



REPORT

of the

BROADCASTING

SPECIAL WORKING PARTY

Adopted by the Committee of Marylebone Cricket Club
21st February 2007

REPORT OF THE M.C.C. COMMITTEE TO MEMBERS OF THE CLUB

The M.C.C. Broadcasting Special Working Party was set up by the M.C.C. Committee on 14th June 2006, as a result of the following Resolution, which was passed at the 219th Annual General Meeting of the Club, held on 3rd May 2006:

“That, in view of the decision by E.C.B. to award to Sky TV an exclusive broadcasting contract which precludes Test cricket being shown live on any traditional terrestrial channel, the M.C.C. Committee appoints a Special Working Party to investigate the broadcasting of Test cricket from Lord’s and to report to Members at or before the 2007 A.G.M.”

Mr. Peter Leaver, Q.C., who was a member of the M.C.C. Committee on 14th June 2006, was invited to act as Chairman of the Special Working Party, the full composition of which was as follows:

P.L.O. Leaver, Q.C. (Chairman)

G.W.P. Barber

D.E.J. Frith

M.G. Griffith

Dr. N.J. Knott

D.P. Natali

C. Maynard (Assistant Secretary)

The Special Working Party was considerably assisted throughout its life by the Assistant Secretary, who organised the meetings, prepared the minutes and provided the material that was requested.

The Report of the Special Working Party was presented to the M.C.C. Committee and considered at its meeting on 21st February 2007. The Report was adopted in its entirety, and no adjustments to it were made.

The M.C.C. Committee wishes to place on record its gratitude to all members of the Special Working Party for the time and commitment which they have given to their task. The Committee would also like to express its thanks to the England and Wales Cricket Board for the assistance which they have provided to the Working Party, and to those Members of Parliament who readily gave their time to attend meetings at Lord’s. The assistance which the Working Party received comprised an essential part of its research and has been of great benefit in the construction of this Report.

REPORT OF THE M.C.C. BROADCASTING SPECIAL WORKING PARTY

1. Introduction

The M.C.C. Broadcasting Special Working Party met on five occasions. During the course of its life, the Chairman met with Mr. C.G. Clarke, Chairman of the E.C.B. Commercial Committee, and the Special Working Party met with Major Hugh Robertson M.P., the Shadow Minister for Sport and the Olympics, and Mr. John Grogan M.P., who has been prominent in the campaign to require cricket to be shown on free-to-air television. The Working Party attempted unsuccessfully to meet with Mr. Don Foster M.P., the Liberal Democrat Shadow Secretary for Culture, Media and Sport.

Although the Special Working Party's Terms of Reference were limited to a consideration of the position at Lord's, it was its feeling that it would be inappropriate and unhelpful to attempt to consider the position at Lord's in isolation. Accordingly, the Working Party took the view that it would consider the broadcasting of Test cricket throughout the United Kingdom. This broadening of the Working Party's remit inevitably led to consideration of other issues, which would themselves require more time and greater resources than were available to it.

In addition to the meetings described above, the members of the Special Working Party received a letter from Mr. Des Wilson, a past Chairman of the E.C.B. Marketing Committee, and were provided with copies of the Report of the House of Commons Culture, Media and Sport Committee, entitled *Broadcasting Rights for Cricket*, and of the current Staging Agreement. The Working Party also looked at a number of other papers which are available on the internet.

2. The Present Position

The present position in relation to the broadcasting of Test cricket from Lord's can be shortly stated. The England and Wales Cricket Board is a member of the International Cricket Council and is responsible, amongst other things, for the staging of Test cricket in England and Wales. E.C.B. enters into broadcasting arrangements for both television and radio broadcasting of Test (and other English) cricket, and then enters into Staging Agreements with the Test Match grounds pursuant to which the broadcasters are granted a licence to enter the grounds and broadcast from them. At present, each Test Match ground enters into a separate Staging Agreement with E.C.B., although in the past the grounds have negotiated jointly. E.C.B.'s current broadcasting agreements, and its Staging Agreement with M.C.C., run until the end of the 2009 cricket season.

