[2016] UKFTT 0389 (TC)

# TC05143

**Appeal number: TC/2015/03533**

***INCOME TAX, NATIONAL INSURANCE CONTRIBUTIONS – whether payments made to employees on termination of their employment contracts "from" their employment – appeal allowed***

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**TOTTENHAM HOTSPUR LIMITED** **Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS** **Respondents**

**TRIBUNAL: JUDGE JONATHAN RICHARDS**
**MICHAEL SHARP FCA**

**Sitting in public at The Royal Courts of Justice, Strand, London on 11 and 12 May 2016**

**Jolyon Maugham QC and Georgia Hicks, instructed by Deloitte LLP, for the Appellant**

**Aparna Nathan, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. The appellant company is the parent company of Tottenham Hotspur Football & Athletic Co. Limited, a Premier League football club. In this decision, we will refer to both the appellant and the subsidiary as "Tottenham" except where it is necessary to distinguish between the two companies. In August 2011 Tottenham agreed terms with two of its players, Peter Crouch and Wilson Palacios (the "Players") which involved the Players leaving Tottenham to join Stoke City Football Club ("Stoke") and Tottenham making payments to the Players. This appeal concerns the tax treatment of those payments.

2. HMRC consider that the payments were earnings from the Players' employment and, as such, subject to income tax under s9 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") and subject to national insurance contributions under s6 of the Social Security Contributions and Benefits Act 1992 ("SSCBA"). On 10 December 2014, HMRC issued determinations under Regulation 80 of the Income Tax (PAYE) Regulations 2003 and decisions under s8 of the Social Security Contributions (Transfer of Functions etc) Act 1999 reflecting their view of the nature of the payments.

3. Tottenham argues that the payments were compensation for the early termination of the Players' contracts and, as such, were not "from" the Players' employments. For reasons set out more fully at [65] this appeal does not involve amounts of income tax that are significant relative to the amount of payments made. However, the dispute does involve material amounts of national insurance contributions ("NICs").

### Evidence

4. Tottenham relied on evidence from Matthew Collecott, the Group Operations and Finance Director of Tottenham Hotspur Limited, and from Melvyn Gandz, a partner at BSG Valentine Chartered Accountants, who acted for Mr Crouch in his negotiations with Tottenham in 2011. Ms Nathan cross-examined both of these witnesses. We found both Mr Collecott and Mr Gandz to be honest and reliable witnesses. HMRC did not rely on any witness evidence.

5. We also had documentary evidence in the form of a bundle of relevant documentation. We have made the findings set out at [6] to [61] below from the evidence before us.

### Relevant background facts

6. The Players were, at all material times, professional footballers and employees of Tottenham Hotspur Football & Athletic Co. Ltd[1]. Both of the Players were employed

[1] It was not suggested that anything material turns on the fact that HMRC are seeking to collect the income tax and NIC due from Tottenham Hotspur Limited (which is the appellant in this appeal).

on fixed-term contracts of employment. Mr Crouch's fixed-term contract commenced on 28 July 2009 and expired on 30 June 2013. Mr Palacios's contract commenced on 9 March 2009 and expired on 30 June 2014. At [18] to [47] below, we will set out more detailed findings on the terms of the Players' contracts as some of those matters were in dispute.

7. In 2011, Tottenham wished to reduce its wage bill as its commercial income had declined given that the club had not been involved in the Champions League in that season. Accordingly, Tottenham wanted to transfer the Players to another club and had identified Stoke as a possible destination. Both Players were reluctant to move. The "transfer window" within which the Players could move from Tottenham to Stoke was due to expire on 31 August 2011.

8. Even though the Players were reluctant to move, Tottenham did not take express action to terminate their contracts by, for example, sending an express notice of termination or requiring them to stay away from Tottenham's ground or other players. Moreover, even though Mr Crouch had expressed himself reluctant to move, in the week running up to 31 August 2011, his agents were engaged in a dialogue with other clubs (including Stoke) who were interested in signing him as to the terms that would be available were Mr Crouch to join them.

9. On the afternoon of 31 August, Mr Collecott sent a text message to Mr Gandz, Mr Crouch's accountant, as follows:

> Bottom line is player won't be part of 25 man squad and will sit out 2 years – Stoke won't take as asking too much.

Later in this decision we will consider whether this text message amounted to an anticipatory breach of contract.

10. Mr Collecott intended the first part of his text message to outline Tottenham's bargaining position which was that, if Mr Crouch insisted on staying at Tottenham until his contract expired, he could do so and could continue to receive his salary. However, if he did this, he would not form part of the 25 player squad eligible to play in Premier League matches. Such an action would have an adverse effect on Mr Crouch's career as a professional footballer as, since he would not be playing Premier League football, he would lose match fitness. In addition, other clubs would not see him playing so his prospects of a transfer to another top team would be reduced. It would also have had unfortunate consequences for Tottenham as it would not succeed in reducing its wage bill, would not receive a transfer fee and would run the risk of a disaffected senior player affecting the morale of the team as a whole. Because of the consequences for both player and club, it was rare for Tottenham to make a threat such as this, and still rarer to carry it out (although Mr Collecott did give an example of a situation when Tottenham had taken this action previously with a "surly" former player who had fallen out with both Tottenham's management and his team mates). Mr Gandz and Mr Crouch took the threat seriously.

11. The second part of Mr Collecott's message was intended to convey feedback that Tottenham had received from Stoke to the effect that the demands that Mr Crouch was making as to the terms of any contract with Stoke were excessive.

12. Initially, it appeared that Mr Crouch was going to acquiesce, reduce the terms that he was demanding of Stoke and join Stoke. He undertook a medical with Stoke on 31 August. However, late on 31 August, having received advice from his father, Bruce Crouch, he and his advisers informed Tottenham that he would require financial recompense from Tottenham in return for ending his contract early. Eventually, Tottenham agreed to this proposal. On 31 August 2011, Tottenham and Mr Crouch signed a "Compromise Agreement" and Mr Crouch duly joined Stoke.

13. We had very little evidence on the process of negotiations with Mr Palacios. However, as set out in more detail below, Tottenham ultimately agreed to make a payment to him as well and he also joined Stoke.

14. In response to HMRC enquiries in 2012, Tottenham confirmed that it has never made termination payments to players leaving the club in circumstances where Tottenham was also receiving a transfer fee. Mr Collecott confirmed the accuracy of this statement in his evidence which was not challenged, and which we have accepted.

**The respective positions of the parties**

15. We will deal with the parties' submissions in greater detail later on in this decision. However, it is convenient at this stage to record the essence of the parties' respective positions.

