

On The Ball

Our regular football-focused legal round-up

Welcome to *On The Ball*.

In this issue, we gaze again into the complex world of football and the law. We delve into subjects such as the Premier League Takeover Regulations, Twitter and football and the UEFA Financial Fair Play Rules.

On the Ball is produced in conjunction with Football Aid, a sports charity organisation, which enables football supporters to 'Live the Dream' and bid online at Footballaid.com to play on the hallowed turf of their cherished 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 interesting. If you have any questions or comments you can contact me at my email below.

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Premier League Football Club Takeovers and Ownership Rules

High profile takeovers of Premier League (PL) football clubs have become common place in recent times. Current Chelsea owner Roman Abramovich is almost as recognisable as some of his star players.

Many investors have seen the vast revenues that can be generated from broadcasting money, Champions League success, merchandising and ticket sales.

One of the most notable takeovers in recent years occurred in July 2003 when Chelsea was sold to Roman Abramovich for around £140m. It has been reported that Mr Abramovich has since poured over £700m into Chelsea in the form of transfer fees and wages. Within three years Chelsea had invested heavily in Shevchenko (£30m), Essien (£24m), Drogba (£24m), Wright-Phillips (£21m), Carvalho (£19m), Mutu (£19m), Duff (£17m), Veron (£16m) and Crespo (£16m). Chelsea subsequently won the PL title in 2004-05, 2005-06, 2009-10 and FA Cup in 2007, 2009 and 2010.

Interestingly Ken Bates, who sold Chelsea to Abramovich considered that:

"if this is the start of the super-rich invaders it'll be very, very interesting to see how the fans react to it."

No doubt Chelsea fans have been more than happy with their trophy collection and mega signings since the beginning of the Abramovich era. Other football takeovers in the PL have been more controversial. One example is Manchester United. Having won the PL championship for three out of the last four years and Champions League winners in the 2008-9 season, United's debt was around £700m after the Glazer family takeover back in 2005. In the three years since the takeover, vast amounts of interest payments have been paid to various investment banks and hedge funds who loaned the Glazer family part of the money needed to purchase Manchester United. Last year's accounts show that if Ronaldo had not been sold to Real Madrid for £80m, the club would have made a loss of over £30m for the second consecutive year.

Club	Date of Most Recent Takeover	Who Currently Owns the Club
Aston Villa	August 2006	Randy Lerner
Birmingham	November 2009	Carson Yeung
Blackburn	November 2010	Venky's
Chelsea	July 2003	Roman Abramovich
Liverpool	October 2010	Fenway Sports Group—John Henry
Manchester City	September 2008	Sheikh Mansour
Manchester United	July 2005	Glazer Family
Sunderland	May 2009	Ellis Short
Stoke	May 2006	Peter Coates
West Ham	January 2010	David Gold and David Sullivan
Wolves	August 2007	Steve Morgan

However, the award for the largest ever annual loss in the PL goes to Manchester City with losses of £121m for the year ending 31 May 2010.

The reason why it is important to illustrate the various debts and losses that PL clubs have posted is because UEFA (European football's governing body) is aiming to introduce a financial fair play regulation across UEFA's membership. Its president Michel Platini believes that clubs should not be able to repeatedly spend more than their generated revenues and that a rich benefactor like Mr Abramovich or Sheikh Mansour should not be able to subsidise a club spending spree. The consequence of the introduction of such a rule would mean that any club wishing to participate in the lucrative Champions League or Europa League would have to adhere to strict UEFA guidelines on a number of defined financial targets. See the article later on in this On the Ball edition.

Premier League Club Ownership Rules

An important consideration for anyone wishing to buy a PL club involves satisfying various PL ownership regulations. In 2004, the PL introduced the fit and proper person test (FPPT). This was to ensure, among other things, that an owner, significant shareholder or a director of a PL club has:

- not been found guilty of a number of criminal offences;
- no involvement in the day to day running of any other PL or Football League club; or
- not been involved with a number of insolvent companies.

Such criminal offences include any dishonesty offence and, for example, ticket touting. A relatively new rule introduced for the 2009/10 season stipulates that if an owner, significant shareholder or director of a PL club is prohibited from entering the United Kingdom, they will not be able to become involved in a PL club.

An owner, significant shareholder or director of a PL club has to sign a FPPT declaration before they purchase a PL club and then submit a new declaration each season or where a change of circumstances occurs.

The previous ownership of Manchester City illustrates one example of the FPPT in practice. Thaksin Shinawatra, the former Thai Prime Minister, courted controversy in 2007 when he purchased Manchester City. Various human rights groups protested about his human rights record during his time as Thai Prime Minister and stated that he should be barred from owning a PL club.

The Thai government that deposed him in September 2006 initiated a number of investigations into Mr Shinawatra's affairs. Thai prosecutors froze many of Mr Shinawatra's domestic assets. One allegation, involving a land purchase by his wife from a government agency resulted in Mr Shinawatra's wife being found guilty of tax evasion. The result of this meant that Mr Shinawatra no longer fulfilled the FPPT criteria. Mr Shinawatra had by this stage already sold his stake in Manchester City.

PL Chief executive Richard Scudamore was recently questioned on the application of the FPPT to the ex-Manchester City owner, Mr Shinawatra. Whilst some believed Mr Shinawatra should not have been allowed to buy Manchester City in the first place, Mr Scudamore believed that the FPPT did its job by forcing him to sell his shareholding in Manchester City to Sheikh Mansour, because he realised that he would soon be in breach of the FPPT.

"once his wife was convicted, our rules would define her as an associate of his and... that would have caught him... the fact he sold the club so quickly was because of the application of our rule. He knew that his wife and him were not going to comply [with the FPPT]. So in effect, the 'Fit and Proper Persons' test worked."

The ENIC Case and multiple club ownership

As stated above, the FPPT also ensures that no owner, significant shareholder or director of a PL club can have an ownership stake in another PL or Football League club. There are also additional UEFA rules relating to shareholdings in two or more clubs competing in a UEFA sanctioned club competition (i.e. the Champions League or the Europa League). These additional rules, in part, occurred as a result of the ENIC case which is described below.

