

n The Ball

Our regular football-focused round-up



Welcome to the first issue of *On The Ball*.

In this issue, we gaze into the complex world of football and the law. From the disbanding of the G14 group, to the Transfer Window and the controversial 6+5 FIFA proposals, the first On the Ball instalment includes many of the most topical events in the world of football. The articles focus on national, European and global issues alike.

On the Ball is produced in conjunction with Football Aid, a sports charity organisation, where supporters can Live the Dream and bid online at Footballaid.com to play on the hallowed turf of their boyhood team.

On the Ball aims to give the reader a good understanding of the core legal issues in the football industry.

I hope you find the newsletter both useful and informative. If you have any questions or comments you can contact me at my email below.

Daniel Geey, Solicitor and Editor
daniel.geey@ffw.com

Contents

- | | | | |
|----|--|-----|--------------------------------------|
| 2. | The Transfer Window | 10. | Safeguarding Football's Crown Jewels |
| 4. | The end of G14.. | 12. | Hanging On - Clubs on the Brink |
| 6. | When is a foreign player not a foreign player? | 14. | The Webster effect |
| 8. | The 39th Game | 17. | About Field Fisher Waterhouse |
| | | 18. | Contact details |



The Transfer Window

It's that time of the year again: football fans continuously clicking refresh on forum websites, managers flying back and forth (negotiating, persuading and influencing like a frenzied US presidential candidate) a doubling of Sky Sports News' viewing figures... the football transfer window is open once more.

At the turn of the century, football's governing bodies set up the transfer window as we see it today - two periods in which players can be traded between clubs - following pressure from the EU Competition Commissioner at the time, Mario Monti, and amid threats to outlaw transfer fees which were alleged to have contravened EU rules on the free movements of employees across the EU. While the Bosman ruling of 1995 allowed a player to move for free at the end of their contract, the potential implications of the EU proposals could have rendered the sanctity of player contracts obsolete.

A hastily organised meeting involving members of FIFA, UEFA and various leading figures from the world's top leagues put forward ideas for a radical overhaul to the transfer system, which has now been codified into the FIFA Regulation for Transfers. While focussing on the liberalisation of the contracts of younger players (the outlaw of international transfers of under-18s and payment of 'Training

Compensation' to teams losing players below the age of 24), the system also introduced the transfer windows.

Only allowing players to move during two 'windows,' one at the end of a domestic football season, another in the middle of the season, has resulted in only a small time period in which Sir Alex can dip into the Glazer war chest or for Chelsea to make use of their owner's spending power. Following FIFA's decision to bring the rule into compulsory effect during the 2002-2003 season there have been various debates from pubs to directors' boardrooms as to the benefits and shortcomings of the system.

Some of the major opposition to the existence of the transfer window comes from the smaller clubs in football. The big-money sale of a player has always been a saving grace for clubs in the lower divisions when facing difficulties. The £5 million that Nottingham Forest received from Newcastle United for Jermain Jenas in 2002 was rumoured to have kept Forest afloat. Similar sales have helped Sunderland (Kevin Phillips to Southampton, 2003) and, Leeds United (Rio Ferdinand to Manchester United, 2002) in previous seasons.

Do the restrictions placed on player sales put them in unnecessarily precarious positions? Lawrie Sanchez, the ex manager at Fulham, certainly thinks so: “What has happened is the big clubs have accumulated loads of players so they can get through the window. It stops smaller clubs being able to sell their players when they need to. Whatever reason it was set up for, it has not worked. The new game on the block is name the next manager to get sacked...”

Which he duly was earlier in the year.

One only has to look at the various big money moves to the top four Premiership sides to see how clubs can spend to their hearts (or owners) content. This, however, is tempered by the fact that it is not possible for a club to splash out on a player after just a few poor results. There is only one point mid-season during which teams can use money to solve their problems. Nicolas Anelka's move from Bolton to Chelsea in last January's transfer window shows that the window may not hinder certain clubs with readily available funds. However, it does at least preserve the competitive sporting nature in the game in that at least Chelsea were not able to buy Anelka until the window opened.

The argument in favour of the restraint of trade of players is founded in the concept of maintenance of the integrity of the competition whereby one team should not be given an unfair advantage (by having more money than anyone else) to buy a player at any time of the season. However, this presents an inherent

conflict. There is little doubt that the premise of the transfer window is evidently a restriction on a player's freedom of movement. Therefore, how can the European Commission justify it? In the case of Lehtonen, concerning the transfer window in the European basketball league, the European Court of Justice accepted there could be good sporting reasons to justify some kinds of economic restrictions - namely the benefits of team stability and 'regularity' of sporting competition.

