

PE1319/RRR

Tam Baillie, Former Children and Young People Commissioner Scotland submission of 5 June 2017

Introduction

The purpose of this report is to update the Petitions Committee on letters sent by myself and others regarding petition PE1319, Improving youth football in Scotland. On 17th May 2017 I demitted office as the Children and Young People Commissioner Scotland and with the agreement of the new Commissioner, Bruce Adamson, I will continue to be involved in the issues raised by the petition.

Letter sent to FIFA

On 17th May 2017, a letter was sent to FIFA, signed by myself and the petitioners Willie Smith and Scott Robertson. It was also signed by MSPs, Alex Cole-Hamilton (Scottish Liberal Democrats), James Dornan (Scottish National Party) Neil Findlay (Scottish Labour) Alison Johnstone (Scottish Green Party) and Brian Whittle (Scottish Conservative and Unionist Party). The range of signatories is a measure of the widespread concerns across all parties in the Scottish Parliament.

The letter offers a view that the Scottish Football Association (SFA) and Scottish Premier Football League (SPFL) have been intransigent to change with the result that the petition is now the longest running open petition being considered by the Scottish Parliament Public Petitions Committee.

The letter acknowledges that during the passage of the petition there have been some positive developments such as the SFA appointing a Child Protection Officer and a Children's Rights Officer and some limited changes to children's rights whilst signed to a professional football club. However, the letter highlights that there remain substantive outstanding matters in respect of:

- a child who signed a registration form at age-group 15 can be held by the professional football club for three consecutive seasons up to their 18th birthday
- there has been no audit of the management of the public funds of the SFA as called for in the original petition
- the operation of the 'compensation scheme' has not changed and continues to cause concern

The letter also raises additional concerns that have come to light:

- contracts between professional clubs and 16/17 year olds which contravene Minimum Wage legislation
- payments between clubs which have been made beyond the parameters of the compensation scheme
- the lack of appropriate child protection checks carried out on football agents engaged with children

The letter states that it is important to note that the outstanding matters and additional concerns have been brought to the attention of the SFA and the SPFL, with no progress made. On the matter of the contraventions on Minimum Wage

legislation, documentary evidence is produced which confirms 16/17 year olds have signed with professional football clubs for wages ranging between £1 to £10 per week and copies of such were attached.

The letter informs that these matters have been reported in the press in respect of players with St. Mirren, Dundee, Falkirk, Queens Park and Stirling Albion. Indeed, HM Revenue and Customs has investigated and found St Mirren FC guilty of paying a player (employee) Kieran Doran on a full time Professional Contract the sum of £1 per week in breach of the Minimum Wage Act 1998. St Mirren FC were ordered to reimburse Mr Doran the full outstanding wages.

The letter reminds FIFA that the footballing authorities in Scotland are party to the 'Autonomous Agreement' signed by: The Union des Associations Europeennes de Football (UEFA) of which the SFA is a member; the European Professional Football Leagues (EPFL) of which the SPFL is a member; and the Federation Internationale de Footballleurs Professional Division (FIFPro) of which the Scottish PFA is a member.

The letter asserts that the authorities in Scotland are in breach of Article 18, Implementation and Enforcement, specifically section 18.1, which states:

'The aforementioned is without prejudice to the principle of subsidiarity, including but not limited to national legislation, existing collective bargaining agreements, standard contracts and club player contracts. The implementation of this Agreement shall take into account the applicable legal environment on sporting labour law and shall be in accordance with the procedures and practices to management and labour in European Union Member States and in the remaining countries of the Territory.'

This clause requires the professional football clubs to adhere to the UK labour laws and legislation. As detailed above, press reports indicate several Scottish professional clubs have not adhered to UK labour laws because they have not been paying the Minimum Wage.

The letter reminds FIFA that it has a role in these matters as the world governing body which has the overarching responsibility for agreements such as the 'Autonomous Agreement' and invites FIFA to review the implementation of the 'Autonomous Agreement' in Scotland regarding those matters within FIFA jurisdiction.

Letter sent to HMRC

On 17th May 2017, I sent a letter to HMRC informing them of the petition and the implications arising from it in respect of payments by professional football clubs in Scotland which contravene Minimum Wage legislation. I reiterate the concerns that the Scottish Football Association (SFA) and Scottish Premier Football League (SPFL) have been intransigent to change. I inform HMRC of the documentary evidence produced which confirms 16/17 year olds have signed with professional football clubs for wages ranging between £1 to £10 per week as detailed above in the letter to FIFA.

I inform HMRC of evidence to the Petitions Committee on 22nd December 2016 by Neil Doncaster (SPFL) when he stated:

“We do not have sight of the contracts between clubs and players. Effectively, eligibility to play in SPFL competitions arises from a Scottish FA registration. So, no, I did not have knowledge of any clubs paying £1 a week.”

In the same session Andrew McKinley (SFA), commenting on payments under the national minimum wage stated:

“The Scottish FA registers players. I checked on Monday and found that, to date this year, the registrations team, which is made up of three individuals, has processed more than 18,000 transactions. The team does not consider the terms of the contracts. I want to make it clear that we were absolutely not aware of that issue.”

Even when it is brought to their attention, they fail to act. In response to a letter on the Minimum Wage from the petitioners, the SFA and the SPFL stated:

“This area of legislation is complex and it is not always apparent from a contract how many hours a player may be working in a relevant pay period.”

“The focus of both bodies is to ensure that players are paid the minimum wage rather than punishing clubs for non-compliance.”

I state to HMRC my belief that this is complacency in the face of clear evidence that children are being treated out-with UK employment law and a failure to act on the part of the SFA and the SPFL. I offer a view that it is likely that the practice of not applying Minimum Wage legislation is more widespread. The cases quoted are only those known so far and there is little evidence that the football authorities are prepared to either act on reports where the minimum wage is not being paid or be interested in finding out what is happening under their stewardship.

I request further involvement of HMRC on the basis that there is a systemic failure to adhere to UK employment legislation among Scottish professional football clubs and a failure of the football authorities to investigate the breaches.

Conclusion

The letters to outside regulatory bodies demonstrate the lack of faith in our football authorities to effectively address the issues raised. This is a position which is shared amongst MSPs. The length of time taken, the lack of appetite for change and the continuing denial of a problem on the part of the football authorities raise significant concerns regarding their capacity to address these issues without external regulation. This is a call I have made in the past and I repeat now. In my view, external regulation is required to address matters raised by petition PE1319.