The case involved the English National Investment Company (ENIC), which had a variety of shareholdings in several clubs competing in UEFA competitions in a single season. In 1998, a case arose because of two clubs that ENIC owned (Slavia Prague and AEK Athens) competing in the same UEFA Cup competition. UEFA introduced a rule prohibiting one company owning or controlling two or more clubs competing in the same competition. UEFA's justification was that matches between two commonly owned clubs may be decided in the boardroom rather than the football pitch. This could happen if, for example, in the group stages of a UEFA competition Slavia Prague needed to win a match against AEK Athens, to qualify for the next round. If AEK Athens were not in a position to qualify for the next stage, and then fielded a weaker team (allowing Slavia Prague to win), many may argue that such conduct (by ENIC) would be unsporting and improper.

As a result of this case, additional UEFA regulations were drafted to ensure that the above scenario could not occur. Current UEFA regulations do not prohibit one company owning two clubs in Europe, but do prohibit two clubs that are owned by the same company playing in the same UEFA club competition.

Opinion and Conclusion

The above descriptions illustrate the rules and regulations in place in the PL that any potential owner, shareholder or director has to satisfy. It is therefore vitally important that any person wishing to become involved with a PL club is aware of the domestic and international regulations in place. For example, a person wishing to buy shares in a PL football club who has

already been involved in a number of company insolvencies is unlikely to pass the PL FPPT. Similarly, UEFA regulations on multiple club ownership are important because if the owner of an Italian team, which qualifies for the Champions League, also owns an English team which also qualifies for the Champions League, UEFA rules prohibit both teams playing in the same competition. Football investors should be wary of investing in more than one European club.

By Daniel Geey, Solicitor

Rotation, Weakened Teams and the Premier League Rules

Introduction

With a new domestic football season under way and Premier League (PL) clubs now having grown used to dealing with squad sizes limited to 25 players, eight of whom have to meet the 'home grown' criteria, this article considers the highly contentious issue of PL teams strategically fielding weakened teams.

Previous seasons have witnessed Wolverhampton Wanderers (Wolves) and Blackpool being disciplined as a result of breaching PL rules for fielding weakened teams. Such PL Board decisions have raised questions about past situations where managers have rotated or rested players in important games yet not been punished.

In readiness for the 2011-12 season, the PL has announced its rotation rule is to be relaxed. This article looks back at a number of contentious decisions and highlights the potential pitfalls of the "weakened team" rule.

The Regulations

In February 2010 the PL Board found Wolves guilty of breaching rules B.13 and E.20. B.13 relates to each PL club behaving

"towards each other Club and the League with the utmost good faith."

Rule E.20 stipulates that

"in every League Match each participating Club shall field a full strength team."

This was in relation to the Wolves v Manchester United game when ten changes were made from the previous PL match. Following the PL Board's decision there was much debate about how previous instances of heavy rotation had gone unpunished.

Neil Warnock, the ex-manager of Sheffield United whose team were relegated after Liverpool and Manchester United (United) allegedly fielded weaker teams (against teams competing with Sheffield United to avoid relegation in 2007), did not mince his words.

"It's a disgrace the Premier League even thought about charging them [Wolves]. They didn't charge United or Liverpool, which were far more expensive mistakes. Have Liverpool been docked points for the team they put out against Fulham or the one Manchester United did against West Ham? I don't think so somehow."

There continues to be no accepted definition of what constitutes a "full strength team" and it is clearly an area based on difficult, subjective assessments of perceived player quality, a managers need to rest players and player injuries.

Perhaps Wolves' manager Mick McCarthy was too blunt in his explanation that Wolves had a relegation six pointer against Burnley three days after the United game, and that was his priority. Wolves fans who travelled to Manchester for the game were subsequently furious that they paid over £40 to watch a Wolves 'reserve' team take on United.

In a similar situation to that of Wolves, Blackpool were fined £25,000 last season for making ten changes for an away trip to Aston Villa. They lost 3-2. Holloway defended his selection, saying at the time:

"I've got every right to do what I like. Who are they to tell me my players are not good enough?"

Two Premier League Examples: The Quality of Your 'Second String'

Below are two examples of heavy rotation by Manchester United and Liverpool. The context of the United example, was that they had just won the PL with one game to spare. They played Hull on Sunday 24 May 2009 ahead of the Champions League Final against Barcelona just three days later. Nine days earlier United put out its strongest team against Arsenal because at that stage the race for the title with Liverpool was still up for grabs. Once United had secured the PL title they rotated 10 of the starting 11 players for the trip to Hull.

Arsenal v Manchester Utd 15 May 2009	Hull v Manchester United 24 May 2009
Van der Sar	Kuszczak
O'Shea	Rafael Da Silva
Vidic	Brown
Evans	Neville
Evra	De Leat
Ronaldo	Nani
Fletcher	Fletcher
Carrick	Gibson
Giggs	Welbeck
Rooney	Martin
Tevez	Macheda

Alex Ferguson made ten changes for the Hull game but was not sanctioned by the PL (this was the same number of changes as Wolves made against United for the match it was found to have breached PL Rules). Did the fact that the United players playing Hull included Nani, Fletcher, Brown and Neville, who were all internationals playing in United's 'weakened' team, lead the PL to the conclusion that United was putting out its 'full strength' team? Surely such a conclusion would disadvantage teams with smaller wage bills that could not have a squad full of internationals.

Another example was when Liverpool made nine changes from the team that had previously beaten Chelsea in the Champions League semi-final four days prior to their PL game against Fulham. Even with those changes the starting eleven facing Fulham contained nine internationals. Arbeloa and Insua were the only two who at that time had not represented their country, although both have subsequently been called up for Spain and Argentina respectively.

Liverpool v Chelsea (Champions League semi-final second leg) 1 May 2007	Fulham v Liverpool (PL match) 5 May 2007
Reina	Reina
Finnan	Arbeloa
Agger	Paletta
Riise	Hyypia
Carragher	Insua
Pennant	Pennant
Gerrard	Alonso
Zenden	Sissoko
Mascherano	Gonzalez
Kuyt	Fowler
Crouch	Bellamy

Even with nine and ten changes made, international class players were still present in both Liverpool and United's 'weakened' team.

Unfortunately the PL did not make its full decisions in the Wolves or Blackpool matters public so it is not possible to assess how the disciplinary Board measured what constituted a full strength team.

