteria, many of which cannot in good sense be combined, and some of which may be appropriate to apply to one category of case and inappropriate to apply in another.

10. Subject to it being validly agreed by an enforceable contract, there is no economic, moral or legal justification for a club to be able to claim the market value of a player as lost profit. From an economic perspective, there is no reason to believe that a player's value on the market owes more to training by a club than to a player's own efforts, discipline and natural talent. In addition, from an economic and moral point of view, it would be difficult to assume a club could be deemed the source of appreciation in market value of a player while never be deemed responsible for the depreciation in value. From a regulatory standpoint, to allow clubs to claim the market value of players as lost profit would amount to double counting, since article 20 and annex of the FIFA Status Regulations already provide for a system of compensation to clubs for the training and education of players. Finally, because of the potentially high amounts of compensation involved, giving clubs a regulatory right to the market value of players and allowing lost profits to be claimed in such manner would in effect bring the system partially back to the pre-Bosman days.
11. A club cannot claim the right to reimbursement of any portion of the fee initially paid to purchase a player from his former club when the player remained with the club for a longer period in total than the initially agreed fixed term of the contract, since according to the criteria laid down in article 17 par. 1 of the FIFA Status Regulations in this respect, that fee must be deemed amortised over the term of the contract.
12. The remuneration and benefits due to the player under his new contract is not the most appropriate criterion on which to rely in cases involving unilateral termination by the player beyond the Protected Period, because rather than focusing on the content of the employment contract which has been breached, it is linked to the player's future financial situation and is potentially punitive.
13. Just as the player would be entitled in principle to the outstanding remuneration due until expiry of the term of the contract in case of unilateral termination by the club, the club should be entitled to receive an equivalent amount in case of termination by the player.
14. The joint and several liability of the new club provided under 17 par. 2 of the FIFA Status Regulations must be deemed a form of strict liability, which is aimed at

avoiding any debate and difficulties of proof regarding the possible involvement of the new club in a player’s decision to terminate his former contract, and as better guaranteeing the payment of whatever amount of compensation the player is required to pay to his former club on the basis of article 17.

The parties and the origin of the dispute

A. CAS 2007/A/1298

1. The Appellant

Wigan Athletic AFC Limited (“Wigan”) is a football club with its registered office in United Kingdom. It is a member of the English Football Federation, which is affiliated to FIFA.

2. The Respondent

Heart of Midlothian PLC (“Hearts” or the “Club”) is a Scottish football club with its registered office in the United Kingdom. It is a member of the Scottish Football Association, which is affiliated to FIFA.

B. CAS 2007/A/1299

1. The Appellant

Heart of Midlothian PLC (“Hearts” or the “Club”).

2. The Respondents

Mr Andrew Webster (the First Respondent, “Andrew Webster” or the “Player”) was born on 23 April 1982 and is of English nationality. He is a professional football player currently on loan to the Glasgow Rangers, a Scottish football club, after having been transferred from Hearts to Wigan.

Wigan Athletic AFC Limited (the Second Respondent, “Wigan”).

C. CAS 2007/A/1300

1. The Appellant

Mr Andrew Webster (“Andrew Webster”).

2. The Respondent

Heart of Midlothian PLC (“Hearts” or the “Club”).

D. The Origin of the Dispute

On 31 March 2001, shortly before the Player’s 19th birthday, Hearts and Andrew Webster signed an employment contract that was due to expire on 30 June 2005.

Upon engaging Andrew Webster, Hearts paid a transfer fee of GBP 75,000 to the Scottish football club Arbroath.

On 31 July 2003, two years before the expiry of the initial contract and following a renegotiation of its terms, Hearts and Andrew Webster entered into a new employment contract, which provided for the Player’s employment for a term of four years until 30 June 2007 (the “employment contract”).

While employed by Hearts, Andrew Webster became an important member of the first team and enjoyed significant national and international success. He made his debut for Scotland in 2003 and went on to gain twenty two international caps by the age of 24. Hearts also enjoyed a number of sporting successes during the period of his employment.

Consequently, Hearts became interested in retaining the Player for a longer period of time.

Thus, in April 2005, more than two years before the end of the employment contract, Hearts wrote to the Player’s agent, Charles Duddy, offering to extend the contract for a further two seasons, on improved terms. However, no agreement was reached.

In January 2006, with approximately 18 months to run under the employment contract, discussions resumed regarding its re-negotiation. Through his agent, Andrew Webster turned down an initial offer from Hearts.

Between January and April 2006, Hearts made several other offers to Andrew Webster but none of them were accepted because the terms did not match his expectations.

During the same period, Andrew Webster was not selected by Hearts for several games. Due to the timing and circumstances of the decisions, he formed the impression that this was a tactic designed by Hearts to compel accepting a new employment contract.

Matters came to a head between April and May 2006, when the majority shareholder of Hearts, Mr Vladimir Romanov, made various statements in the media to the effect that Andrew Webster’s commitment to the club was uncertain and that he would therefore be put on the transfer list. Mr

Romanov was also quoted as having declared that *“Unfortunately in football there are agents, but the most negative influence is the parents – they shouldn’t interfere in matters”*.

Upset by these statements, Andrew Webster decided to seek advice from the Scottish Professional Footballer’s Association (SPFA).

During a meeting with representatives of SPFA in early May 2006, Andrew Webster explained his feelings about the situation. He was advised that if there was a complete mutual breakdown in trust he had the legal right to terminate his contract by invoking clause 18 of his employment contract, whereby: *“If the Club intentionally fails to fulfil the terms and conditions of this Agreement the Player may, on giving fourteen days’ written notice to the Club, terminate this Agreement”*.

In light of the discussions with SPFA, Andrew Webster resolved to terminate his contract for just cause. On 4 May 2006, he wrote to Hearts indicating he was terminating his contract with 14 days notice. In the letter, Mr Webster explained that he believed the club had failed in its duties towards him and that a fundamental breakdown in trust justified his action.

Hearts replied by stating it had lodged an appeal with the Scottish Premier League Board.

In the light of this development, SPFA further advised Andrew Webster that, in addition to the termination for just cause, he could unilaterally terminate his contract without cause in accordance with article 17 of the *FIFA Status Regulations for the Status and Transfer of Players* (the “FIFA Status Regulations”), since his termination would occur outside a Protected Period of three years commencing from the date when he was employed by Hearts.

Realizing that the appeal procedure triggered by Hearts could result in a protracted dispute that might prevent him from securing a contract with another club in time for the 2006/2007 season, Andrew Webster decided to follow the alternative route suggested to him by SPFA.

As a result, on 26 May 2006, Andrew Webster notified Hearts that he was also unilaterally terminating his contract on the basis of article 17 of the FIFA Status Regulations, i.e. irrespective of the existence or otherwise of a just cause.

On 28 June 2006, Hearts wrote to Andrew Webster asking him to clarify whether he was relying on the notice of 4 May 2007 or on the subsequent notice of unilateral termination.

On 7 July 2006, Andrew Webster replied to the effect that he was no longer relying on the grounds invoked in his notice of 4 May 2007 but was maintaining his unilateral termination with reference to article 17 of the FIFA Status Regulations.

