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### The Game is the winner

#### HMRC takes another kicking over football creditors

Many of my readers will know that I was deeply involved in the rescue of Wimbledon Football Club from administration, as it went on to become the mighty MK Dons. I was there, in the Court of Appeal, when HMRC's challenge to the CVA, and indirectly of the Football League's football creditor rule, took a 3-0 drubbing.<sup>1</sup> Leading Treasury Counsel had his legs taken out from under him by the Lord Chief Justice in the first five minutes.

So I was a bit surprised that HMRC has had another go, this time in proceedings against the Football League itself. HMRC was knocked out in the first round by Mr Justice David Richards.<sup>2</sup>

The football creditors rule has been deeply unpopular with HMRC and other non-football creditors for many years, because it requires football creditors (players, managers, other clubs and the League itself) to be paid in priority when clubs go into administration, leaving less (or nothing) for the unsecured creditors. It offends against the usual principle that unsecured creditors rank equally and get paid proportionately. It works by not allowing the club to play in the League unless the football creditors have been paid. So any buyer will pay off the football creditors and knock the cost off what he would otherwise have paid for the club. Because the money does not go through the administrator's hands, he cannot distribute it equally. To add insult to injury, the creditors are then asked to agree a CVA (company voluntary arrangement) that prevents them from pursuing their claims; if they don't agree, the club goes into liquidation and they get nothing.

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<sup>1</sup> [Inland Revenue v Wimbledon Football Club Ltd & Ors Rev 2 \[2004\] EWCA Civ 655](#)

<sup>2</sup> I'm getting old. I remember instructing David Richards as (very) junior counsel.

HMRC tried to use the anti-deprivation rule, which invalidates arrangements that deprive a debtor of assets on bankruptcy. The court held that this can apply to an administration, but its scope is narrow and the funds in question in this case are not assets of the club at the time of administration.

It remains to be seen whether HMRC seeks a return match in the Court of Appeal, but there is not much in the judgment of David Richards J.<sup>3</sup> to give them any hope.

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<sup>3</sup> [HMRC v The Football League Ltd & Anor \[2012\] EWHC 1372 \(Ch\)](#)