But can the role of a football player even be compared with that of a 'regular' employee? This is a very distinctive industry where players are, rightly or wrongly, considered as commodities. The EU is eager to categorise sporting industries as "economic activities" and thus bring them within the ambit of EU legislation. Various declarations have been made on an EU level (culminating in the White Paper on Sport) acknowledging the 'specificity' of sport and the role it can play as a positive social, community building tool.

Daniel Geey, Solicitor and Mohammed Karim, Trainee

The end of G14, and the rise of the European Club Association

In the past seven years the G14 has been a major headache for UEFA. Outspoken and sometimes controversial, it has been the unofficial voice for Europe's top clubs. It is now however an inclusive member of the European footballing hierarchy. The body that was once the G14 is now, the European Club Association (the ECA). The route to this cunning transformation however has been about as smooth as the JJB turf after a tractor fair.

Tuesday 15 January 2008, signalled the end of the G14 and the creation of the ECA. The signing of an agreement between UEFA and the ECA creates a new reformed hierarchy within the footballing world. Unlike the unrecognised body that was the G14, UEFA now recognises the ECA as the sole body representing the interests of clubs at a European level. Furthermore, the document also sets out that the ECA recognise UEFA as the European governing body of football and FIFA at a worldwide level. There should now be a more harmonious chain of command within European football. It has not always however been so friendly (think Keane, Haaland and knee high challenges for the love lost between UEFA and the G14).

Things under the G14 were very different. The G14 was formed in September 2000 by fourteen of Europe's top clubs. It had no official authority in the footballing world and was seen by UEFA as a maverick pressure group that provided clubs with a powerful collective voice. The G14 was founded as a consequence of the dissatisfaction felt by the founding clubs with UEFA and a feeling that clubs should be represented within the formal UEFA decision making process so that they would be consulted before UEFA made decisions affecting them.

Much deliberation, persuasion and negotiation has taken place to get to the position we see today. The majority of the threats and counter accusations by both sides have been played out in front of the worlds media, and have taken the form of high profile disputes between the clubs and Europe's governing body. One of these cases was the compensation case by Abdelmajid Oulmers - a case dubbed as the

new Bosman, which commentators predicted could change the game forever, and a case that may have proved to be the catalyst resulting in the formation of the ECA.

In November 2004, whilst playing for Morocco against Burkina Faso, Oulmers was injured and ruled out for 8 months. Sporting Charleroi (his club) blamed the loss of the player as the reason for their failure to win the domestic league, eventually finishing fifth. Understanding the issue was of major importance to all clubs throughout Europe. The G14 supported Sporting Charleroi in a compensation claim against FIFA for the injured Oulmers. The G14 further claimed €360m in damages for the costs incurred during the previous 10 years of putting players at FIFA's disposal so that they could represent their country to the detriment of the club paying their wages.

The formation of the ECA coincided with calls for all outstanding lawsuits to be brought to an end. The formation of ECA is seen by many as one of the compromises stemming from negotiations between FIFA/UEFA and the G14 in order to solve amicably the various legal disputes to be dropped. Karl-Heinz Rummenigge of the ECA stated on its formation that:

“It is also important that pending legal cases are also to an end, this is a sign that we are all moving along the right road”.

The parties decided to settle this issue in the political rather than legal environment, championing negotiation ahead of litigation. The result? Both sides are winners; FIFA have their current legal disputes that were started or supported by the G14 clubs dropped; and the clubs receive appropriate compensation for releasing their players (see below) and have a recognised body representing their views.

Compensation will be paid to the clubs not for a player's injury but for their participation in national competitions. Clubs who released players for Euro 2008 were paid up to £3,000 per player per day in compensation. Money was only paid to clubs for the finals tournaments and not for qualifying matches.



G-14 President Jean-Michel Aulas commented:

“A new era in clubs' representation has been confirmed today. G-14 Members were ready to dissolve this organisation because G-14 has successfully achieved its key objective of ensuring that Clubs are fully respected by the international governing bodies and appropriately integrated in the relevant governing structures up to the highest levels.”

UEFA has said that Euro 2008 was worth more than £32million to clubs. Euro 2012 is expected to be worth in excess of £40million. UEFA President Michel Platini said “Clubs who provide UEFA and FIFA with certain amounts

of money through these players should get some compensation and share in these profits”.

The body overseeing European club's welfare, the ECA, will be composed initially of 103 clubs drawn from all of UEFA's 53 Member Associations. It appears that the wishes of the founding members of the G14 have been granted. No longer is it likely that the Champions League structure will be modified without the major clubs' consent, as happened in 2002. The football clubs have been given a legitimate voice, and the new ECA organisation will consult with the decision makers of European football.

The formation of the ECA has potentially resolved all outstanding legal disputes between the clubs and FIFA/UEFA. However, in a multi-layered diverse organisation like UEFA where different bodies will represent their own interests, the difference is that whilst previously the G14 was an outside dissenting voice, the ECA is now an inclusive part of the formal footballing hierarchy and will now have to play within the rules of the game.