Meanwhile, in the final weeks of June 2006, Hearts had rejected an offer of GBP 1.5 million from Southampton Football Club for the transfer of Andrew Webster, in the belief that Player's market value was higher.

On 9 and 10 July 2006, Andrew Webster's agent sent a fax to approximately fifty clubs, stating that the player had terminated his contract with Hearts, that no sanctions would apply as a result of this termination, and that compensation would be fixed by FIFA in the region of GBP 200,000.

On 4 August 2006, Blackburn Rovers, a Premier League club, wrote to Hearts to indicate its interest in signing the Player and to enquire about his contractual status.

On 9 August 2006, Andrew Webster signed a three-year employment contract with Wigan.

Neither the Player nor Wigan offered Hearts any compensation upon his departure.

In November 2006, Hearts filed a claim against Andrew Webster and Wigan in front of the FIFA Dispute Resolution Chamber (DRC). It claimed compensation for breach of contract in the amount of GBP 5,037,311 against Mr Andrew Webster, and against Wigan as jointly and severally liable for having induced the breach.

Hearts also requested that the Andrew Webster be declared ineligible to take part in any official matches for a period of two months, in application of article 17.3 of the FIFA Status Regulations and that Wigan be banned from registering any new player for one registration period, in application of article 17.4.

The DRC heard the case and, on 4 April 2007, handed down the following decision (the "DRC decision"):

1. *The claim of the Scottish club, Heart of Midlothian, is partially accepted.*
2. *The Scottish player, Andrew Webster, has unilaterally breached the employment contract with Heart of Midlothian without just cause outside the Protected Period.*
3. *Mr Andrew Webster has to pay the amount of GBP 625,000 to Heart of Midlothian within 30 days of notification of this decision.*
4. *If this amount is not paid within the aforementioned deadline, a 5% interest rate per annum as for the expiry of the aforementioned deadline will apply, and the present matter will be submitted to the FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
5. *The English club Wigan Athletic is jointly and severally liable for the aforementioned payment.*
6. *Any other request filed by Heart of Midlothian is rejected.*
7. *Heart of Midlothian is directed to inform Mr Andrew Webster and Wigan Athletic immediately of the*

account number to which the remittance is to be made, and to notify the Dispute Resolution Chamber of any payment received.

8. *Mr Andrew Webster failed to give Heart of Midlothian due notice of termination.*
9. *Mr Andrew Webster is not eligible to participate in any official football match for a period of two weeks as from the beginning of the next national league championship for which he will be registered.*
10. *The matter concerning the role played by the Scottish player's agent, Mr Charles Duddy, in the breach of contract, will be forwarded to the Players' Status Committee for investigation and decision".*

Each party disagreed for different reasons with the finding of the DRC and, therefore, each decided to file an Appeal in front of the Court of Arbitration for Sport (CAS).

In January 2007, Andrew Webster was loaned by Wigan to the Glasgow Rangers until the end of the season.

Summary of the Arbitration proceedings

On 24 May 2007, Wigan filed its Statement of Appeal with the CAS against the DRC decision, requesting the following relief:

- "1) *The Appellant requests that the CAS annuls Section III paragraph 3 of the DRC Decision relating to compensation and replaces the sum £,625,000 with a sum representing no more than the residual value of the Contract; or in the alternative*
- 2) *In the event that the CAS upholds the DRC decision to award a sum of compensation in excess of the residual value of the Contract, the Appellant shall in any event request the CAS to annul Section III paragraph 3 of the DRC Decision relating to compensation and replace it with a new decision as it is unclear how the DRC has arrived at the figure of £,625,000 and furthermore, this amount of compensation is excessive. In particular, the Appellant requests that the compensation awarded to the Respondent by the DRC be reduced for a number of reasons including, but without limitation as follows:*
 - (i) *the DRC Decision is procedurally flawed due to the way in which the DRC Decision was reached in breach of Article 13.4 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (ed June 2005) ('Procedural Rules') which provides that decisions of the DRC must contain "reasons for the findings". Although the DRC refers to a number of factors that is considered relevant to the calculation of compensation due to the Respondent, it fails to adequately explain the significance of each of the factors and how the final award has been calculated; and/ or in the alternative*
 - (ii) *the DRC in the DRC Decision has failed to follow its own settled jurisprudence, in accordance with Swiss Law and in particular, Article 44(1) of the Swiss Civil Code of Obligations, that contributory fault of the "injured party" (i.e. the Respondent) is a material factor to consider when calculating the sums of calculation due in the case of a contractual termination without just cause. It is the Appellant's*

- case that the Respondent treated the Player unfairly in the 2005/06 season and this is a material factor to be considered by the CAS when determining the sum of compensation due to the Respondent; and/or in the alternative*
- (iii) *the DRC in the DRC Decision appears to place reliance in the Respondent's favour on the fact that the Player had spent five seasons with the Respondent. Furthermore, the DRC incorrectly observes that the Respondent had a real interest in retaining the services of the Player, however, the manner in which the contractual negotiations were conducted between the Respondent and the Player and the Respondent's subsequent unfair treatment of the Player are clear evidence to the contrary; and/or in the alternative*
- (iv) *the DRC in the DRC Decision wrongly considers that the amortised transfer fee paid by the Respondent to Arbroath for the acquisition of the Player in 2001 is relevant to the determination of the sum of compensation payable in this case (given that the original playing contract the Player entered into in March 2001 was replaced by the Contract in July 2003); and/or in the alternative*
- (v) *the DRC in the DRC Decision has incorrectly placed reliance on the weekly wage that the Player was due to earn under his new employment contract with the Appellant. The Appellant submits that this contract is irrelevant to the calculation of compensation, given that it has no bearing on the loss suffered by the Respondent.*
- 3) *The DRC at Section II, paragraph 36 of the DRC Decision has itself acknowledged that the Appellant is not guilty of any wrongdoing, nor has it induced the Player to breach the Contract. The Appellant submits that it should therefore not be held to be jointly and severally liable to compensate the Respondent, nor should it be deprived of the Player's playing services for the two week period in which the DRC has ordered a playing ban to take effect. Thus, the Appellant further requests that the CAS respectively annuls Section III paragraph 5 and 9 on the following grounds:*
- (i) *the DRC has determined that the Appellant is not guilty of any wrongdoing and did not induce the Player to terminate the Contract and therefore it should not be held liable to pay compensation for such breach. Contrary to the DRC's reasoning, the liability for breach of contract and the liability pay compensation flowing from such a breach are inextricably linked; and/or in the alternative*
- (ii) *the DRC in the DRC Decision wrongly imposed a two week playing ban on the Player as it incorrectly concluded that the 15 day time period within which the Player must have served his notice to terminate the Contract in accordance with Article 17(3) of the FIFA Status Regulations for the Status and Transfer of Players (ed Dec 2004) commenced on the last league match and did not include the Scottish FA Cup Final. In the alternative, if the DRC interpretation is upheld, the two week playing ban imposed by the DRC is disproportionate to the 4 day delay in the service of the notice by the Player. Furthermore and in any event, given that the DRC has decided that the Appellant is not guilty of any wrongdoing in this matter, these "disciplinary measures" adversely impact on the Appellant and its own sporting performance as it is deprived of the Player's playing services during this period and are not therefore sustainable.*
- 4) *The Appellant therefore requests that in accordance with Article R 57 of the CAS Code, the Panel reviews the facts and the law relevant to above points, annuls the specified sections of the DRC Decision and replaces them with a new decision. In addition to the above requests, and in the event that they are successful, the*

Appellant shall request the Panel to grant an order that the Respondent shall be liable for all costs and expenses incurred by the Appellant in bringing this appeal, including the costs and expenses of the CAS”.