16. Mr Maugham argued as follows:

> (1) The payments to the Players were made in return for the Players giving up their rights to be employed until the expiry of the fixed term set out in their contracts. The payments were not made pursuant to any provision of their contracts. Accordingly, the payments were in return for the total abandonment of rights under the Players' employment contracts and were not "from" their respective employments.
>
> (2) No breach of contract is required to support the conclusion at [(1)] above. However, even if a breach were required, the text message referred to at [9] amounted to an anticipatory breach of contract by Tottenham.

17. Ms Nathan's position was as follows:

> (1) The Players' contracts expressly envisaged, and provided for, termination by mutual consent. The payments were made following a termination by mutual consent and therefore flowed "from" the Players' contracts of employment.
>
> (2) In order for payments such as those in issue not to be "from" the Players' employments, there would need to be a breach of contract by Tottenham. There was no such breach and Mr Collecott's text message did

not amount to a breach since Tottenham were contractually entitled to retain both Players' services, continue to pay them, but not select them for any of Tottenham's matches.[2]

**The Players' contracts of employment**

18. The rules of the Premier League stipulate the form of a standard contract (a "Form 13A") which is to set out the key terms of a footballer's employment. Tottenham entered into a Form 13A contract with both of the Players. Schedule 2 of each contract set out its commencement and termination dates and the player's remuneration. Schedule 2 also referred to, and incorporated, certain specific provisions particular to each player that were not dealt with in the standard Form 13A provisions.

*Form 13A – standard form provisions common to the contracts of both Players*

19. Clause 2 of the agreement provided as follows:

> Appointment and duration
>
> 2.1 The Club engages the Player as a professional footballer on the terms and conditions of the contract and subject to the Rules.
>
> 2.2 This contract shall remain in force until the date specified in clause 2 of Schedule 2 hereto subject to any earlier termination pursuant to the terms of this contract.

20. The "Rules" referred to at [19] were defined as:

> the statutes and regulations of FIFA and UEFA the FA Rules the League Rules the Code of Practice and the Club Rules

21. It was common ground that Clause 2.2 when read together with other provisions of the contract which required both the Players and Tottenham to observe the Rules had the effect of "importing" the provisions of the Rules into the Players' employment contracts. We will refer to the individual codes as the "FIFA Rules", the "FA Rules" and the "Premier League Rules". The contract did not deal in exhaustive detail with the position should one aspect of the Rules conflict with either an express term of the contract itself or another aspect of the Rules. However, nothing material turns on that point in the context of this appeal.

22. Clause 3 of the agreement set out the duties and obligations of the Players. The first obligation mentioned was, if directed by an authorised official of Tottenham, to attend matches in which Tottenham was engaged and to participate in those matches if selected to play.

23. Clause 6 of the agreement set out Tottenham's obligations. That clause imposed no contractual obligation on Tottenham to select either Player to play in any particular

[2] In her skeleton argument Ms Nathan also argued that it was reasonable to assume that the Players had an expectation that they would receive payments on early termination by mutual consent. However, in view of the evidence at [14] she did not pursue that argument at the hearing.

match. (Later in this decision we consider Mr Maugham's submission that a term should be implied into the Players' contracts to the effect that they would, at least, be considered for selection).

24. Under Clause 8 of the agreement, Tottenham could terminate a Player's contract if the player suffered prolonged or permanent incapacity or injury. Clause 8.2 provided that Tottenham had to give either six months' or twelve months' notice of termination under this clause (depending on the cause of the Player's incapacity). However, pursuant to Clause 8.5, Tottenham could terminate the agreement without notice on paying the Player the amounts that would be payable under the agreement if it ran to term. It was common ground that Clause 8 was not engaged in relation to either of the Players.

25. Under Clause 10, Tottenham had the right to terminate the contract early in cases involving, among other matters, gross misconduct. It was common ground that the conditions necessary to terminate either of the Players' contracts under this clause were not satisfied.

26. Clause 11 of the agreement set out the Player's right to terminate the contract if, among other things, Tottenham was guilty of serious or persistent breach of contract or failed to pay the Player the remuneration due. Again, it was not suggested that this provision was operative.

*Schedule 2 etc of Mr Crouch's contract*

27. The provisions set out at [18] to [26] were contained in the contracts of both Mr Palacios and Mr Crouch (since they were included in the standard Form 13A). Schedule 2 to each contract set out specific terms relevant to each player and were not, therefore, identical.

28. Paragraph 2 of Schedule 2 to Mr Crouch's contract stated that the termination date was 30 June 2013.

29. Schedule 2 also incorporated by reference a further Clause 14 to Mr Crouch's contract which provided, relevantly, as follows:

> 14.13 Option Period:
>
> This agreement shall cease and terminate on the said 30 June 2013 unless:
>
> 14.13.1 This agreement shall have been previously been [sic] terminated in accordance with the provisions of clauses 10 or 11 or;
>
> 14.13.2 This agreement shall have previously been terminated by mutual consent of both the Club and the Player or;
>
> 14.13.3 The Club shall have by the third Saturday in May 2013 exercised its option to retain the Player's services for a further period of one year…

Thus, although the Clause was headed "Option Period" it did not just deal with the option referred to in Clause 14.13.3. That clause expressly contemplated that the contract could be terminated early by mutual agreement.

*Schedule 2 of Mr Palacios's contract*

30. Paragraph 2 of Schedule 2 of Mr Palacios's contract provided that it would terminate on 30 June 2014. It had no equivalent to the Clause 14.13 contained in Mr Crouch's contract.

## Relevant provisions of the Rules

*Relevant provisions of the FIFA Rules*

31. Rule 13 of the FIFA Rules provides as follows:

> **13 Respect of contract**
>
> A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.

That Rule is expanded upon by Rule 16 which prevents unilateral terminations of contracts during a football season.

32. However, the FIFA Rules set out some exceptions from this rule as follows:

> (1) Under Rule 14, either party can terminate a contract without consequences of any kind where there is "just cause".
>
> (2) Under Rule 15, an established professional who has, in the course of a season appeared in fewer than 10 per cent of his club's official matches can terminate the contract prematurely on the basis of "sporting just cause". In such a case, the club in question would not be subject to sporting sanctions under the FIFA Rules but may be required to pay compensation.
>
> (3) Rule 17 of the FIFA Rules set out the consequences that apply if a contract is terminated without just cause. In broad summary, Rule 17 provides that the party terminating the contract wrongly could be required to pay compensation to the other and could also be subject to sporting sanctions imposed by FIFA.