Objective Assessments

There are a number of relevant factors that could be used in assessing whether a PL club is fielding its "full strength" team. A basic measure of a club's full strength team might be to base it on the players that start the most number of PL games for the club. A team that is not at full strength would fail to contain many of the players that have started the most PL games for a club. In the case of Wolves it would mean assessing how many of the team that played United were amongst Wolves' top eleven starters since Wolves had returned to the PL. However, this alone is clearly too crude a measure as it fails to factor in player unavailability due to injury, international duty or having only recently being signed to the club.

It also begs the questions as to whether the players are internationals has any bearing on whether they are considered to be *full strength* when included in a club's team? It may seem perverse for the PL to sanction a club who had made wholesale changes to their starting line-up yet the majority of those players named in the allegedly weakened team play international football. The problem with such an analysis is that it would clearly penalise teams which do not contain an entire squad full of seasoned internationals. Teams like Manchester City and Chelsea with squads packed full of internationals could all be deemed capable of first team action.

Interestingly, the PL statement fining Blackpool in January 2011 stated that the PL had taken into account:

1. the Blackpool team fielded against West Ham on 13 November 2010;
2. the team fielded in the FA Cup with Southampton; and
3. Ian Holloway's comments concerning the team selected for that game.

This at least shows the rationale of the PL in coming to its decision.

Does the result have a bearing on the alleged breach?

In the above United example, United beat Hull with its weakened team and Hull stayed up only because Newcastle lost to Aston Villa in the last game of the season.

If Hull had beaten United's weakened team and Newcastle had beaten Aston Villa, it would have been very interesting to see whether Newcastle would have asked the PL to charge United under the very same rules that Wolves were guilty of breaching. Therefore does the result of a game, where an alleged weakened team has been fielded make any difference to whether a club is charged?

The PL's decision to penalise Wolves suggests that, up until last season, clubs with a smaller or 'weaker' squad faced a far greater likelihood of the PL penalising them for squad rotation than a club which enjoys the luxury of a squad full of top quality international players.

Update for the 2011-12 season

The PL recently announced that the "weakened team" rule was to be relaxed. After announcing the change to the ruling, a Premier League spokesman said:

"The clubs voted at the last Premier League Annual General Meeting to modify the rule regarding clubs fielding full strength teams (E.20). From 2011/12 onwards the rule will allow any combination of players included in a club's 25-man squad list to be selected for a Premier League fixture. The 25-man squad rules do allow clubs to pick under-21 players beyond

those named in their squad list and, with this in mind, it was agreed by the clubs that it was appropriate for the rule to remain in place in order to ensure the integrity of the competition".

Thus anyone selected from the named 25-man squad will be deemed acceptable. There however could still be issues if a number of under 21 players are fielded in a PL match.

Conclusions

Wolves Chief Executive, Jez Moxey, believed that the:

"ruling may now lead to a wider discussion regarding the issue of squad rotation and the Premier League's rules."

Wolves striker Kevin Doyle was more outspoken in his criticism of the decision commenting that:

"Bigger teams change their sides massively every week, so why is that any different for us?"

Whilst Arsenal manager Arsène Wenger believed that the Wolves team selection against United *"threatened the international credibility of the Premier League"* many in the game are intrigued as to why Wolves have been found guilty of a rule breach when other clubs appear to have behaved in a similar manner.

The disciplinary action taken against Wolves and Blackpool would have previously been seen as a warning shot to all PL clubs to ensure each club fields its strongest possible team for every PL match. The

beginning of the current PL season may again throw up instances of clubs prioritising certain competitions if their league position is secure. However, the announcement that the rule will be relaxed, so that anyone in a club's 25-man squad will be considered acceptable, brings an element of common sense to a previously unsatisfactory situation.

By Daniel Geey, Solicitor

Goal Line Technology: A step too far or just the beginning?

"Lampaaaaaaaard!!! He did it! It was in... No? Surely that was in?! It crossed the line, but it's not been given. Surely that was in...?"

Guy Mowbray, England World Cup Commentator

Poor England performances and questionable tactics aside, one of the biggest talking points from the successful South African World Cup was the 'goal' not awarded to Frank Lampard after his 38th minute shot during the England Germany match. Some may view it as fate finally catching up with England 44 years on from Roger Hunt's strike in the 1966 World Cup Final.

Sepp Blatter, President of FIFA, apologised to the England team in the aftermath of the match and claimed that the incident had convinced him to reconsider putting the issue of the use of goal-line technology onto the agenda of the next board meeting planned in October 2010 of the International Football Association Board (IFAB).

The much rehearsed debate is whether:

1. technology would ruin football,
2. whether it should be used for certain decisions; and
3. actually some human error is all part of football's unique appeal.

Extent of Use

Many believe that if technology is used to assist referees and their assistants in making decisions about whether a ball crosses the line, there will also be calls for the use of video evidence for other decisions. Take the example of the World Cup Mexico vs Argentina game. Carlos Tevez scored a goal from an offside position. A replay of the

goal was then shown on the huge screens at the Soccer City Stadium in Johannesburg which clearly showed Tevez was offside. After seeing the replay, (which was shown against the rules) the Mexicans urged the referee and linesman to change their minds. The problem that faced the officials was that they were not allowed under FIFA rules to take account of the video technology even if it was clear that an unjust decision had occurred.

Therefore the goal stood much to the anger of the Mexican players, management and fans.

The question remains as to the scope of the technology. Chief executive of the Football Association of Wales Jonathan Ford doubted whether football was:

"really ready to embrace that full technology? If you start [with] the goal-line technology where do you end?"

Clearly, Tevez was offside just as it was obvious that Lampard's shot had gone over the line. However, FIFA's stance after the World Cup was that technology should not be used to overrule offside decisions but a ball crossing the line could be different. The reason for the distinction is that some believe technology is best suited only for goal-line incidents.

"Goal-line incidents are the only decisions which are entirely definitive and the answer can be provided to the referee within 0.5 seconds of the incident happening, this makes a clear distinction between goal-line and other decisions. Referees want goal-line technology. It would be there to help them, not to replace them."

Dr Paul Hawkins, co-designer Hawk-Eye

At present, it appears that if technology is going to be embraced by FIFA (and it is a big if), it will only be for goal line decisions.