On the same date, Andrew Webster filed an appeal with the CAS against the DRC decision, requesting the following relief:

“(1) *The Appellant requests that the CAS annuls Section III paragraph 3 of the DRC Decision relating to compensation and replaces it with a new decision as it is unclear how the DRC has arrived at this decision and in any event, the amount of compensation awarded to the Respondent is excessive. In particular, the Appellant requests that the compensation payable to the Respondent be reduced for a number of reasons including, but without limitation as follows:*

(i) to (iii) same as Wigan’s [2] (i) to (iii)]

(iv) the DRC in the DRC Decision wrongly considers that the amortised transfer fee paid by the Respondent to Arbroath for the acquisition of the Player in 2001 is relevant to the determination of the sum of compensation.

(v) the DRC in the DRC Decision has incorrectly took into account the weekly wage of the new contract. The Appellant submits that this contract is irrelevant to the calculation of compensation. Also the guidelines indicate that this way of calculation is only possible for players transferring from outside the EU/EEA zone of from this zone.

(2) the DRC wrongly imposed a two week playing ban on the Player as it incorrectly concluded that the 15 day time period within which the Player must have served his notice to terminate his playing contract with the Respondent in accordance with Article 17(3) of the FIFA Status Regulations for the Status and Transfer of Players (ed Dec 2004) commenced on the last league match and did not include the Scottish FA Cup Final. In the alternative, if the DRC interpretation is upheld, the two week playing ban imposed by the DRC is disproportionate to the 4 day delay in the service of the notice by the Player.

(3) The Appellant therefore requests that in accordance with Article R 57 of the CAS Code, the Panel reviews the facts and the law relevant to above points, annuls the specified sections of the DRC Decision and replaces them with a new decision. In addition to the above requests, and in the event that they are successful, the Appellant shall request the Panel to grant an order that the Respondent shall be liable for all costs and expenses incurred by the Appellant in bringing this appeal, including the costs and expenses of the CAS. ((same as 4. of Wigan))”.

On 25 May 2007, Hearts filed its Statement of Appeal with the CAS against the DRC decision, requesting the following relief:

“The relief sought on the Appeal is, pursuant to R57 and R65.4, that CAS:

(a) Accepts this Appeal against the Decision;

(b) Replaces the Decision of the FIFA DRC and issues a new decision, which:

(i) Confirms that the FIFA DRC failed to assess the level of compensation payable in accordance with Article 17(1) of the FIFA Status Regulations, either adequately, or at all;

- (ii) *Specifies the level of compensation for which the First and Second Respondents should be liable to the Appellant pursuant to Article 17(1) of the FIFA Status Regulations, in an amount to be determined in accordance with Article 17(1). (In the Appeal Brief the Appellant will make submissions as to the amount.);*
- (iii) *Orders that the Respondents pay the amount so assessed; and*
- (iv) *Orders the Respondents to pay costs before the DRC and CAS in an amount to be assessed by the CAS”.*

On 4 June 2007, all three parties filed their appeal briefs and Andrew Webster indicated that he would be relying on the arguments and evidence submitted by Wigan.

On 6 June 2007, following the agreement of the Parties, the CAS confirmed that the same Panel would be appointed to decide the three appeals in a single arbitral award.

On 26 June 2007, Wigan filed its Answer, which contained the following prayers for relief:

- “98. *The Respondent requests that the Panel dismisses the Appellant’s claim for compensation in the sum of approximately £4,680,508.96.*
- 99. *In particular, in respect of each head of loss claimed at paragraph 11.2 of the Appeal Brief, the Respondent responds as follows:*
 - (i) *loss of opportunity to receive a transfer fee / or the replacement value of the Player - £4 million: the Respondent rejects this head in its entirety and refers the CAS to its arguments set out above and in particular, to paragraphs 41 to 61;*
 - (ii) *the residual value of the final year of the Contract - £199,976: the Respondent accepts that this is the only head of potential recovery for the Appellant but submits that the residual value of the Contract should be calculated in accordance with its arguments as set out in more detail in the Respondent’s Appeal Brief (and summarised below at paragraph 100) so that the sum due to the Appellant is limited to £132,585.24;*
 - (iii) *the profit that the Player will make from the New Contract - £330,524: the Respondent rejects this head in its entirety and refers the Panel to its arguments set out above and in particular, to paragraphs 82 to 84;*
 - (iv) *the fees and expenses incurred by the Appellant to date - £80,008.96 (plus further legal expenses pursuant to the proceedings before the CAS): the Respondent rejects this head in its entirety and refers the Panel to its arguments set out above and in particular, to paragraph 86;*
 - (v) *the sporting and commercial losses suffered by the Appellant - £70,000: the Respondent rejects this head in its entirety and refers the Panel to its arguments set out above and in particular, to paragraphs 94 to 95.*
- 100. *Furthermore, the Respondent refers to its Appeal Brief which it submits must be read in conjunction with this Answer. In the Appeal Brief, the Respondent sets out its own interpretation of the relevant provisions of the*

Regulations and its request for relief which, in summary, is that the CAS annuls the DRC Decision and replaces it with its own decision which orders that:

- (i) the compensation due to the Appellant is limited to the residual value of the Contract, given that this is a termination which occurred outside the Protected Period. On the facts of this case, given that the Appellant had informed the Player that he would not play again until he signed a new playing contract, only the guaranteed sums payable under the Contract can be taken into account and no appearance or performance bonuses are relevant. Furthermore, the outstanding bonus payment due to the Player should also be deducted so the Respondent calculates the maximum residual value of the Contract in the sum of £132,585.24. Furthermore, in accordance with Article 44(1) of the Swiss Civil Code of Obligations, the compensation should be also reduced to reflect the fact that the Appellant, by treating the Player unfairly during the period February to May 2006, had contributed to its own loss; or in the alternative*
- (ii) a figure of compensation that is less than the £625,000 is payable to the Appellant, which it considers to be reasonable in the circumstances, giving due regard to the objective criteria under Article 17(1) as detailed in the Respondent's Appeal Brief, the most important of which is that the termination occurred outside the Protected Period, so that the most severe aggravating factor of a termination inside the Protected Period is absent in this case. Furthermore, the Respondent requests that the compensation in any event should be further reduced as the Appellant has contributed to its own losses by its treatment of the Player during the period of February to May 2006; and*
- (iii) the Respondent is not to be held jointly and severally liable to pay compensation for the Player's termination as the DRC has determined that the Respondent was not guilty of any wrongdoing and did not induce the Player to terminate the Contract. Contrary to the DRC's reasoning, the Respondent avers that the liability for breach of contract and the liability to pay compensation flowing from such a breach are inextricably linked; and*
- (iv) the DRC in the DRC Decision wrongly imposed "disciplinary measures" in the form of a two week playing ban on the Player as it incorrectly calculated the 15 day time period within which the Player must have served his notice to terminate the Contract, or in the alternative, if it has corrected calculated this 15 day time frame, that the two week playing ban is in any event excessive".*

On 27 June 2007, Hearts filed its Answer, which contained the following prayers for relief:

"6.1 In light of the arguments made in this Response, Hearts respectfully requests that the Appellants' appeal be dismissed".