Daniel Geey, Solicitor & Ross Lima, Trainee



When is a foreign player not a foreign player? The home grown player quota debate continues...

The debate surrounding whether the influx of foreign players into the Premier League constitutes a threat to our national game has been rumbling on for many years. Amidst various opinions from players, managers and pundits under the combined stewardship of Sepp Blatter (President of FIFA) and Michel Platini (President of UEFA), footballs governing bodies have either implemented or propose to introduce further reforms. It remains to be seen whether EU law is likely to prevent both organisations reaching their ultimate goals.

The current UEFA “locally trained players” rule that UEFA has already introduced is designed to increase the participation of locally trained players in European competition. Clubs participating in the Champions League, the UEFA Cup, the UEFA Super Cup and the Intertoto Cup have been subject to restrictions on their squads for these competitions for the last few years. These UEFA regulations have also been adopted by certain national football associations including Germany, Italy, Portugal and Russia.

At present, UEFA regulations state that the 25 man squad submitted by a club participating in one of UEFA’s European competitions must include 6 “locally-trained players” (to be increased to 8 from the 2008/9 season). Now you would be forgiven for thinking at this point that this restriction means that UEFA have limited the number of foreign players who can be in a clubs European competition match squad; but that is not the case. A “locally trained player” can be either “club-trained” or “association-trained”. There is little difference between these two terms, both essentially mean that that player must have been registered with the club (or with another club affiliated to the same national association) for three full seasons, or 36 months, between the age of 15 and 21.

This applies irrespective of nationality meaning that players such as Cesc Fabregas, Arsenal’s captain and Spanish midfield maestro, counts towards Arsenal’s quota of “locally-trained players” even though he’s about as English as paella! Failure to name 6 “locally-trained players” in the squad leads to a reduction in the size of that squad i.e. if a club entering the Champions League for the 2007/8 season fails to name any such club or association trained players, they would only be permitted a squad of 19 rather than 25.

The existence of these rules goes some way towards explaining the mad rush in recent years from the top clubs to snap up European

talent at such a young age. For example, Liverpool's FA Youth Cup winning squads of 2006 & 2007 contained young players from Spain, Denmark, Sweden and Norway. Should any of these players prove their worth and end up in the first team in the next couple of years, like Fabregas before them, they will be designated "locally-trained players" and will satisfy the UEFA requirements.

There however remain concerns that these regulations may be illegal under EU law as they could lead to direct discrimination between EU citizens on grounds of nationality. The European Commission itself commented in its White Paper on Sport (July 2007) that,

"rules requiring that teams include a certain quota of locally trained players could be accepted as being compatible with the Treaty provisions on free movement of persons if they do not lead to any direct discrimination based on nationality".

This rule has not yet been tested in any European member state country, but it is not difficult to envisage a player who feels he was left out of a Champions League squad due to his status as a non "locally-trained player" making a persuasive case for indirect discrimination. It is also arguable that these rules do more to harm the national leagues than they do to help them, with ever greater importation of young foreign players stifling the youth team opportunities of, for example, English youngsters.

The future of foreign player quotas

In turning to FIFA's proposals for reducing the number of foreign players in national leagues, Sepp Blatter advocates introducing a true quota for foreign players, where every team must consist of at least 6 home grown players. It is important to highlight here that a "home

grown" player is not necessarily the same thing as a "locally-trained player". A home grown player is a national of the league in which the club he plays for is registered (i.e. Gerrard being an Englishman playing for Liverpool would be a home grown player but Fabregas would not be). Blatter raised the issue at the annual FIFA Congress in Sydney in May.

The likelihood that there will be a pure foreign player quota system in the Premier League at any point in the foreseeable future remains slim. FIFA would also need to overcome in particular the strong objections of the premier League. Richard Scudamore has labelled Sepp Blatter's plans, "jingoistic, nationalistic" and "almost racist".

In the context of the registration of players in the Champions League for the 2007/8 season it was pointed out there were more Scottish players registered to play for the two Scottish clubs that qualified (Rangers and Celtic) than there were English players registered for four Premier League clubs (Chelsea, Arsenal, Liverpool and Manchester United). This illustrates that the top English clubs would probably oppose such restrictions which limit their ability to buy the worlds best players. That however has not stopped Reading manager Steve Coppell calling for some limit in order to increase the pool of talent available to future English managers.

Conclusion

Clubs will not want their ability to purchase the best international players restricted. Leagues' may not want restrictions which lessen the attractiveness of the league product for marketing and television broadcasting sales if only second rate national players (under FIFA's system) can be used because each clubs 'foreign' quota has been reached. Although Fernando Torres may be classed as an honorary scouser already, he would be deemed to be a non-home-grown player under the FIFA proposals.