Cost

At the IFAB Annual General Meeting in Zurich the board voted on the introduction of goal-line technology but the proposal was blocked by Northern Ireland, Wales and FIFA (only England and Scotland consented) as too costly to implement. Hawkeye and Cairros however (two of the leading goal line technology companies) have offered to install the systems for free in return for the right to enter into sponsorship agreements for sponsors' logos to appear when a decision is referred. For example, Rolex often sponsor the use of Hawk-Eye in tennis competitions. Presumably however, these systems are just one part of the overriding cost of the process. It is also not clear who would have the responsibility to pay for the technology, but critics of the IFAB decision point to FIFA's £1.7 billion profit from the World Cup this year as proof that affordability should not really be an issue for the world governing body.

It also leaves the question of whether technology will be implemented in all leagues across the world, or perhaps only in the top divisions. Lower leagues with fewer resources may not have the financial means (even if part of the technology is provided free of charge) to implement the technology. This could create a two tiered technology system of the have's and have not's.

Human Error

The mistakes of officials have been cited as an attractive aspect of football matches:

"No matter which technology is applied, at the end of the day a decision will have to be taken by a human being. This being the case, why remove the responsibility from the referee to give it to someone else?"

Sepp Blatter, FIFA President

President Blatter raises an interesting point. Do refereeing decisions need to be 100% right all of the time? Is human error actually attractive, thus prompting talking points which make the game more enjoyable if also more controversial? Surely, everyone makes mistakes (coaches selecting the wrong formation or a player missing a penalty)? The difference is perhaps because issues of fairness and justice are more relevant if something blatant like a ball being kicked 1 metre over the line occurs. Many argue that referees should be aided to make the right decisions and if that means a few more breaks in the game, then at least a correct decision is the outcome.

As an alternative to technology based solutions FIFA is also actively considering the introduction of two more pitch-side referees. Last season's UEFA Europa League competition trialled two additional referees stationed on the goal line, near to the six yard box. It seemed that prior to the World Cup and the goal line fiasco in the Germany England game, FIFA were leaning towards the two additional referee solution. Popular opinion is now moving towards technology to solve such injustices.

Other Sports

Technology has been introduced into various sports in recent years. In tennis, there are two different systems to question line calls: MacCAM and (the more popular) Hawk-Eye. The trajectory of the moving tennis ball is recorded by several court-side cameras and an accurate representation of its path is calculated. Players have the opportunity to unsuccessfully challenge three times per set (plus once more if in a tie break). In Rugby League in the UK, video replays are used to assist in decisions and in the NBA video replays can be used to determine whether a shot is released before the shot clock has expired.

The one big difference between football and the above sports is the relative stop-start nature of the games. Football fans are attracted to the game because of its non-stop action. Any delay in processing decisions would have a massive impact on how the game would be played. If FIFA were to change its mind and allow the introduction of goal-line technology to assist referees, decisions will have to be almost instantaneous.

Conclusion

Goal line technology appears back on the menu. It would have certainly helped prevent instances:

- in the Premier League such as Roy Carroll's 'claw back' of Pedro Mendes' shot in a 2005 Premier League game between Manchester United and Tottenham; and
- in the Champions League such as Luis Garcia's decisive goal for Liverpool against Chelsea in the 2005 Champion's League semi-final.

FIFPro (International Federation of Professional Footballers) recently surveyed clubs participating in the UEFA Europa League last season. 70% of clubs responded negatively to the introduction of two more referees, whilst 90% were in favour of introducing goal-line technology. Tijs Tummers, technical committee secretary for FIFPro, said that FIFA's refusal to introduce goal-line technology was "unacceptable". Unfortunately, the IFAB (in July) went against the wishes of the players and decided that various new competitions would implement the two extra referees experiment for the UEFA Champions League, the Asian Football Confederation President's Cup, the French League Cup, the UEFA Super Cup as well as domestic competitions in Brazil and Mexico.

Football players, fans, coaches, and referees alike all now await the conclusions of the IFAB's October meeting to decide whether new proposals will lead to technology being given a leading role in assisting referees.

By Daniel Geey and Mohammed Karim

Kakuta Who?

Introduction

On 3 September 2009 the FIFA Dispute Resolution Chamber (the DRC) ruled on a case concerning French player Gael Kakuta and Chelsea. The DRC heavily sanctioned Chelsea for inducing the player to breach his contract with Racing Club de Lens (Lens). Chelsea believed that there was no signed contract in place between Kakuta and Lens and the player was therefore available once Kakuta turned 16. As a result, Chelsea were:

- banned from registering any player until the January 2011 transfer window; and
- required to pay compensation to the tune of almost €1m.

Chelsea appealed to the Court of Arbitration for Sport (CAS). Initially the Chelsea appeal successfully suspended the above sanctions. However on 4 February 2010 before a judgment was given, Lens and Chelsea came to an agreement whereby in exchange for an undisclosed amount the “two clubs and the player admitted that there was never any valid contract between the player and RC Lens.” This resulted in the case being discontinued, Lens receiving an agreed amount of compensation and Chelsea not having the FIFA sanctions imposed.

What happened?

Lens claimed that Kakuta signed a “contract aspirant” or an “accord de non sollicitation” with Lens before his 16th birthday tying him to the club until 2008. English clubs have taken advantage of signing youth players because they can sign 16 year old players on scholarship training schemes. Other continental clubs appear to be at a disadvantage because of national employment laws. Clubs like Barcelona have lost talented youngsters like Cesc Fabregas to Arsenal and Gerard Pique to Manchester United, before both moved back to the Catalonia. This was because Barcelona were not permitted to sign 16 year old players.

France for example, has legislated so that such pre-contracts (the “contract aspirant” or the “accord de non sollicitation discussed above) can be signed before a French academy player turns 16. The Kakuta case, if it had run its full course, may indeed have turned on the validity of such a pre-contract. Francis Collado, a former director of Lens explained that at:

“...14 we proposed a contract. In effect this was a pre-contract because in France you can't pay a player until he's 16. The contract was registered with the French FA and the French league.”

FIFA's Rules and the Procedure

FIFA's heavy punishment was based on the FIFA Regulations on the Status and Transfer of Players. Article 17.4 below relates to when a club and/or player terminates a contract without just cause. It states:

“It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two registration periods.”

The rule makes reference to a club banned from registering any new players for two transfer windows as a consequence of a club inducing a breach. It meant that Chelsea were initially banned from registering players in the January and August 2010 transfer windows.

Who is CAS and what happened next?

CAS describe themselves as:

"an institution independent of any sports organization which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world."