*Relevant provisions of the Premier League Rules*

33. Section K of the Premier League Rules deals with players' contracts. Rule K.10 stipulates that contracts with players made on or after 5 June 2003 must be in Form 13A referred to at [18]. Since Form 13A contains detailed provisions dealing with termination of contracts, the Premier League Rules do not set out great detail on how players' contracts can be terminated. However, Rule K.24 requires parties agreeing to terminate a player's contract prior to its expiry date to notify the Football Association and the general secretary of the Premier League to that effect.

34. Section L of the Premier League Rules deals with players' registrations. Rule L.1 provides that, in order to play for a club in a Premier League match, a player must be both registered with that club and included in a "Squad List" of up to 25 players which can only be altered during a transfer window or with the permission of the Board. A player can hold a registration with only one club at a time.

35. Section M of the Premier League Rules permits a player's registration to move from one club to another. Rule M.11 sets out the manner of effecting the transfer of a registration from one club to another. Rule M.12 provides that any such transfer is subject to the approval of the Board of the Premier League. Rule M.26 provides that, where a player's registration is transferred, a "Compensation Fee" (known generally as a transfer fee) may become payable from transferor club to the transferee club.

36. Rule M.27 sets out the circumstances in which a player's registration with a club is to terminate. Rule M.27 does not provide that any termination of a player's contract results in a termination of the registration (although by virtue of Rule M.27.4, a termination of a player's contract on the grounds of permanent incapacity does result in that player's registration being terminated). Moreover, Rule K.41 makes it clear that, if a player's contract is terminated by mutual consent, the club in question may nevertheless retain the player's registration.

37. Ms Nathan argued that, when Sections K, L and M of the Premier League Rules were read together, it was clear that if a club terminated a contract with a player in breach of the terms of that contract, it would not be able to benefit from a transfer fee on the transfer of that registration to another club. She supported that argument by submitting that the "transfer" of a player's registration was, in reality, the cancellation of the existing registration (with the "transferor" club) and its replacement with a new registration (with the "transferee" club) and that, under Rule M.12, the Board is entitled to withhold approval to the transfer of the registration. Therefore, she reasoned that, if there was a defect in the way that a player's contract was terminated, the Board would be entitled to refuse to register the transfer of registration to the new club.

38. We have not accepted Ms Nathan's submission outlined at [37]. Firstly, it is clear from [36] that, even if Tottenham terminated the Players' contracts, it could still hold their registrations and could transfer them. There can be no doubt that the Board have a general discretion to refuse to register a transfer. However, we were not shown any provision of the Premier League Rules that made it clear that a wrongful termination of a contract would automatically result in a transfer of registration being refused. Nor did we have any evidence to the effect that the Board would be likely to exercise its discretion to refuse to register a transfer following a termination of a contract in breach of its terms. Indeed Mr Collecott could not think of a single situation in which the Board had refused to register a transfer for any reason.

*Relevant provisions of the FA Rules*

39. The provisions of the FA Rules relevant to this appeal are in many respects similar to those of the Premier League Rules and therefore we can deal with them quite briefly.

40. Like the Premier League Rules, the FA Rules require a player to be registered with a club in order to be able to play for that club and provide that a player cannot be registered to more than one club. Provision is made, in Rule C.1(g) of the FA Rules, for a registration to move from one club to another. Subject to limited exceptions, Rule C.1(i) prevents a player from playing for any club other than the club holding the registration.

41. Rule C.1(k)(ii) of the FA Rules provides that a player not selected to play or attend as a substitute for a period of four weeks may apply to the relevant club to request cancellation of both the employment contract and the registration with the FA. The club's decision in this regard can be reviewed by the FA. This provision, therefore, is similar to Rule 15 of the FIFA Rules referred to at [32(2)]. However, while the FIFA Rules appear to provide an absolute right for a player to cancel the contract and registration in similar circumstances, the FA Rules appear to confer more limited right, namely for a request in this regard to be considered.

42. Rule C.1(k)(iv) of the FA Rules provides that (except in relation to terminations under Rule C.1(l) which is not relevant in the circumstances of this appeal), except by mutual agreement, a club and player are not allowed to terminate a player's contract early without the consent of the FA. We did not consider that the FA Rules provided that, if a player's contract were terminated in breach of Rule C.1(k)(iv) it would automatically follow that there would be a restriction on the ability to transfer the player's registration to another club.

**The existence or otherwise of an implied term in the Players' contracts; whether Tottenham committed a breach of the Players' contracts**

43. It was common ground that there was no express term in the Players' contracts (or in the Rules which were incorporated into those contracts) to the effect that the Players would be selected, or considered for selection for any of Tottenham's fixtures. However, Mr Maugham argued that there was an implied term in each of the Player's contracts to the effect that they would at least be considered for selection. Therefore, Mr Maugham argued that the text message that Mr Collecott sent on 31 August 2011 amounted to an anticipatory breach of Mr Crouch's contract.

44. We were referred to provisions of *Chitty on Contracts* that summarise the law on the implication of contractual terms. In *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10, Lord Hoffmann stated that:

> … in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such provision would spell out in express words what the instrument, read

> against the relevant background, would reasonably be understood to mean.

Lord Hoffmann acknowledged, however, that the "usual inference" to be drawn from silence is that the parties did not intend anything to happen because, if they intended something to happen, they would have made express provision for it in the contract.

45. Mr Maugham pointed out that both the FIFA Rules and the FA Rules referred to at [32(2)] and [41] were incorporated into the Players' contracts and gave both players the right to terminate, or seek termination of, their contracts if they were not selected in a certain number of fixtures. Moreover, he referred to evidence that both Mr Gandz and Mr Collecott gave (which we accepted) to the effect that a principal motivation for professional footballers in playing the game is so that they can be selected for, and play in, competitive matches. Since he submitted that no club would sign a player unless expecting to consider selecting that player, and no player would sign for a club otherwise than in the expectation of being considered for selection, Mr Maugham submitted that this was a strong case for a term to be implied.

46. We do not, however, accept Mr Maugham's submissions for the following reasons:

(1) The Players' contracts were in a standard form prescribed by the Premier League Rules which made no provision requiring them to be considered for selection for any particular match or matches. Given that the contracts were in standard form, the "usual inference" to which Lord Hoffmann referred at [44] is a particularly strong one.

(2) Given the provisions of the Premier League Rules referred to at [34], a Premier League club will typically have 25 players eligible to participate in a Premier League match, but only 11 of those (plus up to seven substitutes) can actually be selected either to play or attend as substitutes. Therefore, for any given match there will be at least seven players whose services are not called on. We agreed with Ms Nathan that there would be significant consequences if each club had to demonstrate, following each fixture, to each disappointed player that it had complied with an implied term to consider that player for selection. That might be difficult to evidence as managers might not keep written records of the process by which they selected their team. Moreover, if a club could not demonstrate that the implied term had been complied with, it might face significant financial consequences, including a claim for damages or a claim that a contract with the player had come to an end following a breach of condition. We do not consider it obvious that the parties intended these consequences and, since the implied term would be difficult to monitor and enforce, we considered that was an indication that the parties did not intend it.