On 27 June 2007, Andrew Webster filed his Answer.

On 28 June 2007, FIFA informed the CAS that it was renouncing its right to intervene in the proceedings.

On 3 July 2007, Hearts filed additional exhibits.

On 24 July 2007, the Panel issued three procedural orders containing the following decisions:

- “1. *The two additional exhibits filed by Hearts are admitted on record.*
 2. *Wigan and the Player are entitled to file any rebuttal documents (affidavits and/or other documents) by 24 August 2007.*
 3. *CAS will make arrangements for a hearing to be held in September at a date which is convenient.*
 4. *The costs of the present order shall be determined in the final award.*
- and*
1. *A hearing shall take place as soon as possible after 1 September 2007 at a convenient date to be found between the parties and CAS.*
 2. *If the parties cannot agree on a reasonable date of hearing, it shall be fixed by the Panel.*
 3. *The costs of the present order shall be determined in the final award.*
- and*
1. *CAS has no jurisdiction to entertain an appeal against that part of FIFA’s decision of 4 April 2007 imposing two-weeks of ineligibility on the player Andrew Webster as a disciplinary measure.*
 2. *The costs of the present order shall be determined in the final award. ”*

On 21 August 2007, Andrew Webster filed additional exhibits.

On 7 September 2007, the CAS informed the parties that the hearing would take place over a period of two days and that it would be held on 17 and 18 October 2007 at the CAS Court Office in Lausanne.

On 12 September 2007, the CAS informed the parties that the additional exhibits submitted by Andrew Webster had been admitted on record.

On 15 October 2007, the *Lega Nazionale Professionisti* filed a non-solicited letter with the CAS purporting to comment on certain aspects of the dispute between the parties.

At the beginning of the hearing three outstanding procedural issues were addressed. The Panel informed the parties that the letter submitted by the *Lega Nazionale Professionisti* was not admitted into the record, due to the latter not being a party to the proceedings. Furthermore, with the parties’ agreement, it was decided that an additional witness statement submitted by Hearts would be admitted into the record and that the Panel’s determination as to the applicable law would be included in the final award after hearing the parties’ pleadings on that issue, together with expert testimony on Scottish and Swiss law.

LAW

Jurisdiction

1. The appeals are admissible as they were filed within the deadline stipulated in article 61 of the FIFA Statutes and in the appealed decision.
2. The jurisdiction of CAS, which is not disputed, derives from articles 60 and 61 of the FIFA Statutes and art. R47 of the Code of Sports-related Arbitration (“CAS Code”).
3. The scope of the Panel’s jurisdiction is defined in art. R57 of the CAS Code, which provides that: *“The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”*.

Applicable Law

4. The rules of law applicable to the dispute between the Player and Hearts, on the one hand, and between the latter and Wigan, on the other hand, could in theory be different, since the parties are not the same and the clubs are not contractually bound to one another as the Player was with Hearts.
5. However, for the reasons now examined, the Panel finds that the same set of regulations and same national law are applicable to all three of the proceedings having been joined and to all aspects of the dispute between the parties.
6. Since chapter 12 of the Swiss Private International Law Act (“PIL Act”) governs all international arbitrations with their seat in Switzerland and this arbitration constitutes an international arbitration with its seat in Switzerland as defined by article 176 of the PIL Act, article 187 PIL Act is the underlying conflict-of-law rule which is applicable in determining the governing rules of law.
7. According to article 187 of the PIL Act (free translation): *“The Arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection”*.
8. Article 187 of the PIL Act gives the parties a large degree of autonomy in selecting the applicable rules of law – including the possibility of choosing conflict-of-law rules (to

determine the governing substantive law), a national law or private regulations. Moreover, the parties' choice can be tacit, e.g. result from their conduct during the proceedings.

9. In the present case, the applicable regulations and national law result from a combination of choices and references by the parties.
10. With respect to the Player and Hearts, the primary source of choice of law would be the employment contract. That said the employment contract contains no choice-of-law clause. With regard to the applicable regulations, clause 10 provides that:
"The Player and the Club shall observe and be subject to the Rules, Regulations and Bye-Laws of The Scottish Football Association, The Scottish Premier League and such other organisations of which these bodies or the Club is a member and in the case of any conflict between this Agreement and such Rules, Regulations or Bye-Laws then such Rules, Regulations or Bye-Laws shall take precedence. The Player shall also at all times observe the reasonable Rules of the Club".
11. Since the Scottish Football Association is a member of FIFA, the FIFA Status Regulations and bylaws are applicable and take precedence in accordance with the reference in clause 10.
12. The FIFA Status Regulations and bylaws in turn contain a main choice-of-law clause under article 60 par. 2 of the FIFA Statutes, whereby: *"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law"*.
13. The foregoing choice-of-law clause underlines the primary application of the various FIFA Status Regulations, while referring to the CAS Code and Swiss law.
14. In the present case, the reference to the CAS Code simply has the effect of re-confirming the primary application of the FIFA Status Regulations and the additional application of Swiss law since art. R58 of the CAS Code provides that: *"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.
15. Furthermore, all the parties in all three cases are basing their contentions in part on the FIFA Status Regulations, notably on the FIFA Status Regulations.
16. For the above reasons, the Panel finds that all three parties have chosen the primary application of the FIFA Status Regulations to the matters in dispute in all three cases.

