

# Realgrassroots

**PE1319/PP**

Thursday 21<sup>st</sup> November 2013

Ms Anne Peat,  
Clerk to the Public Petition Committee,  
TG.01,  
The Scottish Parliament,  
Edinburgh.

Dear Ms Peat,

## **PUBLIC PETITION PE1319**

Mr Smith and I are pleased to see our petition being considered and examined by the Public Petitions Committee of the Scottish Parliament.

We acknowledge the submission made by the Tam Baillie, Scotland's Commissioner for Children and Young People and note he is sceptical of the evidence given by Mr Doncaster at a previous hearing.

Mr Smith and I were pleased to see the correspondence submitted by the Scottish FA and we have looked in detail at their reply.

The SFA refers not for the first time to their compliance with FIFA and UEFA regulations in relation to compensation payments involving young players.

Within these regulations and it is our assumption that they are referring to the Articles contained within FIFA's Regulations on the Status and Transfer of Players document it states '*Each association shall include in its regulations appropriate means to protect contractual stability, paying due respect to mandatory national law and collective bargaining agreements.*'

It is our contention that the current system of compensating clubs is simply not complying with European law, in particular Article 3 of the UN Convention on the Rights of the Child (the best interests of the child principle). The current system prevents freedom for young players to move and make choices that they believe may be in their best interest and to that extend the system potentially breaches Article 12 – respect for the views of the child. It must be borne in mind that the restrictions and conditions affecting the young people are made by businesses, whose main objective is to make a financial profit. It is perhaps somewhat ironic that these organisations also receive public money to support their youth enterprises.

The FIFA Regulations also state – Article 1 Scope: *Such regulations should also provide for a system to reward clubs investing in the training and education of young players.*

It is unclear what is meant by 'young player', could this mean players aged 18, 19 or 20 years of age? The regulations seem to only relate to professional players which of course 10 to 15 year olds are not. Is it therefore a case that Scottish clubs are mis-interpreting this Article for financial gain at the expense of our young players?

FIFA Article 20 says '*Training compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a professional, and (2) each time a professional is transferred until the end of the season of his 23rd birthday.*'

This seems entirely reasonable that when a player earns a professional contract, then the nurturing club is rewarded with compensation. We would remind the Committee that Vyacheslav Bytsanyov from Legal League, Sports Lawyers Association wrote '*If a club has received compensation according to the Scottish regulations for the transfer of amateur, then it doesn't deprive it of the right to receive compensation for the second time for the same thing (according to the FIFA regulations at the signing of first professional contract). Double compensation – it is already not a compensation, but additional profit.*'

Realgrassroots are currently advising the father of a 14 year old player who participated in the Club Academy Scotland programme as a registered player for one season. The player elected not to renew his registration however the professional club wrote to the SFA and 'offered terms'. This means that unless the sum of £6,000 is paid to the club, this young player cannot register to play for any other professional club. Very few clubs have the resources to meet this financial demand therefore it is entirely possible this young player will not be able to play football with another professional club until thousands of pounds are paid to a club who he trained and represented for one season.

Only last week the father of this player contacted Realgrassroots distraught and seeking advice intimating the stress his entire family have been under because a professional club have informed him that his son cannot sign for any other professional club unless that club pays £6,000. The family are at the point that they themselves are trying to find the money to pay it to the professional club to obtain their son's release. Our legal advisors are considering the options in this case and legal action is not ruled out in an effort to unshackle this child from this scandalous situation.

The SFA's proposal does nothing to address the potential breach of Section 2 Age of Legal Capacity (Scotland) Act whereby at age 15 years a youngster can be held beyond the initial one year registration period for a further two years with no option for release. The current system is not 'fair and reasonable' as required by the Act. This represents a contract and not a simple registration document which is one sided and unfair as recognised by not only Tam Baillie but a leading Advocate Malcom McGregor of Compass

Chambers – a copy of his published opinion is enclosed. Realgrassroots are awaiting further legal advice from Bridge Litigation who are specialists in sports litigation - FA approved and handle professional football contracts south of the Border.