(3) We agreed with Mr Maugham that footballers doubtless wish to be selected to play and clubs would be foolish to engage players whom they would not consider selecting. However, it does not follow from those statements that the parties necessarily intended the club to assume a

contractual responsibility to consider selecting players. More particularly, Tottenham's interests are appropriately served by having available to it a squad of players from whom it can select a team in its absolute discretion. It is true that Tottenham have a clear incentive to think carefully about who the players on its squad should be. However, once Tottenham have a squad of players we do not see why, in the absence of express provision, they should be presumed to have undertaken a contractual obligation to consider each player for selection. We therefore considered that Mr Maugham's submissions in support of the implied term focused unduly on players' natural wish to be selected to play and did not give sufficient weight to whether it was necessarily in Tottenham's interests to assume a contractual obligation to consider each player on its squad for selection.

(4) Tottenham must have the right not to consider a player for selection during a period of injury. In addition, if a player had fallen out with team mates or management (like the "surly" player referred to at [10]) Tottenham had shown that they would not consider the player for selection. Therefore, it seemed to us that there could not be an unqualified right for a player to be considered for selection. Accordingly, it seemed to us that any implied term could not be expressed succinctly – it would need to be subject to a number of exceptions and qualifications. The fact that the parties did not see fit in their contract to spell out all of these matters adds support to the conclusion at 46(1) that they did not intend the term to be implied.

47. It follows from what we have said at [46] that Tottenham did not commit an anticipatory breach of an implied term in Mr Crouch's contract when Mr Collecott sent the text message referred to at [9]. Nor did that text message amount to a breach of Rule 15 of the FIFA Rules (referred to at [32(2)]) or Rule C.1(k)(ii) of the FA Rules (referred to at [41]). Firstly, those rules are only engaged when a player is not actually selected for the requisite number of matches. Secondly, even if a player is not selected for the requisite number of matches, no breach of contract results: rather a player's right to terminate, or request termination of the contract, is engaged. We had no evidence to suggest that a similar message was sent to Mr Palacios or his representatives. Even if it were, it would not have amounted to an anticipatory breach of contract for similar reasons.

## The agreements under which the payments to the Players were made

*The Compromise Agreement with Mr Crouch*

48. On 31 August 2011, Tottenham and Mr Crouch entered into a Compromise Agreement. So far as material, that agreement provided as follows.

49. The front cover of the agreement stated that it was "without prejudice and subject to contract". However, Clause 8 of the agreement stated that, when it was dated and signed, it was to take effect as an "open" document evidencing an agreement binding on the parties. We have concluded, therefore, that the Compromise Agreement was a binding contract.

50. The preamble to the agreement and Clause 1 of the Compromise Agreement stated that:

> Following discussions between the Club and the Employee regarding the termination of the Employee's employment it has been agreed as follows:
>
> 1. The Employee's employment with the club was terminated by the Club on 31 August 2011. The Players [sic] basic weekly salary up to and including this date will be paid in the normal manner.

51. Clause 1 referred to above could be read as stating that Mr Crouch's contract had already been terminated (earlier on 31 August 2011). However, given the background to Mr Crouch leaving Tottenham, we consider it unlikely that Tottenham would first terminate Mr Crouch's employment (earlier than its stated maturity and in breach of the terms of his employment contract) and then enter into a Compromise Agreement. Rather, viewed in context, we consider that the parties were intending to enter into an agreement setting out the terms on which Mr Crouch's employment contract would be terminated and therefore that the Compromise Agreement was itself the document by which that employment was terminated.

52. Clause 2 set out the payments that Tottenham would pay to Mr Crouch. These payments were less in amount than the wages Mr Crouch would have received had he remained employed until expiry of his fixed-term employment contract. The payments were defined as the "Termination Payment" and Clause 2 of the Compromise Agreement further provided:

> The parties acknowledge that the Termination Payment is a non-contractual payment made in connection with the termination of the Employee's employment with the Club.

53. The rest of the Compromise Agreement contained provisions that would be expected in an agreement of this nature, for example, an acknowledgement that the agreement was in full and final settlement of all claims, a warranty that Mr Crouch had received appropriate legal advice and an agreement that the parties would not make disparaging remarks about each other.

54. From Mr Collecott's evidence we have concluded that Tottenham entered into the Compromise Agreement because, if they did not, they would have a contractual obligation to continue to employ Mr Crouch until his fixed term employment contract expired. Therefore, entering into the Compromise Agreement enabled Tottenham to save the ongoing cost of his wages and to secure a transfer fee from Stoke. Tottenham considered that the sum they had to pay to Mr Crouch under the Compromise Agreement was worth paying in the light of those benefits.

55. From Mr Gandz's evidence, we have concluded that Mr Crouch entered into the Compromise Agreement as it gave him some financial recompense for leaving Tottenham and ceasing to obtain the high level of wages that he enjoyed there. While the amount he would receive in wages if he had stayed at Tottenham was higher than the "termination payment" he received, by signing the Compromise Agreement, Mr Crouch was in a position to move to Stoke and might, by making this move, be able to

extend his playing career beyond the age of 35 and potentially play for England again. Neither of these outcomes would be likely if he had stayed at Tottenham and not been selected to play for the first team.

*The termination arrangements with Mr Palacios*

56. Mr Palacios did not sign a Compromise Agreement similar to that signed by Mr Crouch. There was relatively little documentation surrounding his departure from Tottenham. On 28 August 2011, Tottenham sent him a letter that was expressed to be "subject to contract". That letter read, so far as material, as follows:

> Dear Wilson
>
> **Re: Termination Payment**
>
> Upon the termination of your employment with Tottenham Hotspur Football Club this transfer window to join Stoke City Football Club, I am writing to confirm that Tottenham will agree to pay you the following sums as a termination payment.
>
> 1) £900,000 upon the permanent transfer of your registration
>
> 2) A further £510,000 payable on 15 August 2012
>
> Please note that the above sums will be taxed at source.

57. It was common ground that the payments referred to in this letter were requested by Mr Palacios (rather than being offered by Tottenham) and were ultimately made on the dates referred to in the letter. However, it was not clear whether it was intended at the time that this letter would ultimately be superseded by a formal compromise agreement but that this was subsequently overlooked. Nor is it clear whether Mr Palacios's contract had by this point already been terminated or whether the letter was setting out a proposal as to the terms on which it would be terminated.