17. That said, a question remains concerning the scope of application of Swiss law in addition to the FIFA Status Regulations, in light of the fact that according to article 17 par. 1 of the FIFA Status Regulations, “... *compensation for breach shall be calculated with due consideration for the law of the country concerned...*” and that according to article 25 par. 6 the DRC shall when making its decisions, “... *apply these Regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport*”.
18. The Panel considers that the reference in article 17 par. 1 of the FIFA Status Regulations to “*the law of the country concerned*” does not detract from the fact that according to the clear wording of article 60 par. 2 of the FIFA Statutes, the FIFA intended the interpretation and validity of its regulations and decisions to be governed by a single law corresponding to its law of domicile, i.e. Swiss law.
19. Thus, the Panel finds that the interpretation of the FIFA Status Regulations and the validity of the DRC decision under appeal must be determined in application of Swiss law.
20. Moreover, the Panel finds that article 25 par. 6 of the FIFA Status Regulations and the reference in article 17 par. 1 to the “*law of the country concerned*” are not, properly speaking, choice-of-law clauses.
21. Given its formulation, article 25 par. 6 must be deemed a general reminder to the decision-making bodies of FIFA (PSC, DRC, Single Judge and DRC Judge) that in making their decisions under the FIFA Status Regulations they must not apply those regulations in a vacuum but must account for the applicable contractual arrangements, collective agreements and national law. Article 25 par. 6 does not purport to specify what national law is relevant.
22. As to article 17 par. 1 of the FIFA Status Regulations, it is clear from its wording that the reference to the “*law of the country concerned*” is not a choice-of-law clause, since it merely stipulates that such law is among the different elements to be taken into consideration in assessing the level of compensation.
23. In other words, article 17 par. 1 does not require that compensation be determined in application of a national law or that the rules on contractual damage contained in the law of the country concerned have any sort of priority over the other elements and criteria listed in article 17 par. 1. It simply means that the decision-making body shall take into consideration the law of the country concerned while remaining free to determine what weight, if any, is to be given to the provisions thereof in light of the content of such law, the criteria for compensation laid down in article 17 par. 1 itself and any other criteria deemed relevant in the circumstances of the case.

24. In the present case, the law of the country concerned is Scottish law, since Scotland has the closest connection with the contractual dispute; being at once the country where the employment contract was signed and performed and where the club claiming compensation (Hearts) and the Player were domiciled at the time of signature and termination.
25. In sum and for the above reasons, the Panel considers the applicable law and regulations to be as follows:
- The FIFA Status Regulations in determining the amount of compensation due to Hearts as a result of the Player's unilateral termination of his employment contract.
 - Swiss law in interpreting the FIFA Status Regulations and the validity of the DRC's decision under appeal.
 - Scottish law, if the Panel deems any provisions are relevant to apply in conjunction with the FIFA Status Regulations in determining the level of compensation due to Hearts.
26. For reasons that will be explained below when discussing the claims, the Panel considers that the provisions of Scottish law invoked by Hearts should not be applied.
27. Finally, with respect to EC law invoked by the Player and Wigan, the Panel shall examine its scope of application if it becomes necessary in relation to the type of compensation decided.

Merits of the Appeals

28. The central provision of the FIFA Status Regulations invoked by the parties is article 17, which provides as follows:

“Article 17 Consequences of Terminating a Contract Without Just Cause

The following provisions apply if a contract is terminated without just cause:

1. *In all cases, the party in breach shall pay compensation. Subject to the provisions of Art.20 and annex 4 in relation to Training Compensation, and unless otherwise provided for in the contract, compensation for breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the Former Club (amortised over the term of the contract) and whether the breach falls within a Protected Period.*
2. *Entitlement to compensation cannot be assigned to a third party if a Professional is required to pay compensation, the Professional and his New Club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.*

3. *In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the Protected Period. This sanction shall be a restriction of four months on his eligibility to play in Official Matches. In the case of aggravating circumstances, the restriction shall be six months. In all cases, these sporting sanctions shall take effect from the start of the following Season of the New Club. Unilateral breach without just cause or sporting just cause after the Protected Period will not result in sporting sanctions. Disciplinary measure may, however, be imposed outside of the Protected Period for failure to give due notice of termination (i.e. within fifteen days following the last match of the Season). The Protected Period starts again when, while renewing the contract, the duration of the previous contract is extended”.*
29. The parties are at one in arguing that the DRC misapplied article 17 of the FIFA Status Regulations and in doing so violated procedural requirements of FIFA Status Regulations by failing to explain how it arrived at the figure of GBP 625'000 in compensation.
30. The parties however disagree as to how the criteria laid down in article 17 par. 1 should be applied and therefore as to the amount of compensation owed to Hearts.
31. Consequently, the Panel shall (A.) begin by examining whether the DRC decision can be deemed in violation of the FIFA Status Regulations and, if so, shall (B.) make a new determination as to the amount of compensation owed to Hearts in application of article 17 of the FIFA Status Regulations. Since the parties also disagree as to the joint and several liability of Wigan to pay compensation, this point shall be addressed thereafter (C.).
- A. The Validity of the DRC's Decision*
32. The Panel shall begin by determining whether the DRC breached any formal and procedural requirements of the FIFA Status Regulations and/or any mandatory principles of Swiss law of associations.
33. In that relation, the Panel finds that Wigan rightly invokes article 13 par. 4 of the *FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber* (the “FIFA Rules”), which provides that decisions of the DRC must contain “... reasons for its findings”.
34. The relevance and importance of article 13 par. 4 is confirmed by several mandatory principles of Swiss law that limit the regulatory and decisional freedom of an association in order to protect its members. One such principle is that an association must correctly apply its own regulations, another being that its regulations must be applied and its decisions made in a predictable and cognisable manner, notably to ensure equality of treatment and due process.

35. The Panel finds that in this case the DRC has failed to meet the requirements of article 13 par. 4 of the FIFA Rules, since although the DRC decision does discuss some of the criteria listed in article 17 of the FIFA Status Regulations for determining the level of compensation owed, in the final analysis it is impossible to understand from reading the decision what weight was given to what criteria in determining the quantum, i.e. there is no indication of the method and figures used by the DRC to arrive at the amount of GBP 625'000, or in other words what the figure consists of.
36. For the above reasons, the Panel finds that the DRC's decision is invalid for having failed to meet the formal requirements laid down in the FIFA Status Regulations.
37. Therefore and given the prayers of all three parties that the Panel directly renders a new decision, as well as the Panel's authority to do so in accordance with art. R57 of the CAS Code, the Panel shall issue a new decision and now turns to the determination of the level of compensation to be awarded on the basis of article 17 of the FIFA Status Regulations.

B. Level of Compensation Owed by Hearts

38. In determining the level of compensation owed, the Panel shall begin, as a preliminary matter, by (i) listing a certain number of undisputed facts, and (ii) examining the disputed existence of any aggravating factors and contributory negligence. The Panel shall then (iii) turn to the interpretation and application of article 17 of the FIFA Status Regulations.

(i) Undisputed Facts

39. The Panel notes that the following circumstances relating to the issue of compensation are undisputed:
 - Although the Player initially purported to terminate his contract by relying on just cause, he finally renounced such approach, retracted his initial notice and unilaterally terminated his employment contract without cause as defined in article 17 of the FIFA Status Regulations.
 - Consequently, the only matter to assess is one of compensation and article 17 of the FIFA Status Regulations applies in that respect.
 - The rounded-off figure of GBP 150'000 is accepted by all parties as the residual value of the Player's employment contract remaining after its termination (this figure was agreed at the hearing).