The Special Working Party was not able to see a copy of the existing broadcasting agreements, which are confidential to E.C.B. and the broadcasters. As is well known, the current television broadcasting agreement is with BSkyB, which provides coverage of Test cricket to those who have a subscription to its sports channels. Under the current Staging Agreement, which was made on 21st May 2003, and amended on 13th October 2004, M.C.C. granted to BSkyB the right to broadcast Test, and certain other cricket, from Lord's. The amendment granted to BSkyB, for an additional annual sum, the "On-Line Rights", which had been specifically excluded from the original form of the Staging Agreement.

In this Report, the Special Working Party will use the term "broadcast" to include all of the various methods of televising Test cricket which are covered by the Staging Agreement. One important point that must be borne in mind when considering the present, and any future, broadcasting arrangements, is that it is Government policy that analogue broadcasting should come to an end by

2012. From then on broadcasting will be only on digital channels. There are likely to be many more such channels than presently exist. The consequence of the increase in channels is that the broadcasting of Test cricket may once again become attractive to the B.B.C. and Channel 4.

The effect of the present Staging Agreement is that M.C.C. retains no residual broadcasting rights to Test cricket at Lord's. It is difficult to see what advantage would have been gained by the retention of any such rights, as M.C.C. is not in a position itself to make any broadcast. It would have to enter into an agreement with BSkyB, or with another broadcaster, in order to exploit any such rights. Furthermore, it is unlikely that M.C.C. will be able to negotiate successfully to retain any such rights in the future, as either a Staging Agreement will be made that is similar in all material respects to the present Staging Agreement, so far as the extent of the broadcasting rights sold to E.C.B. are concerned, or a completely different type of Staging Agreement will be made in which M.C.C. insists on retaining some rights. In the latter case, there would be a distinct possibility that Lord's would lose one or both of its present Test Matches. Such a result would plainly not be in the interests of Members. It must also be remembered that all international cricket is regulated by I.C.C., and that E.C.B., as the national governing body, has the right to organise international cricket in England and Wales. It follows that M.C.C. could not organise an official England match without E.C.B.'s consent. It is unlikely that such consent would be given unless the usual broadcasting arrangements (i.e. a Staging Agreement or a similar agreement) were in place. Finally, the position would be further complicated by the fact that all top cricketers in the country are centrally contracted to E.C.B.

E.C.B.'s broadcasting agreement with BSkyB was made in late 2004, and confirmed by Ofcom in February 2005. Its predecessor agreement had been with Channel 4 and BSkyB jointly. In broad terms, those broadcasters shared the rights granted under the predecessor agreement.

The background to the making of the predecessor agreement was that, in June 1998, Test cricket was removed from the "A" List and placed on the "B" List of sporting events. The Communications Act 2003 gives the Secretary of State for Culture, Media and Sport the power to maintain a list of sporting events divided into two categories, which are referred to as the "A" and "B" Lists. If an event is on the "A" List full live coverage must be offered to generally available free-to-air broadcasters, and be received by at least 95% of the population in the United Kingdom. At present, the effect of this restriction is to limit the category of potential broadcasters to B.B.C., I.T.V. and Channel 4/Channel 4 Wales, although it is to be noted that there is no obligation on any broadcaster to acquire the rights. The reasons for placing cricket on the "B" List, rather than on the "A" List, are explained in the House of Commons Select Committee's Report. In summary, those reasons are that:

- (a) E.C.B. requested that cricket should be on the "B" List rather than on the "A" List because it felt that it could raise more revenue for the game as a whole if it were on the "B" List as free-to-air broadcasters would pay less for the broadcast rights than would be paid by subscription channels; and
- (b) the free-to-air broadcasters had great difficulty in scheduling 30 days of cricket a year.

At the time that the re-listing was being carried out, the then Chairman of E.C.B. Lord Maclaurin of Knebworth, wrote to the then Secretary of State for Culture, Media, and Sport, Mr. Chris (now Lord) Smith, stating that he had given his "personal reassurances ... that ... E.C.B. would wish to keep a substantial amount of live coverage on B.B.C.". There was considerable debate in the House of Commons Select Committee Report about the nature of the "reassurances". The Select Committee ultimately referred to them as "a Gentleman's Agreement", although it is clear that Lord Maclaurin considered that they had rather greater weight.