58. We have accepted Mr Collecott's evidence that Mr Crouch had better professional representation than Mr Palacios. We have concluded that the most likely explanation of the lack of documentation of Mr Palacios's departure is that Tottenham focused their efforts on ensuring that the deal with Mr Crouch, who was the more demanding player with the better representation, was properly documented and that the club lost sight somewhat of Mr Palacios's documentation. Therefore, we consider that the letter referred to at [56] was originally intended as an offer to the effect that, if Mr Palacios agreed to the early termination of his contract, Tottenham would pay him the sums set out in that letter. At some point, most probably when he consented to the transfer of his registration to Stoke, Mr Palacios accepted that offer by conduct and, at that point, it became a binding contract.

59. We concluded that Tottenham's motivations for entering into the agreement with Mr Palacios were similar to those set out at [54]. We had no evidence as to Mr Palacios's motives since neither he, nor his representatives gave evidence to the Tribunal. We will not, therefore, make any findings as to his motives.

*Whether these agreements were made following a breach of contract*

60. We have, at [46] explained that Tottenham were not in breach of an implied term in the Players' contracts to consider them for selection in the future. More generally, we find that neither of the Players' contracts was terminated in breach of contract. Rather, both contracts were brought to an end by means of a mutual agreement that, in Mr Crouch's case was set out in the Compromise Agreement and, in Mr Palacios's case, was made in the circumstances set out at [57] and [58].

61. Ms Nathan argued that there was a further reason why we should conclude that there was no breach of the Players' contracts, namely that, if Tottenham had breached those contracts, the Rules would have precluded them from receiving a transfer fee from Stoke. Given that we have concluded, for other reasons, that there was no breach of contract, we do not need to consider that submission. However, for completeness, for reasons set out at [37] and [38] we have not accepted this aspect of Ms Nathan's submissions.

**Relevant statutory provisions**

62. Section 6(1) of ITEPA imposes the charge to tax on employment income on "general earnings" and "specific employment income".

63. Section 7(1) of ITEPA defines "general earnings" as being earnings within Chapter 1 of Part 3. That consists of a single section, s62 of ITEPA, which provides relevantly as follows:

> (2) … "earnings", in relation to an employment means –
>
> (a) any salary, wages or fee,
>
> (b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth, or
>
> (c) anything else that constitutes an emolument from employment.

64. Section 7(6) of ITEPA includes income falling within Part 6 of ITEPA within the scope of "specific employment income". Section 403 of ITEPA, which falls within Part 6, imposes a tax charge on termination payments to the extent they exceed £30,000.

65. It follows from [62] to [64] above that the parties agreed that, if the payments to the Players were "general earnings", they are subject to income tax in their entirety whereas, if they were not, they would represent "specific employment income" of which all but the first £30,000 is taxable. It was common ground that any income tax due fell to be collected under the PAYE system. Therefore, the parties' income tax dispute related only to whether the first £30,000 of the payments was taxable or not.

66. The dispute in relation to NICs was more significant. The national insurance position is set out in SSCBA. Section 6(1) imposes a liability to Class 1 national insurance contributions on "earnings" which are defined in s3(1) of SSCBA as including:

any remuneration or profit derived from an employment

67. The parties were agreed that the essential question, posed by both s7(2)(c) of ITEPA and s3(1) of SSCBA is whether the payments to the Players were "from" their employments. Moreover, they were agreed that, in the context of the payments at issue, the tests set out in SSCBA and ITEPA were identical and that case law on the scope of the charge to income tax (including the authorities referred to in this decision) is relevant to the question of whether the payments were "from" employment for NIC purposes.

68. Regulation 80 of the PAYE Regulations and s8 of the Social Security (Transfer of Functions etc) Act 1999 permit HMRC to make decisions and determinations as to the amount of NIC and PAYE due from a taxpayer. There is a right of appeal to this Tribunal against such decisions and determinations.

**Survey of the relevant authorities and the parties' submissions on them**

69. We were taken to a number of authorities dealing with the question of whether particular payments were emoluments from employment for the purposes of the charge to income tax. Mr Maugham and Ms Nathan were, in many instances, relying on the same authorities as establishing different principles. Therefore, in this section we will set out relevant extracts from the authorities and a summary of the conclusions we have been invited to draw from them. In the "Discussion" section below, we will set out the conclusions we have reached on the applicable principles.

*Henley v Murray*

70. Mr Maugham relied heavily on the case of *Henley v Murray* [1950] 1 All ER 908. In that case, the taxpayer was employed by two employer companies under service contracts that could not be terminated before 31 March 1944. The trustees of certain debenture holders made it a condition of their assistance with the disposal of certain properties that the taxpayer leave his employers' service. In those circumstances, the taxpayer and his employers entered into an arrangement under which he left the service of both companies on 6 July 1943 and he was paid the full amount that he would have received under his service agreements had that employment continued until 31 March 1944.

71. The Court of Appeal held that the payment to the taxpayer was not taxable under Schedule E. In his judgment, Sir Raymond Evershed MR said, at 908H of the reported judgment:

> It is clear that a man who has a contract in respect of which he is entitled to periodic remuneration may say: "Well I will take a lump sum now instead of the periodic remuneration in the future, and, though I will continue to serve under my contract, I shall not be expected to do quite as much work" or he may even say: "I shall not be expected to do any work at all." If that were the form of the arrangement in this case, I think it would be true to say that the lump

> sum which was paid was profits which became payable under the taxpayer's contract of service.
>
> …
>
> There is another class of case where the bargain is of essentially a different character, *viz*, where the contract itself goes altogether and some sum becomes payable for the consideration of the total abandonment of all the contractual rights which the other party had under the contract.

72. Sir Raymond Evershed MR thus drew a distinction between a case in which the contract continues and that in which it comes to an end. He concluded at 909G that since the payment to the taxpayer constituted the consideration payable for the "total abrogation imposed on him" of his contract of employment the payment was not income taxable under Schedule E.

73. Somervell LJ agreed with the conclusions of Evershed MR. He also expressed the view (at 911E) that the fact that the payment to the taxpayer was not in form damages for breach of contract did not alter the conclusion in the following passage:

> If in the case of a dismissal, where the employee says: "I am wrongfully dismissed" and sues for damages, he is admittedly outside sched. E and untaxable, it seems to me to follow from that, if one goes by stages, that if one takes a case where equally the employer dismisses the employee and damages are agreed without litigation, the fact that they are agreed instead of being awarded by a judge or jury cannot affect their legal position in regard to the income tax code.