(ii) Existence of Aggravating Factors or Contributory Negligence

40. With respect to the reasons which led to the unilateral termination, Hearts is contending in essence that it was a matter of greed on the Player's part who, knowing the end of his contract was approaching, unfairly refused to negotiate a further prolongation of his employment contract despite having received several offers from Hearts, and then made a deliberate attempt to circumvent the requirement of a transfer fee. Hearts views this as an aggravating factor.
41. The Player is essentially arguing the contrary, i.e. that due to the not-too-distant prospect of the end of his employment contract and the likely fast-diminishing value of his transfer value beyond the upcoming 2006 Summer transfer window, Hearts attempted to pressure him into signing a new contract with Hearts on terms that suited the Club.
42. According to the Player, this pressure was applied by the President of the Club, Mr Romanov, inappropriately giving instructions to the managers not to select him for certain games despite the Player being willing and able to play and having been consistently a leading and respected member of the team.
43. The Player confirmed at the hearing that perception of the reasons for his non-selection led to a breakdown in his confidence in the Club's intentions, which was increased by disparaging comments being made in the media, attributed to Mr Romanov, about the Player's commitment to Hearts and about the role of his parents behind the scene. It is in this context that he ultimately decided to terminate his contract, without having had any contacts or offers from Wigan or any other clubs beforehand.
44. To the extent he is required to pay compensation to the Club, the Player contends that the above circumstances constitute a form of contributory negligence on the part of Hearts that should have the effect of diminishing any amount of compensation allowed.
45. Although the Panel is not convinced that the concept of aggravating factors or of contributory negligence are legally relevant or applicable to the calculation of compensation under the criteria of article 17 par. 1 of the FIFA Status Regulations, the legal question can be left open because the Panel finds there is no sufficient evidence that either party (Hearts or the Player) in fact had ill intentions or misbehaved in their attitude with regard to each other; whatever may have been the contrary perception of each. Neither is there any evidence that Wigan or any other club intervened in the relationship between Hearts and the Player in a manner which would sour it, or incited the Player to leave Hearts by means of an offer prior to the Player's notice of termination.

46. Rather it would appear that through an unfortunate combination of circumstances, probably fuelled in part by a lack of direct communication between Mr Romanov and the Player, the relationship of confidence between Hearts and the Player gradually broke down.
47. Having carefully listened to the Player as well as several of the Club's managers and bearing in mind the other evidence on record, the Panel is convinced that the Player's confidence in the Club and desire to continue playing for the Club was broken; his sensitivity to the fact of not being selected for certain games and to various statements in the media in all likelihood being exacerbated by a sentimental attachment to a club in which he began his professional career as a young player and in which he was originally recognized as a player upon whose motivation the club could confidently count.
48. At the same time, given the realities of the transfer market combined with the Player's incontestable right to leave the Club free of charge at the end of his contract, the Panel finds it is more likely than not that Hearts felt under some pressure to secure a new contract with the Player, in order to leave time to place him on the 2006 Summer transfer list if such contract was not signed. Indeed, the manager and experts who testified on the subject were unanimous in declaring that with 18 months left to run on the contract, the Player's value on the market would rapidly decline, if not become in practice extinguished, after the Summer transfer period.
49. For the above reasons, whether or not the question is legally relevant, the Panel does not find that any aggravating factors on part of the Player or contributory negligence on part of the Club have been clearly established. Accordingly, the Panel will take account of neither in determining the level of compensation owed to Hearts in application of article 17 of the FIFA Status Regulations.
- (iii) The Interpretation and Application of Article 17 of the FIFA Status Regulations
50. In keeping with the practice under Swiss law relating to the interpretation of the bylaws of an association, the Panel shall have regard first for the wording of article 17, i.e. its literal meaning, and if this is unclear shall have regard to the provision's internal logic, its relationship with other provisions of the FIFA Status Regulations as well as its purpose revealed by the history of its adoption.
51. As a starting point, it is noteworthy that according to the first sentence of article 17, in case of unilateral termination without cause: *"In all cases, the party in breach shall pay compensation"*. This comes as a logical consequence of article 13 of the FIFA Status Regulations which underlines the principle *pacta sunt servanda*, by stating: *"A contract between a Professional and a club may only be terminated on expiry of the term of contract or by mutual agreement"*; such provision being further

reinforced by article 16, whereby: “*A contract cannot be unilaterally terminated during the course of a Season*”.

52. In other words, article 17 is not a provision that allows a club or a Player unilaterally to terminate an employment contract without cause. On the contrary, within the framework of section IV of the FIFA Status Regulations – entitled “*Maintenance of Contractual Stability Between Professionals and Clubs*” and covering articles 13-18, any such termination is clearly deemed a breach of contract.
53. Thus, unilateral termination must be viewed as a breach of contract even outside the Protected Period and the position expressed by the Player’s counsel in his closing arguments that no compensation at all should be due is not sustainable; the only possible question in this case being how much is due under the system designed by article 17 to deal with the consequences of unilateral termination without cause.
54. A second preliminary point is that according to the wording of its first paragraph article 17 is not intended to deal directly with Training Compensation – such compensation being specially regulated in detail by other provisions of the FIFA Status Regulations.
55. The Panel finds therefore that in determining the level of compensation payable to Hearts under article 17 of the FIFA Status Regulations as a result of the Player’s unilateral termination without cause, the amounts having been invested by the Club in training and developing the Player are irrelevant, i.e. are not factors that come into consideration under article 17. Consequently, the Panel disagrees with Heart’s submission that among the relevant circumstances in calculating compensation for unilateral termination under article 17 “... *is the sporting and financial investment Hearts has made in training and developing the Player during the last 5 years*”.
56. A third preliminary point is that article 17 gives primacy to the parties’ contractual agreement in terms of stipulating types and amounts of compensation, since according to article 17 par. 1 the criteria for calculating compensation only apply if not “... *otherwise provided for in the contract*” and article 17 par. 2 provides that the amount of compensation “... *may be stipulated in the contract or agreed between the parties*”.
57. In the present case, the parties have not invoked any provisions of the Player’s employment contract with respect to the assessment of the level of compensation, except Hearts’ reference to clause 21 of the contract, whereby “*The Club may offer the Player a further period of engagement under the Rules of The Scottish Premier League and the Player shall not be registered for any other club without payment of a compensation fee (fixed in manner provided by the Rules of The Scottish Premier League) by that other club to the club which previously held the Player’s Scottish Premier League registration if*

and so long as the Club has offered to engage the Player on terms which are in the opinion of the Board not less favourable in all monetary respects than those applicable hereunder”.