Daniel Geey, Solicitor & Henry Marshall, Trainee

The 39th Game

On 7 February 2008, the Premier League issued a press release, announcing that it was considering the introduction of an 'international round' to its football season, extending Premier League clubs' current 38 game season to 39.

Key points of the proposal

Under the Premier League proposal, each club would play a 39th game abroad over a weekend in January, starting in 2011, creating an additional round of matches. Cities all over the world would bid to become hosts for the matches. Five cities would each host two games over a weekend. These additional games would most likely be determined by a draw, potentially and controversially with the top five teams seeded to avoid playing each other.

Advantages of Game 39

The Premier League currently receives £625 million from selling its broadcasting rights abroad. This figure is a sharp increase from the £178 million that the Premier League received back in 2001. With an international round further raising the profile of the already popular league, the amount of money the Premier League could receive from the sale of overseas rights may again rise substantially. The extra games were also estimated to generate an additional £5 million for each club.

It's advocates, including Premier League chief executive Peter Scudamore have explained that more money could be reinvested in the game, meaning better players, grounds and facilities. Prime Minister Gordon Brown even suggested that some of the money that the clubs make could be used to lower ticket prices.

Such a scheme could also be good for the host cities. The NFL game at Wembley, for example, earned London more than £20m as visitors from the US flocked to the capital for the game. Die hard football fans could even use the game as an excuse for the annual family holiday. Indeed, Arsene Wenger, manager of Arsenal and former Newcastle manager Kevin Keegan both thought the idea

of providing live stadium access to fans who could only watch Premier League games on television was a noble gesture. Keegan said

“it will give everybody in the world a chance to see it in areas where they don't get a chance to see football like that”.

Disadvantages of Game 39

Despite the obvious financial incentives for staging the international round, the Premier League proposals have been met with much hostility. 'GAME 39', as it has been dubbed has in fact been roundly criticised. Critics argue the plans will alienate fans whilst seriously affecting the integrity (and importantly) the structure of the football season.

The draw method to determine the Game 39 set of fixtures has been questioned. Specifically it may be especially unfair on the teams battling relegation, to suddenly have to play a third match against the champions elect. It could be seen as particularly unjust if two teams were battling against relegation and one of those teams was drawn against Liverpool with the other drawn against Fulham. Changing the fixture format by adding an additional game would be a difficult policy to justify.

The former Sunderland manager Roy Keane who was broadly in favour of the extra game tellingly explained that “change is good but that depends who you are playing in that extra game. If it's one of the top four, I might argue.” Sir Alex Ferguson was also unhappy over the way the Premier League dealt with the press release, saying consultations with managers and players should have taken place on a substantive level before announcing the idea to the world.

Commentators have also raised concerns about player burn out, saying that some clubs play too many games already. An interesting point was also raised by ex-Fulham manager Lawrie Sanchez who argued that as well as English Premier League fans being unhappy about their league being taken on tour, foreign national associations could well view the Premier League 'soon coming to a country near



you' as a threat to their own leagues viability and popularity. He said

"other national associations won't be happy about the Premier League coming into their game, taking sponsors, taking advertising, taking revenue from their game".

Indeed the Japanese football association called the project "problematic" and whilst chief executive Richard Scudamore has admitted that the proposals are very much a "work in progress," he accepted that they had received "a hostile reaction."

The governing bodies of football

Within a week of the press release, various national and international football associations publicly rejected the idea. UEFA president Michel Platini described the idea as "comical," and "a nonsense idea". Sepp Blatter the FIFA president labelled it an "abuse of association football" whilst the Asian Football Confederation was one of many to refuse the Premier League to play competitive games on their grounds. The Korean FA expressed "strong reservations" and the Japanese FA opposed the plan. Conversely, United Arab

Emirates Football Association and the Hong Kong Football Association backed Premier League plans.

Indeed FIFA went as far as saying that the Premier League was jeopardising England's bid to host the 2018 World Cup. Given the threat to England's bid to host the World Cup 2018, the FA have been very careful to distance themselves from the proposal. As many foreign associations are opposed to the Game 39 idea, the Premier League may not in fact even have the necessary number of national associations on board to stage the games at present.

What is certain is that Game 39 has provoked much protest, support and criticism in equal measure and will not be put to bed any time soon. Whilst there are such interests at stake like increased exposure to a global audience leading to further broadcasting and sponsorship opportunities for the Premier League and its members, it remains to be seen whether the interests of English fans are listened to. The Football Supporters' Federation has launched its 'No to game 39' poll to fight the Premier League's plans. Some have argued however that such a policy line would be to the detriment of the millions of fans who can only watch the Premier League live on television. Access to the live stadium Premier League competition has certainly entered the global debating arena.