No child should be denied their basic human rights of freedom of movement by any employer a view strongly supported by respected organisations in previous submissions sent to the Petitions Committee, including the Child Law Centre, the STUC, The Scottish Youth Football Association, numerous District Councils, Scotland's Commissioner for Children and Young People and many more.

Realgrassroots support Chic's Brodie comments made at the last session on 8<sup>th</sup> January and echoed by the Convener and invite the Committee to call the SFA's Director of Governance & Regulation Andrew McKinlay (a former lawyer) to discuss the legal ramifications of this system. It would be useful to hear evidence from the club's Chief Executive Mr Neil Doncaster as well as a Head of Youth from a professional club, perhaps out with the Old Firm. To balance any oral evidence Realgrassroots would suggest inviting Malcolm McGregor.

We therefore appeal to the Committee to continue our Petition.

Kind regards,

**Scott Robertson**  
(On behalf of Realgrassroots)

**William Smith**

## Opinion of Counsel

Re: Real Grassroots

I am an advocate at the Scottish bar. I called in 1998 and was previously a solicitor at Messrs Simpson & Marwick and Messrs Dundas & Wilson. The focus of my practice is primarily reparation and clinical negligence although it extends to regulatory and disciplinary work also. I have attained top rankings in both Chambers and the Legal 500 in recent years including the present. I am asked to consider the registration rules and procedures that apply within the context of the SFA Handbook when a child or young person registers with a club. I am not asked to specifically consider the recourse available to children through the courts or indeed what the prospects of success of so doing are. Rather, this opinion is to highlight the unfairness which in my view is apparent on a reading of the rules and an understanding of their operation.

A youth player is defined as an amateur player registered on a youth form for a club that has membership of the SFA. A rather nebulous definition applies to the term “non-recreational player registration form” which is contained within the Handbook referring as it does to the form itself. “Non recreational” is defined as “football in which participating players may have a written contract.”

The rules which specifically apply to non recreational youth players are contained within clause 2.5. The emphasis is upon registration and it is noteworthy that there is not one reference to any contractual obligations. Indeed, insofar as the rules are applicable to the age category between 10 and 14 years old, this is entirely appropriate. The rules clearly stipulate that registration of a youth player within this age group lasts for one season only and automatically lapses at the end of the season in which the player signed the registration form. This leaves the youth player free to sign for whichever club he wishes in the following season. However, crucially, the rules within the Handbook highlight an anomaly for ages 15 and 16 years. Rather than the registration lapsing at the end of the season of registration, the club with whom the player is registered is permitted to bring forward a player's registration to the subsequent age group should it so desire. In other words, a player who signs a registration form when he is 15 years old can at the end of the season be informed by the football club that they will be retaining his registration for the following season.

What is apparent from a close reading of the rule is that the player or his legal representative (namely a parent or guardian) have no rights in terms of the rules to reject such an “extension” to the player's registration. It is correct to note that the youth player does have the option to cancel a registration form. However, this can only be done with the consent of the club (rule 2.12.1.1) which if the club wishes to retain the services of the player for the following year, the club is presumably unlikely to accede to, or simply by the authority of the SFA (rule 2.12.1.2). There is no indication or expansion as to the basis upon which the SFA might exercise that authority.

Clause 2.5 has the identical effect as an option clause within a contract. A club has a unilateral option to ‘extend’ the tenure of a player with the club.

There is however one fundamental difference. In typical pre-contractual negotiations, a party may intimate a desire to include an option clause. The other party may negotiate on that basis, namely “if you desire this option clause then, if I am to agree to it, I want something in return.” There is no such bargaining power available under the current regime. The option is mandatory, imposed upon a player whatever he might desire. And of course there is a theme which runs through the rules regarding youth players – which essentially appears to be never refer to the term “contract.” Be that as it may, there is no doubt that what the parent or legal representative is asked to sign when a player “signs” is a contract. The consequence is that a 15 year old boy whose father signs his son to a 12 month contract with Neasden United, is potentially bound to that club until he reaches 18 years old. Thus he cannot seek a review of the contract even when he reaches the age of capacity (in contractual terms). The Age of Legal Capacity (Scotland) Act 1991 provides the child under 16 only with a potential remedy against his parent or legal representative. If signature of such a contract occurs from age 16, then section 3 of 1991 Act does potentially permit a review. Such a young person can apply to the court to have the contract set aside on the ground that it amounts to a prejudicial transaction. Whether a Court would determine that such a contract is prejudicial depends on the young person establishing that, firstly, an adult exercising reasonable prudence would not have made the ‘transaction’ if he had been in similar circumstances to the young person and thereafter, that the transaction is likely to cause substantial prejudice to the young person.