CAS has the ability through its arbitration appeals procedure to rule on disputes stemming from decisions, like that taken by FIFA in the Kakuta case. The CAS procedure enables parties to the dispute to have a final decision usually within four months of the filing of the appeal. There is also a fast-track avenue that allows decisions to be made even quicker.

As is known now, Chelsea appealed the DRC decision to CAS in Lausanne. CAS had the power in this case to make a final judgment on any appeal. As a general rule, there is the ability to appeal a CAS appeal decision but such avenues to the Swiss Supreme Court are very narrow.

There were of course various tactical considerations for Chelsea to decide upon when they appealed. Their first objective was to ensure the FIFA sanction was suspended until the final decision by CAS. This would have enabled the club to purchase players in the January transfer window should it have been required. FIFA would have contended that such a freezing order, would have had the effect of blunting any sanction as Chelsea could then be able to purchase and register players in advance of any subsequent ban. Chelsea argued that should the transfer ban not be frozen, and they were cleared by CAS in the appeal, they would have been unfairly prohibited from purchasing players. This may have been even more important to Chelsea's team planning with the African Cup of Nations taking Mikel,

Kalou, Essien and Drogba away from the squad for part of the season.

The Settlement

As briefly assessed above, both the clubs came to a settlement and CAS announced that:

"the two clubs and the player have recognised that the contract between the player and RC Lens was not valid. Accordingly, the player could not have terminated it prematurely and without just cause and FC Chelsea cannot therefore be liable for inducing a breach of contract. As a consequence, in light of these new circumstances, the sanctions imposed upon Chelsea FC and the player by the Fifa Dispute Resolution Chamber had to be lifted."

In a statement released on their website Lens were:

"pleased with the agreement both "financially and technically".

The settlement statement does however pose the question as to why the DRC has ruled against Chelsea in the first place if there was no contract in place. Nonetheless, a commercially acceptable outcome was reached between the parties with Chelsea appearing the victors with Lens agreeing that there was no valid contract in place.

By Daniel Geey, Solicitor

The World Cup, Injuries and Compensation

With the World Cup having taken place in South Africa last June, this article aims to tackle the legal issues surrounding player participation at the World Cup and other national team football tournaments. Some interesting legal questions have arisen in the past few years. Many of the issues discussed below demonstrate the tension that exists between clubs who pay a player's salary and the national teams who select that player for international duty. The topics discussed below include debates about:

- who should pay the wages of a player if they are injured whilst on international duty;
- whether individual associations like the English Football Association (the FA) should take out insurance against player injury; and
- how much compensation (if any) should clubs receive whilst their players play in international competitions like the World Cup.

Player Injuries During International Duty

Clubs had for many years protested that they should receive compensation for releasing their players to represent their respective countries in international matches. National associations had traditionally rejected the idea of paying clubs to use their players when playing for their country. An important case occurred in 2004 which proved the catalyst for change in this area of disagreement between clubs and national associations. The case concerned football player Abdelmajid Oulmers. In November 2004, whilst playing for Morocco against Burkina Faso, Mr Oulmers was injured and was unable to play football for eight months. His club, Sporting Charleroi, blamed the loss of the player as the reason for failure to win their domestic championship. Understanding the issue was of major importance to all clubs throughout Europe, an association called the G14 supported Sporting Charleroi in a compensation claim against FIFA for the injured Oulmers.

By way of background, the G14 was formed in September 2000 by fourteen of Europe's top clubs. It had no official authority in the footballing world and had been seen by UEFA as an unofficial 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.

The G14 further claimed a huge €860m in damages and compensation for the costs that had not been paid to clubs whose players had been representing their country for free whilst the clubs continued to pay their wages.

In January 2008 as a result of negotiation on the part of UEFA, FIFA and the G14, the clubs that formed part of the G14 agreed to disband the organisation and replace it with a new association called the European Club Association (ECA). At the same time it was agreed between UEFA, FIFA and the G14/ECA, that all outstanding lawsuits (including the Oulmers case) would be brought to an end. It meant that a court did not make a final decision on the case.

Both parties viewed the negotiation and transformation of the G14 into the ECA as a big success. FIFA and UEFA now have the comfort that various legal disputes started or supported by the G14 clubs would be dropped whilst the clubs, from the Euro 2008 tournament, were guaranteed to receive compensation for releasing their players. Many believe that the most significant part of the G14/ECA deal with UEFA and FIFA was the significant compensation paid to clubs for its players participating in FIFA and UEFA sanctioned Finals Tournaments.

The agreement entitles compensation to be paid to the clubs for their players' participation in international tournaments. It should be stressed that the compensation payable by UEFA and/or FIFA to clubs does not however cover situations when a player is injured when playing for his country. The case of Michael Essien, explained below, is a recent example of this ongoing issue.

For Euro 2008, UEFA agreed that clubs who released players should be 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.

Additionally whilst UEFA 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".

It has been reported that the 2010 South African World Cup will see a total of €26 million being paid to domestic clubs, amounting to just over €1,000 per player per day. This figure is set to increase for the 2014 Brazil World Cup to around \$70m. Michael Gerlinger, a lawyer for German team Bayern Munich, explained that the German club had received €1m for releasing its stars to play in Euro 2008.

Injury Insurance

As mentioned above, whilst FIFA and UEFA appear now to be paying compensation to clubs for releasing them to play in World Cup Finals and European Championship Finals Tournaments, there is no comprehensive mechanism currently in place for compensation if a player gets injured on international duty. The example of the Togo national team being shot at in the build up to the African Cup of Nations tournament illustrates a very serious issue. If Emmanuel Adebayor had been injured in the terrorist attack, would Manchester City or Togo have been liable to pay his wages? In most cases this would depend on whether the national association has an insurance policy to cover such eventualities. Many national associations explain that such insurance policies are too expensive. This can leave top European players whose transfer value may be around €10m-€20m and who are paid €100,000 per week without insurance when playing international matches. The obvious safety net is for the club to insure the player for when he plays for his country.

It was reported that when Michael Owen was injured at the 2006 World Cup, Newcastle, his club at the time, received £10m in compensation. Owen missed almost the entire following Premier League season. Newcastle received the compensation because the English FA had an insurance policy in place to cover his wages should he or other members of the English national team be injured during the tournament. Many national associations however do not have player injury insurance in place.