Daniel Geey, Solicitor & Anita Ngai, Trainee

Safeguarding Football's Crown Jewels

The football authorities are appealing against certain national governments policies to safeguard certain "crown jewels" sporting events for terrestrial television only.

In separate actions, FIFA and UEFA have lodged complaints with the European Courts. The football authorities are appealing against certain national governments policies to safeguard certain 'crown jewels' sporting events for terrestrial television only.

Under European law, European Member State governments have the option to draw up a list of sporting or other cultural events that are of 'major importance to society.' These events, which are of major importance to society, must be broadcast on free-to-air television. The listed events that include football are the Scottish and English FA Cup, the Olympic Games, the World Cup and the European Championships. The events on this list must be broadcast live on free-to-air television to ensure that they are made available to the widest audience possible. Under this list system in the UK each terrestrial broadcaster, (the BBC, ITV Channel 4 and Channel 5) can broadcast a listed event.

FIFA is appealing against the EC's decision of 25 June 2007 to approve Belgium's inclusion of all 64 World Cup matches. Similarly, UEFA is appealing against the EC's decision of 16 October 2007 to approve the UK's list of events, which includes all 'Euro 2008' matches, irrespective of the teams playing. UEFA alleges that all the Euro 2008 matches are not of major importance to British society.

Crucially, the UK and Belgian list shows all of the World Cup and European Championship finals games collectively as of major cultural importance to the UK. The reason behind both UEFA and FIFA challenging the list systems of the UK and Belgium is because terrestrial broadcasters cannot pay as much for the rights to the lucrative World Cup and European Championships, than a pay-tv broadcaster like Sky or Setanta. This means UEFA and FIFA cannot realise the broadcasting value for the World Cup and European Championships in the UK and Belgium because they are forced to only sell the televised games to terrestrial broadcasters.

It is interesting to look at all the competitions in the UK football broadcasting market especially when it is pointed out that the hugely popular Premier League and Champions League competitions are not protected under the UK list at all.

The issue is essentially a consideration of what events should be deemed of 'major importance to society'. It is difficult to anticipate the outcome of these cases as there are valid arguments on both sides. UEFA and FIFA appear to be playing hardball in using the European courts to attack the current Belgian and UK governments lists.

In relation to the FIFA World Cup and the European Championship Finals, a number of European Member State governments have limited the number of games to include just the semi-finals and the final and matches involving the nation submitting the list. UEFA and FIFA are not challenging those decisions because it gives them the ability to sell the rest of the games to the highest bidder regardless of whether it is a pay-tv broadcaster or a terrestrial station.

Big Audiences v Big Money

Listed events have the problem of not being able to realise their true pay-TV commercial value. Pay-TV broadcasters in the last decade have purchased the most popular sports events as drivers for their pay-TV platforms. The value that a terrestrial television broadcaster may attach to a match will probably differ considerably from that of a pay-TV broadcaster. The flip side is that if the allocation of sporting and socially integrating programmes of national importance is auctioned off to the highest bidder European citizens' access to popular events would be further restricted. The anti-pay-TV camp would point to other public goods such as clean air or street lighting, benefiting the wider public and therefore adding extra benefit to the wider community.

Such policy decisions taken by national governments for blanket lists governing the FIFA World Cup and UEFA European Championships have been equally welcomed by consumers as much as they have been greeted with hostility (and now challenged) by certain rights holders. As a result, national governments do give priority to terrestrial broadcasters. Whilst rights holders are

Group A (Full Live Coverage Protected)
The Olympic Games
The FIFA World Cup Finals Tournament
The European Football Championship Finals Tournament
The FA Cup Final
The Scottish FA Cup Final (in Scotland)
The Grand National
The Derby
The Wimbledon Tennis Finals
The Rugby League Challenge Cup Final
The Rugby World Cup Final

Group B (Secondary Coverage Protected)
Cricket Test Matches played in England
Non-Finals play in the Wimbledon Tournament
All Other Matches in the Rugby World Cup Finals Tournament
Six Nations Rugby Tournament Matches Involving Home Countries
The Commonwealth Games
The World Athletics Championship
The Cricket World Cup - the Final, Semi-finals and Matches Involving Home
Nations' Teams
The Ryder Cup
The Open Golf Championship

concerned that governments are over stepping the mark in casting the listed net too wide, many citizens view such policy as quite a refreshing counter-balance in an increasingly growing live pay-TV sports market, that governments have decided to shield events for citizens to enjoy free of charge. It would be doubtful any sports fan would argue against the listing of events in a growing age of subscription based television services.

Daniel Geey, Solicitor & Joe Ward, Trainee

Part of this article has appeared in the World Sports Law Report July Edition 2008.



