



**Scotland's Commissioner for
Children and Young People**

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PE1319/E

Mr Frank McAveety
Convener
Public Petitions Committee
Scottish Parliament
EDINBURGH
EH99 1SP

21st May, 2010

Dear Mr McAveety

Petition 1319: Youth Football

I welcome the opportunity to respond to the Committee's questions on this petition.

As Scotland's Commissioner for Children & Young People, my role is to promote and safeguard the rights of children and young people in Scotland, with a particular focus on the rights contained within the United Nations Convention on the Rights of the Child (UNCRC). My remit extends to all children and young people living in Scotland up to the age of 18 (or 21 if they have ever been looked after by their local authority). My response is informed by enquiries received by my office through our Enquiries Service, which provides information and signposting to children and young people, parents and professionals on any aspect of children's rights.

I intend to focus my comments on points 1-4 of the petition – as I believe these raise the most significant children's rights issues for children and young people across Scotland.

I believe that any initiative that encourages young people to become actively engaged in sport across Scotland is to be welcomed. Indeed, children and young people's right to play and leisure is enshrined in Article 31 of the United Nations Convention on the Rights of the Child. It is vital that young people in Scotland are given every opportunity and encouragement to succeed in the sport of their choice.

I do, however, have some very real concerns about initiatives which appear to restrict the freedoms of young people, which limit the opportunities for them to play with their peers and which make it prohibitively expensive for them to exercise any choice in where they might train and play. In my opinion, this seems counter-productive and more likely to dampen any enthusiasm these young people may have for the sport, rather than encourage excellence. From the petitioners' evidence, my concern is that the SFA's Youth Initiative is in danger of discouraging the very young people it seeks to develop.

In addition, I am concerned to hear about the relatively high numbers of young people who are currently being signed up at an elite level under the Youth Initiative. The petitioners estimate the figure to be around 2,700 young people at any one time, with the expectation on the part of these children and young people (and their parents) that they may go on to become a professional footballer at the highest level.

With the true figure of only 4% of these “elite players” succeeding to such a level, then I would question whether restrictions imposed upon them (such as preventing them from playing with their school football team) are either proportionate or fair.

I have further concerns about the age at which some of these children are being registered with clubs. If children as young as 10 (as I have heard) are being asked to commit to registration with a professional club, then I would argue that there needs to be much more scope for them to change their mind as they move into their teenage years and are able to voice their own opinions more clearly.

Registration agreements as they stand appear to offer very little flexibility and few opportunities for the child or young person to be released of their own accord. In addition, it appears that both parents and children have a very limited understanding of the scope of these agreements at the point of registration. In particular they lack an awareness of the penalties that may be involved in trying to free themselves from such an agreement at a later date.

What concerns do you have about the demands and impact (the legal, moral and general as the petition states) this is having on under 16 year olds signing on with professional football clubs?

I am not in a position to offer legal advice and my comments should not be relied upon as such. I do believe, however, that the issues raised in the petition highlight a range of potential breaches of children’s rights under the UN Convention on the Rights of the Child (discussed in more detail later in this document). I am also concerned about how these registration documents fit within the context of other legislation designed to protect children and young people in Scotland. In particular, I have concerns about:

1. The nature of Youth Initiative (Performance Tier) registration documents

Whilst the SFA is clear that their Youth Registration Form does not form a contract, and is merely a way of a young person (and their parents on their behalf) showing their commitment to the club, it does appear to perform many of the functions of a contract, given that it ties a young person to a club and has significant penalties for the young person should the agreement not be adhered to.

However, under Section 2 of the Age of Legal Capacity (Scotland) Act 1991, young people under the age of 16 have no capacity to enter into a contract except those which are “1(a) of a kind commonly entered into by persons of his age and circumstances, and (b) on terms which are not unreasonable”. “Commonly entered contracts” – for children and young people are generally accepted as being those allowing them to buy goods such as clothes or other small items.

I do not believe that as such registration documents would fall into the category of “commonly entered contracts” and I would question why young people (and their parents on their behalf) are being asked to sign them. I would also question whether such agreements are reasonable and fair, given that the penalties appear to be mainly borne by the young person.

2. The issue of compensation

I understand that if a young person changes their mind or chooses to transfer to another club, the terms of their registration mean that the new club would be obliged to provide compensation to the original club for the training already provided. This figure can run into several thousand pounds, depending on how long a young person has been registered with the club.

In my opinion, for all but the very best of young players, it’s unlikely a new club would be willing to pay to free them from their registration, so they have very limited choices. They can either to continue to play for a club they are unhappy with or in some cases make the decision to give up football altogether. Neither of these is a positive option for the young person concerned.

I am also unclear how the compensation figure is arrived at, given the level of funding already provided through the Scottish Government and Cashback for Communities to encourage youth football. Are clubs really spending an additional £3-5k per young person on top of the funding already received? Or, rather, is this a notional figure, designed

to ensure a young person stays with a club no matter what? I would keen to discover the rationale behind the level of compensation payments demanded.

3. Fairness and equality

Whilst the clubs have a number of opportunities to be released from the registration agreement without penalty, the same does not appear to be true of young people. The club they register with effectively has a hold over them for the duration of the registration period. This goes against Article 3 of the UN Convention on the Rights of the Child, which states that the best interests of a child or young person should always be paramount when making a decision which directly affects them.