On one view, both the Association and the clubs must be content that the prospect of a young person potentially litigating on this basis is very slim given a number of risk factors ranging from potential financial liability to the length of time it would take to resolve ending to the stigma of being identified as a player prepared to contest or litigate against a club.

There is little logic in the current arrangement endorsed and given effect to by rule 2.5 other than satisfying the potentially selfish intentions of a club – if a player shows ability then the club can retain him for a total of 3 years. If he is dispensable, the contract comes to an end at the expiry of 12 months. The player has no such power. Granted the youth player can seek the cancellation of the registration but given that this requires the consent of the club or presumably the exercise of the Association’s discretion, then the youth player is hardly ‘empowered’ when the position of the club is compared.

In short, the current regime is flawed. Without referring to any contract, it imposes a contractual regime on youth players and clubs in which the former are placed at a clear and distinct disadvantage in which they have no bargaining power and effectively no remedial rights where the length of a youth player’s tenure at a club is concerned.

M B McGregor, Advocate  
21<sup>st</sup> May 2013

Dear Mr. Smith

I have read with interest the opinion of counsel dated 21<sup>st</sup> May 2013 and understand that you wish to consider any further comments in support of the position expressed in said opinion.

First of all I confirm that this firm has extensive experience in football matters and our employment accredited specialist has dealt with PFA Scotland for several years and has a high level of practical experience in dealing with football related contractual claims.

Your counsel has also outlined his experience both as a solicitor and an advocate and restricts his views properly to the issues of fairness which arise due to the current procedures in place at the SFA.

Counsel states specifically that “crucially, the rules within the Handbook highlight an anomaly for ages 15 and 16 years. Rather than the registration lapsing at the end of the season of registration, the club with whom the player is registered is permitted to bring forward a player’s registration to the subsequent age group should it so desire “. In our view this correctly describes the situation as per the SFA Regulations and does indeed create a contractual position **in favour of the Club** which persists for 2 years into “adulthood”.

It is also correct to further state that this option in favour of the Club can be reviewed in each case by the SFA although your counsel identifies “no indication or expansion as to the basis upon which the SFA might exercise that authority” exists within the rule book.

**In practical terms this means that a youth player who registers with a Club at age 15 is contractually bound to that club for three years in total. This is the situation which raises your concerns about fairness and the lack of mechanism for dealing with this situation when a youth player becomes bound into a “contract” signed by their parent or guardian.**

As far as we are concerned the unfairness which your counsel identifies could be addressed by the SFA reviewing their mechanisms for de-registration of such contracts in circumstances where it appears unfair for a young person to continue to be bound by a contract signed of at age 15. I deliberately use the word “contract” as your counsel does not distinguish in reality from registration and contract due to the nature of the obligations which arise on registration. Therefore it may be possible to achieve a much fairer scenario if the SFA were to allocate resources to this issue by allowing parents and children to make representations to them depending on difficulties and situations which arise following the signing by an adult on behalf of a 15 year old. One crucial factor here would be an onus on the Club to ensure that the adult is fully aware of the consequences of the signing. The Club ought to be in a position to properly demonstrate to the SFA that they have informed the parent or guardian fully. This is the type of appellate approach which could be developed further if the SFA were willing to consider the issue with you.

I have not addressed in any way the general legal background as your counsel has helpfully identified these issues and the scheme itself would be well described within his opinion against the statutory framework and rights to redress. In fact he is absolutely clear that the whole regime could be tested by a litigant in due course.

Yours Faithfully

BRIDGE LITIGATION