Hanging On - Clubs on the Brink

Economies around the world are feeling the effects of the credit crunch, with companies and individuals finding credit harder to obtain. Football clubs, even without the threat of rising wages and falling property values, have always had a tough time staying in the black. According to the latest Deloitte Report the aggregate net debt of Championship clubs at the end of the 2006-7 season was €289 million. Similarly, the estimated revenue generated by promotion from the Championship to the Premier League is around €60 million. This is almost double the value of winning the Champions League.

Even leading Premiership clubs like Manchester United and Chelsea just like many companies, have taken on debt. The test of course is how manageable and sustainable the debt is. This sets apart the old Leeds regime from the current Glazer boardroom. However, even though some clubs have had to severely restructure their finances, which have resulted in sporting penalties like points deductions, some have managed to cling on and return to winning ways. In this article we will look at some of the clubs who have been sucked into administration, and others which have been on the brink and back and some which have found novel ways to save money and ultimately stay afloat.

What goes up, must come down...

Leeds United were a regular fixture at the top of the table in the early 2000s. With five finishes in the top 5 in the Premiership, together with reaching the UEFA Cup Semi-Final and a Champions League Semi-Final in consecutive seasons, things were looking bright for the Elland Road outfit. However, the club's strategy to borrow heavily against future revenue streams meant Leeds strongly relied on continuing appearances in the lucrative Champions League.

When Leeds failed to qualify for the Champions League in consecutive seasons, and were forced to sell off some of its better players, notably, defender Rio Ferdinand to Manchester United for record £30m fee, it signalled the start of Leeds' steady decline.

This culminated in the fire-sale of the club's training ground and Elland Road stadium, together with most of the club's most valuable players in 2003-4. With most of its better players transferred out Leeds' fate was sealed, and they crashed out of the Premier League that very season. The fate of Leeds United illustrates the fact that there is no guaranteed level of income in football, and directors must manage the club's finances and ambitions carefully for their it to progress without risking its long-term future.

A close shave for Boro..

In the summer of 1986, Second Division Middlesbrough Association Football Club found themselves relegated, and a provisional liquidator was called in. Without the capital required for Football League registration, it seemed that the club's days were numbered. However, at the last minute, the club was acquired by a consortium led by 28 year-old Steve Gibson, and completed its League registration with 10 minutes to spare. Since then, the club has risen to new heights, climbing to the First Division in 2 years. Within 6 years, Boro was one of the founding members of the Premier League. Since then, they have been a regular fixture in the Premier League, and eventually saw silverware when they won the League Cup in 2004.

Strapped for cash? Ask the fans!

Some clubs have had to find novel ways to keep themselves afloat. Bournemouth's "Playershare" Scheme allowed fans to invest their own money in the squad, effectively buying shares in certain players. Fans could then recoup this money when those players were sold. This allowed the manager to sign players, even when the club itself lacked the necessary transfer funds. Although the risks for investing fans were high, they had the unique opportunity to make a direct contribution to their team's squad, and its performance on the pitch. The scheme supported the Cherries for a number of years, but it wasn't enough, and Bournemouth eventually went into administration in February 2008 and was subject to a mandatory 10 point deduction effectively condemning them to relegation.

Indeed for the beginning of the 08-09 League Two Season Luton, Bournemouth and Rotherham began the season with minus 30, 19 and 17 points respectively.

In June the FA docked Luton 10 points after it discovered that the club were paying agents through third party bank accounts. The Kenilworth Road outfit were then dealt a second major blow when 20 points were deducted because the Club failed to satisfy the Football Leagues insolvency rules. The combined punishment, the largest in Football League history, leaves the club with a

mammoth task of avoiding relegation. While critics have called the sanctions unduly harsh, the Football League has maintained that they have merely applied the letter of the law to what were substantial failings on the part of the club's previous boards.

KFC Uerdingen, on the verge of bankruptcy, made the decision to sideline manager Aleksandar Ristic and auction the opportunity to manage the club to the highest bidder on eBay. For anyone interested the winning bid was €2,688.05. No doubt many fans of Championship Manager were clamouring for the opportunity to try it in real life.

Uerdingen have also offered its fans the opportunity to buy places on the substitutes bench and participate in the club's matches! During a match against Bayern Munich, Uerdingen surprised everyone by bringing on substitute Marcus Oellers, an insurance salesman who had won an auction on eBay for 4 minutes on the pitch against the Bundesliga champions.

Daniel Geey, Solicitor & Mitain Patel, Trainee

The Webster Effect

As the transfer window is about to open on yet another turbulent transfer season are you already feeling a little despondent? May one of your favourite players hand in a transfer request or engineer their own transfer out of the club? If so, I hate to break it to you, but things may only get worse.