In a similar case, Michael Essien the Chelsea midfielder suffered knee ligament damage whilst on international duty with the Ghana national team. It was thought that the reason Chelsea did not pursue a compensation claim with the Ghana Football Association was because the Association could not have afforded to pay Essien's wages (reported to be over £100,000 per week). Some commentators believe that every national team should be compelled to take out insurance for player injuries in order to avoid such situations like the Essien example.

At present, it is reported that Arsenal are seeking compensation from the Dutch Football Federation. Robin van Persie was injured playing for Holland in a friendly match and was unable to play for Arsenal for around five months. Arsenal manager Arsene Wenger was adamant that he:

"expect[ed] financial compensation for the damage it can make to the championship [prospects] and the salary involved." He went on to state that "the federations have too much power ahead of the clubs, yet it is the clubs who pay the players' wages."

Conclusion

Whilst clubs like Arsenal, Chelsea and Bayern Munich are all now compensated for releasing their players during a World Cup or European Championship Finals Tournament, there is still much debate about who should insure players whilst they are on international duty. If they do subsequently get injured, the debate will continue as to who is liable to compensate the club, for losing that player for a significant amount of time. These are the very same arguments that may have been resolved had the Oulmers case been ruled on. As the ECA, FIFA and UEFA came to a compromise agreement in 2004, there may well be many future disputes between clubs and national associations, when players return injured from international duty. Who pays and who is obliged to take out insurance to cover any risk of injury appears now to be a pressing international issue.

Champions League and Premier League Player Quotas

Introduction

This article is to give you an understanding about the free movement of football players in the European Union (EU). It will set out cases and the rules and regulations of UEFA, FIFA and the Premier League.

Legal Framework

The laws that govern this issue primarily relate to Article 45 of the Treaty of the Functioning of the European Union. This basically means that every European Member State (such as Germany, Italy or Spain for example) has to obey European-wide laws on a number of issues. One such law is Article 45 which relates to the free movement of workers, which include football players. Article 45 only relates to players playing inside the EU. Therefore an English player in Japan could not use Article 45 to challenge Japanese football rules.

Bosman and the Free Transfer

The 'Bosman' case is seen by many football commentators as the most significant European football case of all time. Jean-Marc Bosman was a footballer playing for a Belgium club called Leige. His playing contract expired in 1990 but the club that wished to buy him (Dunkerque) did not offer a large enough transfer fee to Leige. As a result Leige held on to his registration and did not allow him to leave the club. The reason why this story is the most important football decision ever made in the EU is because the European courts in 1995 (five years after his complaint) ruled that:

1. when a European footballer came to the end of his contract he was free to sign for any European club he wished and that it was illegal for the club he had played for to hold on to his playing registration; and
2. as foreigner quotas were in operation in European competitions, such quotas which allowed for a limit of three "foreign" players in a team squad were also illegal.

Both issues were ruled unlawful under Article 45. The effect was that Bosman and all other football players playing in the EU were given the right to a free transfer at the expiry of their contracts. Some of the biggest Bosman transfers in Europe have included Sol Campbell from arch rivals Tottenham to Arsenal and Steve McManaman from Liverpool to Real Madrid. The summer before McManaman moved to Madrid, Barcelona bid £12m for McManaman but the transfer fell through. Less than a year later he had joined Madrid on a free transfer.

The relevance of the Bosman decision is that:

1. European footballers can benefit from letting their contracts expire and then sign for another EU club. Players like Michael Ballack took advantage of this with a large signing on fee from Chelsea and wages (reported to be over £100,000 per week) when he joined Chelsea from Bayern Munich in 2006; and
2. no quotas can be imposed on clubs by FIFA or UEFA that discriminate on the basis of nationality (as this would conflict with Article 45 as mentioned above).

The New Quota Debate

In the last few years, and because of the influx of many foreign players into European leagues the Premier League, UEFA and FIFA have either implemented or propose to introduce further reforms to limit the number of foreign players playing in leagues like the Premier League, Serie A or competitions like the Champions League or the Europa League. The football authorities have to be very careful however that they do not implement quota systems that would be illegal under the European free movement laws.

UEFA has already implemented new regulations concerning foreign players called the "home grown players" rule. At present, UEFA regulations state that the 25 man squad submitted by a club participating in the Champions League must include 8 "locally-trained players".

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. The Premier League

Table 1: Current UEFA Rules and PL Rules for the 2010-2011 season

Total number of players allowed in each <u>competition</u> squad	Total number of players allowed in each <u>match</u> day squad	The minimum number of home-grown players selected in each <u>competition</u> squad	Number of players under the age of 21 permitted to be registered in the competition squad
25	18	18	Unlimited

Table 2: Comparison between FIFA proposals and UEFA and proposed Premier League rules

Players	UEFA regulations	FIFA proposals	PL regulations for the 2011-12 season
Steven Gerrard playing for Liverpool	Qualifies as a home grown player	Qualifies as national of England	Qualifies as a home grown player
Cesc Fabregas playing for Barcelona	Does not qualify as a home grown player even though he was born in Spain	Does qualify as he was born in Spain	If he was still at Arsenal, qualifies as a home grown player even though he was born in Spain

implemented a home-grown player rule in time for the start of the 2010/11 season. The PL quota rule follows a very similar format to the UEFA rules as discussed above. Home grown players will be defined by the Premier League as anyone registered with the English or Welsh Football Associations for three seasons or 36 months before a player's 21st birthday.

The important part of the rule is that it applies irrespective of nationality meaning that players such as Cesc Fabregas, Barcelona's new Spanish midfield maestro, does not count towards Barcelona's quota of "locally-trained players" even though he is Spanish. This is because he trained at Arsenal for three years before his 21st birthday.

The future of foreign player quotas

FIFA has not yet brought any rules on a quota system into place. Its proposals for reducing the number of foreign players in national leagues, include introducing a true quota system for foreign players, where every team must consist of at least 6 players born in the country they play football in. This is important as this restriction is based directly on nationality. This is where the UEFA rules and FIFA proposals differ. Table 2 illustrates the point.

Clubs will not want their ability to purchase the best international players restricted. League's 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.