E.C.B. went out to tender for the current broadcasting agreements in autumn 2004. The rights were divided into 27 packages. Those packages included: Test Matches; One-Day Internationals; International Twenty20 matches; Women's Test Matches and One-Day Internationals; and England Under-19 Test Matches and One-Day Internationals. The rights packages offered included radio broadcast packages.

In summary, no bids were received from B.B.C. or I.T.V. to televise cricket live. Channel 4 submitted a bid of £54million for the rights only to the main Test series, and BSkyB alone submitted a bid for the television rights to all live matches (including domestic matches) throughout the period 2006 to 2009. Channel 5 alone tendered for the Test highlights packages. Although the amount of the BSkyB bid was not specifically mentioned in the Select Committee Report, that Report makes it clear that the difference in the bids that E.C.B. received was £80million over the period.

That is the present position. The negotiations for the next broadcasting contract are likely to start in either late 2007 or early 2008. The Special Working Party is satisfied that nothing can be done to change the present broadcasting arrangements.

A number of suggestions have been advanced to resolve the present position so that some Test cricket is shown on free-to-air television, and these are listed below.

- (a) There was a suggestion in the evidence given to the Select Committee that a solution might be found by adopting a method used in Ireland in respect of their international football matches: that is, that BSkyB should share some of those matches with terrestrial broadcasters.
- (b) Alternatively, it was suggested that BSkyB itself might broadcast some of the matches on its freeview channels.
- (c) A yet further alternative was the suggestion of a round-table meeting convened by the Minister for Sport to investigate whether there was any possibility that some Test Matches could be broadcast on free-to-air television. The Special Working Party understands from Mr. Grogan that a meeting of broadcasters, excluding I.T.V., has now been arranged by the Minister of Sport, and will shortly take place. The meeting takes place against the background of statements of renewed interest by B.B.C. in the broadcasting of Test cricket.
- (d) It was suggested that some Test Matches should be put on the "A" List when the next review is carried out in 2008-09.
- (e) The concessionary rates for subscription to BSkyB should be extended so that those members of the public on reduced incomes should be able to afford the subscription fee.

The idea of some Test Matches being put on the "A" List was rejected by the Secretary of State in 1998, and would not be popular with either broadcasters or E.C.B. It would most likely reduce the bids from broadcasters, as the premium for exclusivity would be lost; although it is difficult to estimate, with any precision, the size of the premium.

The Special Working Party, therefore, concentrated on trying to establish how the next broadcasting agreement might be structured by E.C.B. so as to ensure that some Test cricket was shown on terrestrial television.

3. The Future

The Special Working Party thinks that it is important to bear a number of factors in mind when contemplating future broadcasting contracts. The Working Party hopes that its list of factors, which does not pretend to be exhaustive, and which is listed below, will be of assistance to E.C.B. in its negotiations.

- (a) At present, about 80% of E.C.B.'s income is derived from its broadcasting contracts. Clearly, this is a very important factor in the light of E.C.B.'s responsibility to care for cricket from the Test arena to the grass-roots. About 21% of E.C.B.'s income is spent on grass-roots development, and about 25% on "Team England".
- (b) Digital broadcasting is increasingly going to be the norm, so that the scheduling problems that have been relied upon by terrestrial broadcasters in the past will no longer carry the weight that they have historically carried. Broadcasters will have to decide whether Test cricket is the type of entertainment that warrants a dedicated, continuous coverage. The Special Working Party hopes that the decision will be that it does ~~not~~ warrant such coverage, and that B.B.C.'s apparent re-discovered enthusiasm for broadcasting cricket will be borne out in reality.
- (c) It is easy to underestimate the "reach" of BSkyB – that is, its potential audience. The Select Committee was told that the growth of multi-channel television has been rapid; that 82% of children between the ages of 4 and 15 now live in multi-channel homes; and that 75% of adults aged between 16 and 34 are in the same category. Although BSkyB's reach is obviously wide, it is not clear how many of those multi-channel homes actually subscribe to Sky Sports, nor is it clear whether, even in homes which do subscribe to Sky Sports, the cricket-lover is able to watch as much cricket as he or she wishes.
- (d) Conversely, it is clear that the Channel 4 audience had a larger proportion of viewers over the age of 65 than BSkyB currently enjoys. Channel 4's experience was that at times during a Test Match day the viewing figures were very low.
- (e) BSkyB has made considerable efforts, in conjunction with E.C.B., to make its broadcasts more widely available: it has offered its sports packages at concessionary rates to members of county and other cricket clubs (including M.C.C.), and has invested considerable sums into cricket for many years. In addition, BSkyB covers cricket world-wide, including England's overseas tours.