However, at 911G, Somervell LJ left open the position as to what the position would be if there were a "mutual agreement between the employer and the employed that the service should be ended abruptly and a sum paid".

74. Jenkins LJ also agreed stating that:

> …the question in each case is whether, on the facts of the case, the lump sum paid is in the nature of remuneration or profits in respect of the office or is in the nature of a sum paid in consideration of the surrender by the recipient of his rights in respect of the office.

75. Ms Nathan submitted that the facts of *Henley v Murray* could be distinguished from those in this appeal as, in *Henley v Murray*, the taxpayer had no option to continue in employment: his only course was to leave. By contrast, she argued that it would have been open to the Players to remain in Tottenham's employment and to continue to receive salaries until expiry of their fixed term. She also argued that it had been in the Players' interests to leave Tottenham as, by doing so, they would secure playing time at Stoke which would be beneficial to their careers. She submitted that in this appeal the Players exercised choice as to whether to leave Tottenham and had some input in fashioning the terms on which they agreed to leave. That, in her submission, was sufficient to distinguish *Henley v Murray*.

*EMI Group Electronics Ltd v Coldicott*

76. The Court of Appeal's decision in *EMI Group Electronics Ltd v Coldicott* [1999] STC 803 makes it clear that a payment associated with the termination of employment is still capable of being "from" the employment.

77. In that case the employees were employed under contracts of employment which provided that their employing company would give six months' notice of its intention to terminate the employment but the company reserved the right to make payment of the equivalent of salary in lieu of notice. The company terminated the employment of an employee and exercised its right to make a payment in lieu of notice. The Court of Appeal held that the payment was an emolument for the purposes of what was then the charge to income tax under Schedule E.

78. The core of the Court of Appeal's reasoning is to be found in Chadwick LJ's judgment at page 810 of the reported decision as follows:

> The question, therefore, is whether a payment in lieu of notice made in pursuance of a contractual provision, agreed at the outset of the employment, which enables the employer to terminate the employment on making that payment is properly to be regarded as an emolument from that employment. In the absence of authority which compels a contrary conclusion, I would have no doubt that that question must be answered in the affirmative. It seems to me to fall squarely within the tests posed by Lord Radcliffe in *Hochstrasser (Inspector of Taxes) v Mayes* [1960] AC 376 at 391–392, 38 TC 673 at 707—'paid to him in return for acting as or being an employee'—and by Lord Templeman in *Shilton v Wilmshurst (Inspector of Taxes)* [1991] STC 88 at 91, [1991] 1 AC 684 at 689—'an emolument "from being or becoming an employee"'—which Lord Woolf approved in *Mairs (Inspector of Taxes) v Haughey* [1993] STC 569 at 579, [1994] 1 AC 303 at 320–321.
>
> The point can, I think, be illuminated by considering the related question 'why is the employee entitled to six months' notice of the employer's intention to terminate his employment?' The answer must be 'because that was the security, or continuity, of employment which the employee required as an inducement to enter into the contract of employment'. The answer to the question 'why is the employee entitled to a payment equal to his salary for the remainder of the six-month period if his employment is terminated by less than six months' notice?' must be the same: 'that was the security, or continuity, of salary which he required as an inducement to enter the employment'. It is necessary to keep in mind that (save, perhaps, in exceptional circumstances) the real reason why an employee requires a period of notice is not because he wants to continue working while he finds alternative employment; it is because he wants to continue being paid while he finds alternative employment.

79. Both Mr Maugham and Ms Nathan relied on the passage above. Mr Maugham submitted that, because the Players' contracts did not contain any contractual provision, agreed at the outset, that entitled Tottenham to terminate their contracts in

return for a payment the principle set out above was not engaged. Put another way, Mr Maugham submitted that the entitlement to receive the payment was not one of the terms on which the Players agreed to provide their services.

80. By contrast, Ms Nathan relied on the passage as demonstrating that, whenever there is an express term in the contract that contemplates early termination, a payment received in consequence of the operation of the parties' implementation of that term would be "from" employment.

*Richardson v Delaney*

81. In *Richardson v Delaney* [2001] STC 1328, the High Court considered the situation of a taxpayer employed at an annual salary of £60,000 under a service agreement which provided (in Clause 1.2) that his employment was terminable by either the employer or the taxpayer giving 18 months' notice. However, Clause 1.3 provided that the employer could terminate the employment with immediate effect by paying "salary in lieu of notice". On 1 December 1995, the employer wrote to the taxpayer giving notice of termination of the employment (under Clause 1.2) and requested the taxpayer not to attend the office (although he continued to receive his salary and other benefits). That notice did not have the effect of terminating the employment. At the same time the employer made a "without prejudice" offer to pay him £68,001 as compensation for termination of his employment. Negotiations continued and, eventually, the taxpayer accepted a lump sum of £75,000 (plus a transfer of his company car) and his employment ceased on 28 December 2016.

82. Lloyd J held that the payment of £75,000 was taxable under Schedule E. The core of his reasoning is found in the following passages at 1342f to j of the reported judgment:

> The question then is how can it be said that by giving a notice under cl 1.2, retaining the taxpayer in employment for four weeks, paying him for that period, which is unquestionably subject to tax, and then agreeing with him a package for the immediate termination of the employment after the four weeks, which in economic terms as between him and the employer is at any rate very close to what would have been due to have been paid if the cl 1.3 option had been taken, and thereby terminating his employment, how can that variation between the pure cl 1.2 and the pure cl 1.3 procedures, both of which would be subject to tax, how can this intermediate course manage to escape being subject to tax?
>
> In my judgment, the answer is that it does not. The only way in which it could is that which was identified to and by the commissioners, namely that the payment was of damages or other compensation for a breach of contract by the employer, but the plain and simple fact is that there was no breach by the employer. The employer was acting perfectly well within its rights in giving notice on 1 December under cl 1.2, and it was acting perfectly lawfully when it came to an agreement with the taxpayer on or about 28 December whereby the employment came to an end by agreement in consideration of the payment. There is

> no breach of contract involved there and, in my judgment therefore, the commissioners' conclusion was one which is based on a finding which was not open to them, and the only possible conclusion is that the whole sum was indeed chargeable to tax rather than only the excess over £30,000.

83. Ms Nathan relied strongly on this passage. She submitted that it added further support to her submission referred to at [80]. In particular, she argued that, where parties to an employment contract are implementing a provision of the contract that envisages early termination (as distinct from that contract being breached) any payment resulting is necessarily "from" employment. She also submitted that it was sufficient for this principle to apply that the contract contains a provision envisaging early termination: it need not go on to specify an actual amount (or formula for calculating such an amount) that will be payable if the provision applies.