Opinion and Conclusion

From a legal perspective, it appears unlikely that FIFA's proposals will be permissible under European law. Unlike the UEFA and PL rules, the FIFA proposals discriminate on the basis of nationality whereas the reason that UEFA's rules appear not to breach European laws is because they are not based on nationality but where a player of any nationality trained between 15-21 years of age. Sepp Blatter, the FIFA president, had previously appeared very insistent that the 6+5 rule would be implemented in Europe. This looks increasingly unlikely now. It may mean though that some time in the future, a player just like Bosman did in 1990, will challenge such football rules again. It certainly means interesting times ahead.

By Daniel Geey, Solicitor

Being Tweeted Fairly? Footballers, Clubs and Social Media

Introduction (in 140 characters)

Footballers: beware of fines, bans, hackers and privacy settings. Clubs: get your guidelines and damage control policies in place *#beforeyougetintorealtrouble*

Footballers are always going to be in the headlines. Late night drinking, kiss-and-tell stories and mega transfers create big news stories. We even have Kenny Dalglish (and most of his extended family) on Twitter. Traditional media has relied on the mutually beneficial relationship between, on one side, players, clubs and managers and, on the other, local and national journalists to publicise (and criticise) in equal measure. The advent of Twitter and other social media platforms has provided novel and more direct channels of communication and interaction. Clubs, associations, companies and individuals can communicate instantaneously with fans and followers. The immediacy, ease of communication and the instantaneous nature of, for example, tweeting players means mistakes and mishaps are inevitable. The more high-profile the individual, the juicier the story.

This piece is split into a number of sections. The first part analyses some of the more well known football related 'Twitter gone-wrong moments'. They are to illustrate the ease of how comments in the public domain can lead to a range of consequences. Some can be laughed off, while others have had more serious outcomes. Next is a section on wider social media issues including privacy settings, impersonators and hackers. The last section concludes with a few insights and examples into how situations can be best avoided and contingency planning if the worst happens.

A Risky Business?

Social media is now mainstream. Players need to show common sense on and off the pitch (not easy at the best of times) and clubs need to be prepared for the worst. Damage limitation now extends to the social media world. Never has the impact of being able to communicate so directly and instantly been so exciting for fans and followers alike.

Twitter has opened up a Pandora's box of new opinions. The pitfalls are boundless and inevitably things will go wrong. With no prior vetting by the club of communication that is sent out, the club is relying on a player to use his better judgment; which is of course fraught with danger. Mobile phones are being used as multi-platform devices with texting and instant messaging applications commonplace. It is easy to see how a tweet could be composed and sent to a much wider audience without the same thought for the inevitable repercussions. With a wide range of easy to use twitter apps available from the likes of Nokia, Android and Apple, the ability to access twitter via a mobile phone means a simple avenue exists for footballers with too much time on their hands and something to say. Some however have argued that platforms like Twitter have offered the public something they get less and less of: outspoken remarks and genuinely interesting comment. Such refreshingly unfettered communication has only fuelled the popularity of such platforms.

Twitter has the capability to get you into trouble instantly. Posts can be removed but the damage may have already been done as followers mercilessly retweet a controversial or outspoken remark. The process can snowball quickly. A few instances of footballers on the inadvertent Twitter rampage have included:

- Aldershot's Marvin Morgan being suspended, fined two weeks' wages and placed on the transfer list for comments on Twitter about Aldershot's fans after he was booed from the pitch. After tweeting that he wished that the clubs fans "would all die" winning them back may prove rather tricky. Whether the club could have sacked the player for the remark would be another question (possibly for an employment lawyer). Such a heat of the moment comment shows the repercussions of a totally inappropriate 'off-the cuff' remark.
- Liverpool's Glen Johnson on Twitter, after having his attitude questioned by Paul Merson on Soccer Saturday replied (in somewhat more blunt terms than described here) that he did not take much notice of Merson's comments because of Merson's past drink, drug and gambling problems. No doubt Johnson believed that Twitter was the perfect platform for fighting fire with fire.

- Darren Bent, before his transfer from Spurs to Sunderland, berated Spurs Chairman Daniel Levy through Twitter and urged Levy, in some colourful language to speed up his transfer to Sunderland. Hours later an apology was forthcoming from Bent, though I think it would be fair to say the pair are no longer Facebook friends.

The FA and Twitter

From the above three examples (and there are countless more) come two further instances of tweeting gone bad. The first relates to QPR's encounter with Blackburn and El-Hadji Diouf. He allegedly verbally abused QPR player Jamie Mackie who at the time was lying on the pitch after suffering a broken leg in a tackle with Gäel Givet. Mackie tweeted: "Proper disappointed that e diouf was in my ear while I'm on the deck with a broken leg, saying '— u' and '— your leg'. thanks." Two teammates' tweets however included the comment that Diouf's "time will come!" and "diouf will get it one day, what goes around comes around."

The FA were reported to be looking into the tweets of Bradley Orr and Paddy Kenny and it remains to be seen whether disciplinary action will follow. QPR manager Neil Warnock, as a result banned his players from tweeting about the club.

" We don't want charges of our own. And I've had a word with the lads about this, and they can use Twitter all they want - as long as it has nothing to do with the club."

Absolute prohibitions are certainly one way to stop any ensuing controversy. Whilst QPR await their FA fate, ex-Liverpool FC player Ryan Babel was fined £10,000 by the FA for his Twitter outburst. It was announced on the FA website that:

" Babel admitted a charge of improper conduct relating to comments and images published

by the player on Twitter concerning referee Howard Webb."

Babel forwarded on a picture of Howard Webb in a Man United shirt and commented that "[a]nd they call him one of the best referees? That's a joke". Many may agree with his sentiment.

Importantly however is that this is the first time the FA has taken disciplinary action against a tweeting footballer. Interestingly, it appears that comments and/or images posted may stir the FA into life. Forwarding on images that, for example, bring into question the integrity of the referee are likely to be seized upon by the FA. This should certainly be borne in mind when clubs are drawing up guidelines to help their players avoid the Twitter headlines.

Although Babel is the first Premier League player to be charged and fined by the FA, he is not the first to suffer major consequences as a result of Twitter posts. Beware the impersonator. Back in July 2009, the Associated Press (and subsequently other world media outlets) quoted tweets from a bogus Zlatan Ibrahimovic account believed to be genuine, regarding the player's apparent desire to move to Spain from Inter Milan. However, increased use and awareness of Twitter over the past two years, has reduced the chance of multiple accounts for many high profile footballers being so readily accepted as real.