When the decision whether or not to release a child from their registration is based primarily on another club's ability to pay a compensation fee, rather than a consideration of what is right for a particular child, then clearly that decision cannot be argued to be in that child's best interests. I would like to see this change at the earliest opportunity.

The Children (Scotland) Act 1995, Section 5 (1) also states that clubs registering children and young people must "do what is reasonable in all circumstances to safeguard the child's health, development and welfare". This does not always appear to be the case.

I am aware of one 14 year old who attempted to be released from a registration agreement as he no longer wished to play in goal. He was keen to move to another club where he could play out on the field. However, the compensation payments demanded by his original club were so high that a move was out of the question and he eventually stopped playing football altogether.

By being kept in a situation he was no longer happy with, the young person's health and mental well-being were adversely affected and this had a knock-on effect on his education. The young person's teachers expressed concern about the change in his demeanour. This appears to have been as a direct result of the restrictions imposed on him by his club. I understand that eventually the young person's registration lapsed and he was able to move on, but I find it completely unacceptable and unnecessary that a young person was placed in such a difficult position in the first place.

What actions need to be taken, when and by whom?

I would recommend the following actions:

1. The SFA should ensure a children's rights approach is consistently applied to any initiatives involving under 16s. My office would be happy to give assistance to the SFA in achieving this.
2. Young people should be allowed to continue playing for their school/boys' clubs whilst registered to the SFA's Youth Initiative. Given the statistically remote chance of an individual young person making it to a professional level, they should be allowed to maintain links with their peers and continue to enjoy recreational football, alongside any more formal training they may undertake.
3. As recommended by Henry McLeish in his recent Review of Scottish Football, I would support a move towards a National Academy – a central point where young people can access the best training provided by coaches from across Scotland – rather than the young person being tied to a particular club for lengthy periods.
4. Compensation payments for young people moving between clubs should be abolished immediately. They are overly-restrictive and unfair.
5. If the current arrangements remain in the interim, I would support the petitioners' recommendation that young people should be able to opt out of registration agreements by giving a set period of notice e.g. 28 days.

What evidence do you have as to the ages at which children are entering into registrations/contracts with professional clubs?

Our evidence is based on the enquiries we have received through our Enquiries Service over the last 5 years. These are relatively few in number, but do raise some significant children's rights issues. In the main, these queries relate to young people aged 13 or 14 who have been registered with clubs for approximately 2-3 years and now want to move on. This suggests that children of 10 or 11 are routinely being registered by clubs.

What is your view on the legality of such registrations/contracts and the stipulations they make on the children concerned?

I believe that the registration process as it stands does not work in the best interests of young people. The registration form and the stipulations that accompany it appear to benefit clubs more than young people themselves. This needs to be addressed urgently.

Are these registrations/contracts fully compliant with national policies (e.g. the Children (Scotland) Act 1995, Age of Legal Capacity (Scotland) Act 1991 and international policies such as the European Convention on Human Rights and the UN Convention on the Rights of the Child).

I have already discussed how these registrations fit with the Age of Legal Capacity (Scotland) Act 1991 and have touched upon the duty of care that clubs have towards young people under the Children (Scotland) Act 1995. In addition, I would argue that the current registration process potentially breaches the UN Convention on the Rights of the Child in a range of ways:

Article 3 – the best interests of the child principle

All decisions made affecting a child or young person should have their best interests at heart. I would be interested to know how those best interests are taken into account when a decision is made to register them under the Initiative and equally, when the young person attempts to be released from that registration. At the moment, registration agreements appear to favour clubs' needs above the needs of individual children/young people. There is little indication of how a child or young person's health and well-being are factored into any decision made.

Article 12 – respect for the views of the child

When a child or young person expresses the view that they wish to leave the club they have been training with for some time, their views should be taken into account by clubs when making a decision about their future. At the moment, it appears that compensation is the overriding factor in a child or young person being able (or unable) to make a move to another club. What the child/young person wants to happen appears to be only a secondary consideration.

Article 31 – child's right to leisure, play and culture

By restricting the child or young person's ability to play with their peers (e.g. in their school football team/local boys' team), you are potentially limiting their right to leisure, play and culture. Given that so few young people actually go on to become professional footballers, this seems a disproportionately harsh policy and one that should be reconsidered.

Article 36 – child's right to protection from other forms of exploitation

I am concerned that children are potentially being exploited by a system which is meant to provide them with opportunities and develop their talents. Whilst this may be an unintended consequence of the registration process, it does need to be urgently reviewed to ensure that children and young people's rights are adequately protected.

In conclusion, I believe this petition raises a number of very valid children's rights issues which deserve further scrutiny. I commend the petitioners on bringing these issues to the Committee's attention.

The system as it stands does not appear to place children and young people at the centre – which is where they should be. The focus is very much on protecting clubs' investments in individual children/young people – rather than on what is best for that particular child.

I would favour an urgent review of the current registration process, with a view to adopting a much more child and young person friendly approach in future. My office would be happy to assist with this and would welcome further dialogue with the SFA and other interested parties to enable this to be set in motion as soon as possible.

Thank you for giving me the opportunity to comment on this petition. If you have any further questions, please do not hesitate to contact my office.

Yours sincerely,

A handwritten signature in black ink that reads "Tam Baillie". The signature is written in a cursive, slightly slanted style.

Tam Baillie
Scotland's Commissioner
for Children & Young People