On 30 January 2008 the Court of Arbitration for Sport (CAS), the highest arbitration authority in sport, ruled that Andy Webster was allowed to invoke Article 17 of the FIFA transfer regulations (the Regulations) to cancel his contract at Tynecastle. It was hailed by some as the new Bosman ruling which in years to come may well change the transfer market in much the same way Mr Bosman did in the mid 1990's.

Webster had one year remaining of his four-year contract at Hearts. However, frozen out of the team and still wanting to play, he decided to use the Regulations to escape the remaining year of his contract. He invoked Article 17 of the Regulations and Webster left his club. Wigan became interested and he signed for them.

Hearts appealed to FIFA and were awarded £625,000 in compensation last August by the FIFA Dispute Resolution Chamber (the DRC). Clubs that lose a player to another club under Article 17 of the Regulations are due some form of compensation as set out in the Regulations. Considering Hearts originally demanded a £4million transfer fee from Wigan and has previously turned down a £1.5million bid from Southampton, it was perhaps understandable for Hearts to appeal the DRC decision.

Interestingly too, Wigan and Webster also challenged the DRC decision stating £625,000 was too much compensation. All parties to the DRC decision appealed to the Court of Arbitration for Sport (CAS) who issued the final judgment.

Article 17 of the Regulations works by allowing a player to leave his club after a protected period is served and notice is given to the club of the player's intention to use Article 17. A player is then free to leave having served a notice period. For players under the age of 28

the protected period is three years of their contract, and for those 28 or over the protected period is two years. A two week time period (after the final competitive game of the season) is the allotted timeframe for a player to invoke the rule and then a compensation fee must be decided upon. The player is then free to find a new club, provided the switch is to another member state and not to a club in the same country.

The matter for the CAS to determine was whether the DRC was correct in its assessment of the £625,000 compensation and in particular the substantive elements. The CAS decided that it was the residual value of the contract (i.e. the amount Webster would have been paid during his remaining year at Hearts). In the DRC decision, resulting in a £625,000 compensation payment, other elements such as the time the player stayed with the club and the value of the first year of the new contract with the new club were ruled out by the CAS.

Consequently, the CAS decided that the compensation to be paid by Andy Webster and Wigan would be £150,000, significantly less than the £625,000 previously awarded to Hearts and far smaller than the £4million Hearts originally demanded. The CAS ruled that a club could not claim the market value of a player as lost profit. FIFPro spokesman Tony Higgins stated that the CAS decision has made it "...clear what kind of compensation a club and a player can expect."

Although SPFA general secretary Fraser Wishart stated that "footballers are entitled to the same freedom of movement and contract rights as any other employee in the European Union or global market place," the authors' opinion is that footballers still do not have similar employment rights to the average fan. Whilst there remains an inherent value attached to a player's contractual status, a club will still expect (even after this decision) to be richly compensated if a player terminates his contract two weeks after signing for £20million pounds only to sign for another team on a free transfer (because amongst other things he will be breaching his protected period).



Sepp Blatter, the president of FIFA, reacted angrily to the CAS ruling,

“because of this unfortunate decision, the principle of contractual stability, as agreed in 2001 with the European Commission as part of the new transfer regulations and which restored order to the transfer system, has been deemed less important than the short-term interests of the player.”

The effect on the transfer system could be that instead of large sums of money being paid for players, a club wishing to induce a player to sign for them by using Article 17 as an exit route could instead assist the player by merely paying the compensation due to the club and taking the player on the cheap! Indeed, Frank Lampard before signing his new deal with Chelsea was heavily rumoured to be considering invoking Article 17 of the Regulations as a player over the age of 28, having completed at least two years of his

protected period and potentially free to use Article 17 to his advantage.

Perhaps until a big name player worth a large transfer fee uses this path, this may continue to be an underused avenue for footballers wishing to leave their club in search of pastures new. Could the Fabregas or Torres Rule in a few years be as common place as the Bosman Rule? Arsenal or Liverpool fans alike would certainly hope not!

Daniel Geey, Solicitor & Ross Lima, Trainee



RUN OUT ONTO THE HALLOWED TURF, HEARING THE FANS* CHANT YOUR NAME

***YOUR MUM, YOUR BROTHER AND DAVE FROM THE OFFICE.**

You've always dreamed of playing for the club you love. Football Aid can turn that dream into reality, giving all football fans; from the classic armchair supporter to the ardent season ticket holder, the chance to follow in their footballing heroes' footsteps and play on the pitch of the club they support.

So, visit www.footballaid.com or call **0131 220 5999** to find out how you can secure your place in the ultimate football experience and help raise money for charity. Terms and conditions apply.

www.footballaid.com



Football Aid



About Field Fisher Waterhouse and Football Aid

Field Fisher Waterhouse and Football Aid have established a close working relationship over the past few years. FFW's emphasis on corporate social responsibility and its ongoing commitment to work in the charity sector is matched with its strong and growing presence in the legal sports market. This makes Football Aid an ideal partner for FFW to advise it on all its regulatory, licensing, technology and website issues to help Football Aid expand throughout Europe and maximise its revenues for its charitable causes.