58. However, Hearts has neither indicated the relevance of clause 21 with respect to the specific case of compensation for unilateral termination without cause nor established any amount of compensation that would allegedly be owed according to such clause. Instead, Hearts has chosen to invoke compensation criteria it deems relevant in application of the FIFA Status Regulations and Scottish law and has based its calculations thereon. In addition, Hearts’ foregoing reference to clause 21 of the employment contract is partly contradictory to its written submission that the contract did not provide for any assessment of compensation in the event of breach by either party.
59. For the above reasons, the Panel finds that Hearts has failed to allege or prove that any amount of compensation for unilateral termination or criteria for calculating it is contractually specified in the Player’s employment contract.
60. Having dealt with the foregoing preliminary points, the Panel shall now analyse the factors to be taken into consideration according to the wording of article 17 of the FIFA Status Regulations when determining the level of compensation. Article 17 par. 1 refers to three categories of factor, which the Panel shall examine in turn: the law of the country concerned, the specificity of sport and any other objective criteria (followed by a list of examples).
61. With respect to the *law of the country concerned* and as indicated earlier, the Panel considers that it is Scottish law but that the Panel has the discretion to decide whether or not any provisions of Scottish law should be applied in determining the level of compensation.
62. The Panel finds there are several reasons not to apply the rules of Scottish law invoked by Hearts.
63. One reason is that Hearts is relying on general rules and principles of Scottish law on damages for breach of contract, i.e. on provisions of Scottish law that are neither specific to the termination of employment contracts nor to sport or football, while article 17 of the FIFA Status Regulations was adopted precisely with the goal of finding in particular special solutions for the determination of compensation payable by football players and clubs who unilaterally terminate their contracts without cause. In other words, it is important to bear in mind that it is because employment contracts for football players are atypical, i.e. require that the particularities of the football labour market and the organization of the sport be accounted for, that article 17 was adopted. At the same time, footballers’ contracts remain more akin to employment contracts (and are generally characterized as such under national laws), than to some form of commercial contract to which general rules on damage are applicable.

64. The Panel therefore sees no reason to renounce application of the specific solutions and criteria laid down in article 17 of the FIFA Status Regulations in favour of general rules on contract damages. On the contrary, the fact that several of the applicable choice-of-law rules (article 60 par. 2 of the FIFA Statutes and art. R58 of the CAS Code) underline the primary application of the regulations chosen by the parties, that article 17 par. 1 itself refers to the specificity of sport and that it is in the interest of football that solutions to compensation be based on uniform criteria rather than on provisions of national law that may vary considerably from country to country, are all factors that reinforce the Panel's opinion that in this case it is not appropriate to apply the general principles of Scottish law on damages for breach of contract invoked by Hearts.
65. Consequently, in determining the level of compensation, the Panel will not rely on Scottish law.
66. With respect to the "*specificity of sport*", article 17 par. 1 of the FIFA Status Regulations stipulates that it shall be taken into consideration, without however providing any indication as to the content of such concept.
67. In light of the history of article 17, the Panel finds that the specificity of sport is a reference to the goal of finding particular solutions for the football world which enable those applying the provision to strike a reasonable balance between the needs of contractual stability, on the one hand, and the needs of free movement of players, on the other hand, i.e. to find solutions that foster the good of football by reconciling in a fair manner the various and sometimes contradictory interests of clubs and players.
68. Therefore the Panel shall bear that balance in mind when proceeding to an examination of the other criteria for compensation listed in article 17.
69. With regard to the *other criteria* for determining compensation, article 17 par. 1 leaves a substantial degree of discretion to the deciding authority to account for the circumstances of the case, since after stipulating that compensation may be calculated on the basis of "*any other objective criteria*", it provides that "*These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the Former Club (amortised over the term of the contract) and whether the breach falls within a Protected Period*".
70. In that relation is it noteworthy that independently from the specificities of a given case, the criteria listed in article 17 need to cope with a number of categories of cases, notably those where unilateral termination occurs inside the protected period as distinct from those where it occurs outside such period and those cases where unilateral termination is by the Player as distinct from those where termination is by the Club. It is therefore logical that article 17

par. 1 includes a broad range of criteria, many of which cannot in good sense be combined, and some of which may be appropriate to apply to one category of case and inappropriate to apply in another.

71. Furthermore, in seeking to balance appropriately the interests of clubs and players for the good of the game, it is necessary to bear in mind that because article 17 of the FIFA Status Regulations applies to the unilateral termination of contracts both by players and by clubs, the system of compensation provided by article 17 must be interpreted and applied in a manner which avoids favouring clubs over players or vice versa.
72. In the foregoing context, the Panel finds it appropriate to consider that the clubs particular need for contract stability is specifically and adequately addressed by means of the Protected Period and the provisions designed to enforce it, which comprise the basic period of protection as defined in paragraph 7 of the “Definitions” contained in the FIFA Status Regulations, the automatic renewal of that period upon the contract being extended (article 17 par. 3, last sentence) and the relatively severe sanctions that can be imposed in case of disrespect for the Protected Period (article 17 par. 3); such stability being further enhanced for clubs and players alike by article 16 of the FIFA Status Regulations, which entirely prohibits unilateral termination during the course of a Season.
73. The clubs’ special interest having been recognized and protected in such regulatory manner, the Panel finds that, beyond the Protected Period and subject to the parties’ contractual stipulations, compensation for unilateral termination without cause should not be punitive or lead to enrichment and should be calculated on the basis of criteria that tend to ensure clubs and players are put on equal footing in terms of the compensation they can claim or are required to pay. In addition, it is in the interest of the football world that the criteria applicable in a given type of situation and therefore the method of calculation of the compensation be as predictable as possible.
74. Accordingly, the Panel deems that in the present case the alleged estimated value of the Player on the transfer market, upon which Heart’s is basing its main claim (GBP 4 million), by alternatively claiming such amount as lost profit or as the replacement value of the Player, cannot come into consideration when determining compensation on the basis of article 17 par. 1 of the FIFA Status Regulations because any such form of compensation was clearly not agreed upon contractually and to impose it by regulation would simultaneously cause the Club to be enriched and be punitive vis à vis the Player.
75. Indeed, in this case the Player was initially purchased by the Club for an amount of GBP 75’000 whereas it is today claiming a market value of GBP 4 million. This means that independently from the question of amortization of the initial purchase amount, that the

Panel shall deal with below, the Club is claiming to be entitled to a profit of at least GBP 3.9 million on the sole premise that it trained and educated the Player.

76. In any event, subject to it being validly agreed by an enforceable contract, the Panel finds there is no economic, moral or legal justification for a club to be able to claim the market value of a player as lost profit.
77. From an economic perspective there is no reason to believe that a player's value on the market owes more to training by a club than to a player's own efforts, discipline and natural talent. An empirical study might even demonstrate the contrary, i.e. that a talented and hardworking player tends to fare well, stand out and succeed independently from the exact type of training he receives, whereas an untalented and/or lazy player will be less successful no matter what the environment. Also market value could stem in part from charisma and personal marketing. In any case, it is clear that a club cannot simply assume it is the only source of success of a player and thus claim his entire market value, particularly without bringing any proof (which would be very difficult) of its paramount role in the player's success leading to his market value. In this case, Hearts have underlined the Player's success and alleged his market value but have brought no evidence that the Club entirely or even predominantly generated the alleged market value in question through its training and education.
78. In addition from an economic and moral point of view, it would be difficult to assume a club could be deemed the source of appreciation in market value of a player while never be deemed responsible for the depreciation in value. Consequently, if the approach relied on by Hearts were followed, players should be entitled to claim for example that they are owed compensation for their alleged decrease in market value caused by such matters as being kept on the bench for too long or having an incompetent trainer, etc. Obviously, such a system would be unworkable and would not serve the good of the football.
79. From a regulatory standpoint, to allow clubs to claim the market value of players as lost profit under article 17 of the FIFA Status Regulations would not make sense and would amount to double counting, since, as mentioned earlier, article 20 and annex already provide for a system of compensation to clubs for the training and education of players, and it is not by chance that such compensation is not based on the player's market value but on demonstrable investment made and costs incurred by the club.
80. Moreover, since a club's possible entitlement to the transfer or market value of players is entirely absent from the criteria of compensation listed in article 17 par. 1 and there is no reference to any such form of compensation in favour of Hearts in the Player's employment contract, to apply such criteria and thereby imply it into the contract would contradict both the principle of fairness and the principle of certainty.