84. Mr Maugham noted that *Henley v Murray* was not cited to the High Court and, since the taxpayer was not represented, Lloyd J would not have had assistance from Counsel on both sides. He submitted that Lloyd J was not correct to state that, in order for the taxpayer's argument to succeed there would need to be a breach of contract and, in that context he relied on the passages in *Henley v Murray* (referred to at [73]) and those from *Martin v HMRC* referred to at [89].

*Hofman v Wadman*

85. In *Hofman v Wadman* 27 TC 192 the taxpayer was appointed under fixed term contracts dated 2 May 1940. Although the contracts contained provisions that entitled them to be terminated early on the occurrence of certain events, none of those events occurred. The taxpayer and employer agreed that the contracts "shall be cancelled forthwith subject to the continuance of the fixed remuneration provided for in [the relevant contracts]". The taxpayer also agreed to procure that the employer would obtain ongoing assistance from the directors of a company with which the taxpayer was associated. Having entered into this agreement, the employer continued to pay the taxpayer the amounts set out in the original contract.

86. It was held in the High Court that the payments that the taxpayer continued to receive were taxable under Schedule E. At page 196 of the reported decision, McNaghten J rejected the argument that the payments were compensation for loss of office. He said:

> The letter is quite plain. The agreement of 2 May 1940 is to be cancelled but not wholly cancelled; the provision for the payment of the fixed salary of £750 is to remain in force until the end of the year 1941. There is no reason for construing it in any other way. The words are quite plain: "That the existing Service Agreements dated 2nd May 1940… shall be cancelled forthwith, subject to the continuance of the fixed remuneration provided for in Clause 4". I cannot read that as meaning anything else than the obligation of Parnall Components Ltd to pay that salary, and at the same time the waiver of its right to call upon Mr Hofman to perform the duties of a works manager. It is said that he ceased to hold the office of works manager and no doubt he

> did; but the continuance in the office of works manager does not affect the question of his liability to Income Tax….

87. Ms Nathan relied on this case as authority for the proposition that where the original contractual arrangements governing an employment are terminated by mutual consent, any sums received as part of those consensual arrangements are "from" employment.

88. Mr Maugham noted that there was some doubt as to whether *Hofman v Wadman* was good law since it was considered (but not followed) in the later case of *Clayton v Lavender* 42 TC 607. He submitted, however, that insofar as the decision was based on the proposition that the service contracts in question continued (which was how the decision was explained in *Clayton v Lavender*) it was correctly decided (and not inconsistent with *Henley v Murray* which was dealing with the situation where an employment contract came to an end). However, insofar as *Hofman v Wadman* decided that the payments were taxable in circumstances where the underlying employment contract came to an end, he submitted that it was wrongly decided and inconsistent with the higher authority of *Henley v Murray*.

*Martin v Revenue & Customs Commissioners*

89. In *Martin v Revenue & Customs Commissioners* [2015] STC 478, the Upper Tribunal was not concerned with the question of whether a payment an employee received was "from" that employee's employment. Rather, it concerned the question of whether a payment that an employee made to his employer could constitute "negative taxable earnings". However, in approaching this question, the Upper Tribunal adopted similar principles as those applicable to determining whether receipts by an employee are earnings and analysed relevant authorities on this issue. At [63] of the reported judgment, Warren J said as follows:

> One sees in these authorities that the search is for the reason for which the payment in question is made. The cases show that a distinction is to be drawn between those where the payment flows from the implementation of the contract (as in *Dale v de Soissons*) and those where the payment arises as the result of the abrogation of the contract (as in *Henley v Murray*). Mr Tolley suggests that there is a material distinction between cases where the payment arises as a result of something which one or other of the parties is permitted to do in accordance with the terms of the contract (again as in *Dale v de Soissons*) and a case which involves a breach of contract. *Henley v Murray* does not, however, establish that such a distinction is material. It did not involve breach: there was no breach of contract in the parties to it agreeing to vary its terms, indeed going so far as to abrogate it.

90. Mr Maugham referred to this passage in support of his argument that there did not need to be any breach of the Players' contracts in order for the payment to them to be in "consideration of the surrender by the recipient of his rights in respect of the office" and so within the scope of the principle set out in *Henley v Murray*.

91. Ms Nathan invited us to conclude from the extract quoted above that any payment that arises from giving effect to the right set out in the Players' contracts (namely to terminate those contracts early by mutual consent) was "from" the Players' employment even if the contracts did not specify the amount of the payment or the method for calculating it.

*Other authorities*

92. We were referred to other authorities on the issue. However, we consider that the principles to be derived from those other authorities, and the parties' submissions on the effect of them, overlapped with the points set out above. We have not, therefore, referred to every authority to which we were referred or every point that the parties made on each such authority.

**Discussion**

*Our conclusions on the principles to be drawn from the authorities*

93. The parties are agreed that the question is whether the payments were "from" the Players' employments. To answer that question, it is necessary to focus on why the payments were made. The fact that the parties might have had substantial reasons not connected with the Players' employments for making or receiving the payments (for example Tottenham's wish to secure a transfer fee referred to at [54]) is not sufficient to prevent the payments being from employment provided that there was a "sufficiently substantial" employment-related reason for making the payments. That follows from *Kuehne + Nagel Drinks Logistics Limited v Commissioners of Her Majesty's Revenue & Customs* [2012] EWCA Civ 34.

94. The distinction is between the "receipt of remuneration or profits in respect of the office" and "sums paid in consideration of the surrender by the recipient of rights in respect of the office" (*Henley v Murray*). We have not accepted Ms Nathan's submission referred to at [75] that the degree of the employee's involvement in the termination of the employment is relevant as the Court of Appeal's decision in *Henley v Murray* does not attach significance to such matters. Moreover, the extracts from Somervell LJ's judgment referred to at [73] makes it clear that, in *Henley v Murray*, as in this appeal, the relevant payment was made following a compromise of a potential dispute that the parties agreed between themselves.

95. Where a payment is made in pursuance of a contractual provision, agreed at the outset of the employment, which enables the employer to terminate the employment on making that payment, the sum received is remuneration in respect of the employment even though it is made in conjunction with the termination of the employment. Such a payment is not paid in consideration of the recipient's "surrender of rights" under the contract because the recipient is receiving what was bargained for under that contract (*EMI Group Electronics Ltd v Coldicott*).