About FFW's Sports practice

The FFW Sports Group has, over the past six years, established itself as one of the leading providers of legal advice to the sports industry. The Group acts for sports bodies and regulators, marketing agencies, sponsors, sports brand owners, broadcasters and professional clubs.

Our expertise in sports sector ranges from advising on regulatory and disciplinary issues to advice on TV and media rights, sponsorship and sports marketing, the acquisition and funding of sports business, brand protection, betting and gaming, merchandising, ticketing, endorsement, litigation and stadia development.

About FFW's regulatory practice

Our Regulatory Group combines public and regulatory, competition & EU, public procurement and regulated industries expertise. We specialise in supporting a wide range of commercial organisations on regulatory matters and advise many of the regulators and relevant public bodies themselves.

Clients instruct us to audit their regulatory frameworks against best practice and advise on issues including the powers and duties of public bodies and officials, consultation processes and influencing decision-making, the implementation of new statutory and non-statutory schemes, the requirements of fairness and natural justice, human rights and legal challenges.

Our lawyers are closely allied to our public sector, commercial and privacy & information law teams, working with them on a daily basis to achieve the best overall business result.

Please note that where this publication contains links to pages/items on third party websites, while such information may be available to be viewed and downloaded, this is subject always to the terms and conditions applicable to the particular website(s). Field Fisher Waterhouse LLP is not responsible for the content or operation of third party websites.

About our Editor



Daniel Geey
e. daniel.geey@ffw.com

Daniel Geey is a solicitor at Field Fisher Waterhouse. Daniel joined Field Fisher Waterhouse in March 2007 in the Competition and EU Group. Daniel has a keen interest in sports law and has experience in dealing with English Premier League Rules and broadcasting competition issues. He writes regularly for various journals and is the Editor of *On The Ball*.

Co-Authors



Mohammed Karim
Trainee



Anita Ngai
Paralegal



Ross Lima
Trainee



Mitain Patel
Trainee



Henry Marshall
Trainee



Joseph Ward
Solicitor

Contacts



Patrick Cannon
Corporate and
Head of the Sports Group
t. +44 (0)20 7861 4290
e. patrick.cannon@ffw.com



Matthew Lohn
Regulatory
t. +44 (0)20 7861 4950
e. matthew.lohn@ffw.com



Lewis Cohen
Commercial IP,
Licensing & Sponsorship
t. +44 (0)20 7861 4615
e. lewis.cohen@ffw.com



Hamish Porter
IP Dispute Resolution
t. +44 (0)20 7861 4826
e. hamish.porter@ffw.com



Jeremy Miles
Media
t. +44 (0)20 7861 4977
e. jeremy.miles@ffw.com



Colin Gibson
Litigation
t. +44 (0)20 7861 4123
e. colin.gibson@ffw.com



David Bond
Commercial IP
t. +44 (0)20 7861 4079
e. david.bond@ffw.com



Richard Kenyon
Employment
t. +44 (0)20 7861 4001
e. richard.kenyon@ffw.com



Karen McHugh
Planning
t. +44 (0)20 7861 4149
e. karen.mchugh@ffw.com

For further information please log on to our dedicated sports law website -
www.sportsbusinesslaw.com

Brussels
l'Arsenal,
Boulevard Louis Schmidtlaan 29,
1040 Brussel, Belgium
t. +32 (0)2 742 7000
f. +32 (0)2 742 7100
brusselsinfo@ffw.com

Hamburg
Am Sandtorkai 68, 20457
Hamburg, Germany
t. +49 40 87 88 69 8 0
f. +49 40 87 88 69 8 40
info@ffw.de

London
35 Vine Street
London, EC3N 2AA UK
t. +44 (0)20 7861 4000
f. +44 (0)20 7488 0084
info@ffw.com

Paris
7 Place d'Iéna,
75116 Paris, France
t. +33 (0)1 73 02 30 00
f. +33 (0)1 73 02 30 01
parisinfo@ffw.com

www.ffw.com

This publication is not a substitute for detailed advice on specific transactions and should not be taken as providing legal advice on any of the topics discussed.

© Copyright Field Fisher Waterhouse LLP 2008. All rights reserved.

Field Fisher Waterhouse LLP is a limited liability partnership registered in England and Wales with registered number OC318472, which is regulated by the Solicitors Regulation Authority. A list of members and their professional qualifications is available for inspection at its registered office, 35 Vine Street London EC3N 2AA. We use the word "partner" to refer to a member of Field Fisher Waterhouse LLP, or an employee or consultant with equivalent standing and qualifications.