81. Finally, because of the potentially high amounts of compensation involved, giving clubs a regulatory right to the market value of players and allowing lost profits to be claimed in such manner would in effect bring the system partially back to the pre-Bosman days when players' freedom of movement was unduly hindered by transfer fees and their careers and well-being could be seriously affected by them becoming pawns in the hands of their clubs and a vector through which clubs could reap considerable benefits without sharing the profit or taking corresponding risks. In view of the text and the history of article 17 par. 1 of the FIFA Status Regulations, allowing any form of compensation that could have such an effect would clearly be anachronistic and legally unsound.
82. For the above reasons, the Panel finds that Hearts is not entitled to claim any part of the Player's alleged market value as lost profit or on any other ground and that as a result its corresponding claim for GBP 4 million must be rejected.
83. Neither can Hearts claim the right to reimbursement of any portion of the fee of GBP 75'000 initially paid by it to purchase the Player from his former club, since according to the criteria laid down in article 17 par. 1 in this respect, which the Panel finds reasonable, that fee must be deemed amortised over the term of the contract, and in this case the Player remained with the club for a longer period in total than the initially agreed fixed term of four years.
84. In addition, the Panel is not convinced that beyond the Protected Period it is admissible for a club to reclaim a portion of the engagement fee as compensation for unilateral termination unless such form of compensation is stipulated in the employment contract, since contractual fairness would tend to require that upon accepting his employment a player be fully aware of the financial engagements he has undertaken and the way in which they can affect his future movements. In other words, if a club expects an engagement fee to be proportionately reimbursable beyond the Protected Period – which is a matter that cannot be implied – there should be a negotiation and a meeting of the minds on the subject.
85. Among the other criteria of compensation referred to in article 17 par. 1, the Panel considers that the remuneration and benefits due to the Player under his new contract is not the most appropriate criterion on which to rely in cases involving unilateral termination by the Player beyond the Protected Period, because rather than focusing on the content of the employment contract which has been breached, it is linked to the Player's future financial situation and is potentially punitive.
86. Instead the Panel finds it more appropriate to take account of the fact that under a fixed-term employment contract of this nature both parties (club and player) have a similar interest and expectation that the term of the contract will be respected, subject to termination by mutual consent. Thus, just as the Player would be entitled in principle to the outstanding

remuneration due until expiry of the term of the contract in case of unilateral termination by the club [subject it may be, to mitigation of loss], the club should be entitled to receive an equivalent amount in case of termination by the Player. This criterion also has the advantage of indirectly accounting for the value of the Player, since the level of his remuneration will normally bear some correlation to his value as a Player. Thus a Player receiving very high remuneration (and thereby being able to expect high remuneration in case of a change of club) will have a correspondingly high amount of compensation to pay even if he terminates his contract outside the Protected Period, and the earlier such termination occurs the higher will be the total amount of compensation owed.

87. For the above reasons, the Panel finds that Heart's claim of GBP 330,524 based on the difference between the value of the old and new contract must be rejected and that the most appropriate criteria of article 17 par. 1 to apply in determining the level of compensation owed to Hearts by the Player is the remuneration remaining due to the Player under the employment contract upon its date of termination, which the parties have referred to as the residual value of the contract.
88. Consequently and because the parties have agreed that such residual value represents an amount of GBP 150'000, the Panel considers the foregoing amount to be due to Hearts as full compensation under article 17 par. 1 of the FIFA Status Regulations for the Player's termination of his contract.
89. Having determined that Hearts is entitled to such amount as fair and adequate compensation for the Player's unilateral termination of his employment contract and since the criteria listed in article 17 par. 1 are not designed to be cumulative *per se*, the Panel sees no reason to award any other amount as an additional head of damage.
90. For sake of good order, the Panel nevertheless points out that with respect to Heart's claim of GBP 70'000 for alleged sporting and commercial losses, the Club has established neither the causality of the Player's termination nor the existence of the damage; and that with respect to Heart's claim for GBP 80'008.96 for costs linked to the proceeding in front of the DRC, there is no reason to award such amount because according to the DRC's practice such proceedings do not give rise to awards of costs and because in any event Hearts has lost the present appeal resulting from the DRC proceeding.
91. Finally, with respect to the amount of GBP 150'000 being awarded, the Panel considers that it shall carry interest from the first day following the effective termination of the contract, since within the logic of the system of compensation instituted by article 17 par. 1 such is the date when the compensation became due. Because none of the parties have contested the rate of interest of 5% used by the DRC, that rate shall apply from the date in question.

92. According to the Player's final letter of termination of 26 May 2006, the notice of termination was to take effect on 30 June 2006 given the Player's statement that he would not be honouring the last 12 months of his employment contract. Thus interest is awarded from 1 July 2006.

Several and Joint Liability of Wigan

93. Article 17 par. 2 of the FIFA Status Regulations stipulates that:
"Entitlement to compensation cannot be assigned to a third party. If a professional player is required to pay compensation, the Professional and his New Club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties".
94. Wigan contends that it should not be held jointly liable on the basis of the foregoing provision because it took no part in inciting the Player to leave Hearts and that it had not made him any offer or even made contact with him at the time he decided to leave Hearts and gave the Club his final notice of termination.
95. In light of the evidence on record, the Panel has no reason to doubt Wigan's assertion in this respect or therefore to conclude that Wigan had any causal role in the Player's decision to terminate his contract with Hearts.
96. That said, according to its wording the application of article 17 par. 2 is not conditional on fault and Wigan offered no evidence that article 17 par. 2 should be given any other meaning than its literal sense.
97. Consequently, the Panel considers that the joint and several liability provided under 17 par. 2 must be deemed a form of strict liability, which is aimed at avoiding any debate and difficulties of proof regarding the possible involvement of the new club in a player's decision to terminate his former contract, and as better guaranteeing the payment of whatever amount of compensation the player is required to pay to his former club on the basis of article 17.
98. The Panel finds therefore that Wigan is jointly and severally liable with the Player for the payment of GBP 150'000 in compensation to Hearts.

The Court of Arbitration for Sport pronounces, jointly, with respect to the three proceedings:

1. The appealed decision of 4 April 2007 of the FIFA Dispute Resolution Chamber is set aside.
2. Mr Andrew Webster shall pay Heart of Midlothian an amount of GBP 150'000 (one hundred and fifty thousand Pounds Sterling) as compensation, with interest at 5% from 1 July 2006.
3. Wigan Athletic FC is jointly and severally liable with Mr Andrew Webster to pay Heart of Midlothian the amount of GBP 150'000 (one hundred and fifty thousand Pounds Sterling), with interest at 5% from 1 July 2006.

(...)

6. Any and all other prayers for relief are dismissed.