96. It is a fundamental principle of contract law that any contract can be terminated or varied by mutual consent. Therefore, a contract that contains a clause permitting

parties to terminate it by mutual consent has an identical legal effect to a contract that contains no such term. Of course if a contract contains such a term expressly, a reader with no knowledge of contract law is informed of a possibility of which he or she may otherwise not be aware. However, an employee who has a contract containing such a term has no greater security than one whose contract does not.

97. If a contract contains an express provision permitting early termination of a fixed term by mutual consent and the parties agree that, on the employer making a payment, the contract will be terminated, we do not consider that the employee is receiving "the security, or continuity, of salary which he required as an inducement to enter the employment" in the words of Chadwick LJ referred to at [78]. That is firstly because the parties' right to terminate or vary a contract arises as a result of general contract law; it does not come from the contract. In addition, an employee entering into such a contract has no greater "security or continuity of salary" that he or she would obtain by entering into a fixed-term contract which did not set out expressly a right to terminate by mutual agreement. Therefore, an employee employed under such a contract should be in the same position as an employee employed under a fixed-term contract that is silent as to the circumstances in which it is terminated early.

98. The passage from *Henley v Murray* referred to at [73] does not, in our view, itself determine whether a breach of contract is necessary in order for a payment to be regarded as consideration for the surrender of rights. That passage appears to suggest that, if a breach of contract has occurred, it does not matter whether damages are determined by the court (following a claim for breach of contract) or by the parties (as part of a negotiated settlement). Moreover, in *Henley v Murray*, the Court of Appeal expressly reserved its position on the situation where a contract is terminated by mutual agreement. We do not consider, therefore, that Somervell LJ was setting out a principle that no breach of contract was required.

99. The decision in *Richardson v Delaney* referred to at [82] clearly envisages that a breach of contract is required in order for a payment to amount to consideration for the surrender of rights. Mr Maugham criticised that decision for not referring to *Henley v Murray*. However for reasons set out at [98], *Henley v Murray* did not decide that a breach of contract was not required.

100. Of more force was Mr Maugham's argument that, in *Martin v Revenue & Customs Commissioners*, the Upper Tribunal reached a different conclusion from that in *Richardson v Delaney*. The extract from Warren J's judgment referred to at [89] requires some analysis. Of course, in *Henley v Murray*, the employer had no entitlement to terminate the contract early. Therefore, had employer and employee not agreed a different position, there would have been a breach of contract if the employer had required the employee to leave his employment early. However, what we consider Warren J to be saying in this passage is that there can still be an abrogation of a contract (using the formulation of Evershed MR in *Henley v Murray*) in circumstances where the parties agree to vary its terms. Moreover, that statement forms part of the basis on which the case was decided. At [66] of the reported decision, it is clear that HMRC were arguing that much turned on whether the employee's giving of notice in that case amounted to a breach of contract but, at [73]

of the reported decision, Warren J concluded that this distinction was so fine as to be "almost invisible".

101. We consider, therefore, that in *Richardson v Delaney* and *Martin v Revenue & Customs Commissioners* the High Court and Upper Tribunal reached different conclusions on whether a breach of contract is necessary in order for the principle in *Henley v Murray* to apply. Employers and employees may take a pragmatic decision to enter into a compromise agreement in order to avoid the time and expense involved in determining whether there has been a breach of contract. The logic of *Richardson v Delaney* is that, in such cases, even though the parties have succeeded in avoiding unnecessary civil litigation between themselves, it would still be necessary to determine whether a breach had taken place in order to ascertain the correct tax position. We do not consider that would be a desirable state of affairs and, for that reason, prefer the decision in *Martin* and have concluded that no breach of contract is necessary.

102. We do not consider that *Hofman v Wadman* compels the conclusion that a payment made by an employer as part of a mutual agreement to terminate an employment contract early is inevitably "from" employment. Nor do we consider that *Hofman v Wadman* is inconsistent with other authorities. That is because we regard the true basis of the decision in *Hofman v Wadman* as being that, in that case, there was no termination of the contract. Understood in that way, the decision is consistent with the distinction drawn in *Henley v Murray* between situations where the contract continues and those in which it does not.

*Application to the facts of this appeal and conclusion*

103. There were provisions that would have entitled Tottenham to terminate the Players' contracts early if particular circumstances arose. However, none of these early termination provisions were engaged in relation to either Player. If Mr Crouch had stayed at Tottenham and Tottenham had followed through on the threat of not selecting him to play, he may have been entitled to require his contract to be terminated under the provisions of the FIFA Rules set out at [32(2)]. He may also have been entitled to request that his contract be terminated under the provisions of the FA Rules referred to at [41]. However, in August 2011, this was a threat only and therefore Mr Crouch's right to terminate (or to request termination) had not been triggered. It follows that, with the exception of the right to terminate early by mutual agreement, in August 2011, neither the Players nor Tottenham had any operative right of termination conferred under the Players' employment contracts. The payments that Tottenham made, as part of arrangements to terminate the Players' contracts, were accordingly made in return for the surrender of the Players' rights under the contract and fall within the scope of the principle in *Henley v. Murray*.

104. As noted at [60], the Players' contracts were not terminated following a breach of contract. Rather they terminated pursuant to agreements entered into between Tottenham and each of the Players. In that sense, therefore, the termination was by mutual agreement (although of course both the Players and Tottenham felt under different types of pressure to reach such an agreement). However, the absence of a

breach of contract does not prevent the principle in *Henley v Murray* applying for reasons set out at [98] to [102].

105. Both Rule 13 of the FIFA Rules referred to at [31] and Rule C.1(k)(iv) of the FA Rules referred to at [42] (both of which were imported into the Players' contracts), and Clause 14.13 of Mr Crouch's contract, permitted the parties to the employment contracts to terminate them early by mutual agreement. However, payments made following such a mutual agreement are not within the scope of the principle in *EMI Group Electronics Ltd v Coldicott* for reasons set out at [94] to [97].

106. Our overall conclusion, therefore, is that the payments did not derive "from" the Players' employments applying the principle in *Henley v Murray*. The appeal is accordingly allowed.

107.This appeal has been allocated to the "complex" category and therefore, unless Tottenham has opted out of the costs-shifting regime under Rule 10(1)(c)(ii) of the Tribunal Rules, the Tribunal has jurisdiction to award costs. If either party wishes to claim their costs, that party should apply under Rule 10 of the Tribunal Rules in the usual way. However, since the Tribunal would not itself seek to perform summary assessment of the costs claimed, any application for costs need not be accompanied by a schedule of costs in the form prescribed by Rule 10(3)(b) of the Tribunal Rules.

108.This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**JONATHAN RICHARDS**
**TRIBUNAL JUDGE**

**RELEASE DATE: 3 JUNE 2016**