Although the problems are not straightforward, it is important, in the Special Working Party's opinion, that **efforts should be made by E.C.B. to stimulate a genuine market in advance of the next round of bidding**. There is evidence (i.e. the successful bid from Channel 5) that some effort was made before the last bidding round, although the absence of some notable broadcasters, such as B.B.C., was disappointing. The Working Party suggests that there are a number of possible solutions to achieve that goal and to improve the present situation. It accepts that E.C.B. is under a duty to maximise its income from broadcasting contracts, but it does not accept that that duty requires E.C.B. to "extract" every last penny from a potential broadcaster or broadcasters, whether as a matter of fiduciary duty or simply for economic reasons.

The performance of E.C.B.'s duty to promote cricket cannot be dependent solely on its ability to generate the greatest amount of income from its broadcasting contracts. A balance must be struck between the generation of income and the promotion of cricket nationally. Although the Special Working Party accepts that the promotion of cricket nationally is greatly assisted by a healthy

income, it hopes that E.C.B.'s promotional work has not become wholly dependent on its broadcasting income. Again, M.C.C. would be pleased to offer its assistance to E.C.B. in order to ensure that the promotion of cricket was not unduly affected if E.C.B.'s broadcasting income were to be cut as a result of E.C.B. adopting the suggestion set out above.

The Special Working Party, which has already offered M.C.C.'s assistance to E.C.B. in negotiating the next broadcasting contract, believes that **the solution would be to offer the broadcasting rights in a number of different packages**, some of which would, as now, provide the successful bidder with exclusivity, and some of which would require shared broadcasting, such as was the case when Channel 4 and BSkyB shared the broadcasting. No doubt the European Commission will be vigilant to ensure that the packages offered enable the broadcasts to reach the widest and most diverse audience.

When the tenders are received, E.C.B. could see the total sum that would be received from each of the packages. If the revenue from a shared package would be, say, 85% of the revenue from the exclusive package, E.C.B. might wish to accept the shared broadcasting bid. The Special Working Party accepts that, ultimately, the judgment would rest with E.C.B. as to where the interests of cricket as a whole lay, but it would hope that E.C.B. would take every possible step to ensure that Test cricket was available on free-to-air television so that cricket could be seen by the widest possible audience. The Working Party considers that a modest reduction in overall revenue might be counter-balanced by the advantage of broadcasts reaching a wider audience.

Alternatively, E.C.B. might **carve out One-Day Internationals and/or International Twenty20 matches as matches which can be broadcast only on free-to-air television**. The Special Working Party accepts that One-Day Internationals and Twenty20 matches are not the same as Test cricket, but it believes that the possibility of watching such cricket on free-to-air television would be attractive to a younger audience.

Furthermore, although the present broadcasting contract provided for **special offers** to be made to certain categories of the public, the Special Working Party believes that consideration should be given to extending the categories so that, for example, the more elderly members of the public, who cannot afford to pay the subscription rates charged for Sky Sports, are able to pay a reduced rate that will enable them to receive Test Match broadcasts.

The Special Working Party accepts that none of these objectives ~~are~~^{is} easily achievable, but would encourage E.C.B. to explore them, or any others, that would enable Test cricket to be watched by the widest possible audiences, while at the same time achieving sufficient (if not, maximum) revenue to enable cricket to flourish at all levels in this country.

P.L.O. Leaver, Q.C.
Chairman, M.C.C. Broadcasting Special Working Party
14th February, 2007