Twitter also started a test programme for verifying the identity of high profile users in June 2009, but the programme has now been suspended.

Hacking

With politicians (including Barack Obama) and celebrities falling victims to hackers who guessed their Twitter passwords and security question answers, it is only to be expected that, sooner or later, the same fate will meet a prominent footballer. The likelihood of this occurring is increased by lack of password controls imposed by Twitter (only a simple password of six characters is required). If a successful hacker were to

use caution, they could convincingly pose as the account holder, at least for a short period of time. Is a footballer's argument that they themselves did not write a controversial tweet likely to be believed or accepted? No doubt some serious damage could be done in the interim.

Facebook and Privacy Settings

It is not only the footballers themselves who need to be careful what they write in the heat of the moment. Social media embarrassments are certainly not restricted to Twitter. In December 2010, Paul Konchesky's mother, Carole Konchesky, allegedly labelled Liverpool fans as "scouse scum" in a Facebook status update. Her Facebook Privacy settings allowed any Facebook member to view this status.

Whilst Mrs Konchesky removed the comment within a few hours (and later restricted access to her profile), screenshots had been captured and the images quickly spread around Twitter and featured in the local Liverpool and national press the next day. With her son Paul failing to win over Liverpool fans with his performances on the pitch, some even doubted whether his mother's tirade (apart from being a bit embarrassing) could have really damaged his reputation any further.

This episode highlights the responsibility of families to ensure they protect their footballer relatives by both thinking about the consequences of public comments before they are written and by protecting their Twitter and Facebook accounts through strong passwords and appropriate privacy settings.

Prevention or Cure?

As more players embrace social media there are bound to be more incidents on the horizon. To keep sponsors, managers and team mates onside a footballer should be thinking long and hard about the consequences of each and every post they make. There are no hard and fast rules. The list below is only the tip of the iceberg, but players should bear in mind some of the following:

- Do not give away any technical or tactical information that could aid the opposing team. I.e. "I've been dropped and not playing tomorrow" – Mr Ryan Babel

before the squad had been announced for Liverpool v Stoke in January 2010.

- Cool off: Don't tweet until a few hours after games, otherwise it's more likely that 'honest' but not necessarily appropriate remarks will be made about:
 - controversial moments in the game; or
 - fellow team mates, opposing players, the fans or even the manager.
- Don't broadcast to the world that you've been up all night drinking, gambling, and/or clubbing. Posting pictures of any such 'activities' would also be a definite no-no.
- Don't tell people where you live or give out other personal information. Posting bank details on Twitter, even if you have money to burn, is not a good idea.
- Be careful about starting arguments with followers. Justifying your recent 10k-a-week pay rise is unlikely to illicit much sympathy with the masses.

Damage Limitation: Remove, Clarify and/or Apologise

For clubs who have tweeting players, some of the following points should be considered in preparation for when things go wrong. Some clubs will have in place a damage limitation plan of action. If you are a club that does not, do so ASAP.

- If clubs have the resources, its players should be monitored. The flip side is that anything controversial will spread like wild-fire and the club will soon be aware of the Twitter-storm approaching.
- Similarly, clubs should be employing technical experts to verify that players have set up their mobile phones, Twitter, Facebook and other Internet accounts securely with strong passwords and appropriate privacy settings. This reduces the risk of hacking and impersonation problems if phones are lost or stolen.
- Have an identifiable social media officer to liaise with

the player and implement the damage limitation plan. This may consist of:

- Assessing whether the tweet has just been posted and whether it is worthwhile to remove it; and/or
- Removing the tweet and apologising via twitter and other media platforms. Then possibly clarifying that the comment could have been misinterpreted and was only a bit of fun.

Ryan Babel employed such a tactic with regard to Howard Webb. He removed the tweet, apologised via twitter and even sent himself to #twitterjail.

Alternatively, players may decide to follow none of the above and become an outspoken (and possibly unemployed) legend of the Twittersphere.

A Twitter Time-Bomb?

In summing up the Ryan Babel Twitter posting and comments, Roger Burden, the FA Regulatory Commission Chairman, said:

"Social network sites, like Twitter, must be regarded as being in the public domain and all participants need to be aware, in the same way as if making a public statement in other forms of media, that any comments would be transmitted to a wider audience. It is their responsibility to ensure only appropriate comments are used."

All of the previously mentioned examples of social media and its interesting inter-relationship with footballers illustrate that clubs and players need to tread a very careful path. Aldershot's press release after placing its tweeting misfit Marvin Morgan on the transfer list stressed that:

"The club is also of the opinion that careful consideration is required for all future use of social networking sites by players and staff as a means of communication."

It may be appropriate, especially for clubs to ensure appropriate damage limitation mechanisms are in place to minimise any subsequent embarrassment.

By Daniel Geey and Hal Cohen

Football Dispute Resolution: A Cautionary Tale

Introduction

Football player Adrian Mutu has been playing for his current Italian club Fiorentina against the leading lights of European football. This included a starring role against Liverpool in his team's recent Champions League victory. Off the field however, he is embroiled in one of the most interesting and controversial football cases in recent years. Few people would have imagined that as a consequence of taking cocaine and being sacked by Chelsea, Mutu would have to foot a €17.1m bill for breach of contract.

The Case Facts

In August 2003, Mutu transferred from Italian club Parma to Chelsea for €22.5m. He tested positive for cocaine in October 2004, prompting Chelsea to terminate his contract. He was subsequently banned from football for seven months. Following appeals by Mutu, to the Court of Arbitration for Sport (CAS), it decided that Mutu had committed a breach of his contract without just cause. Chelsea then asked FIFA's Dispute Resolution Chamber (DRC) to set a compensatory amount in line with FIFA's regulations. The DRC initially refused to do this but after further compulsion from the CAS, the DRC ultimately ordered Mutu to pay Chelsea €17.1m. Mutu appealed to CAS challenging the DRC decision. In July 2009, CAS upheld the DRC decision ruling against Mutu. A further appeal to the Swiss Federal Court failed.

The Merits and Consequences

Many have argued that the compensation Mutu must now pay to Chelsea is a wholly disproportionate penalty for Mutu taking non-performance enhancing drugs. Chelsea argue they were merely seeking compensation for the costs incurred but wasted (the transfer fee and associated transaction costs) because of Mutu's breach of contract. Thus they were perfectly entitled to sack him and then claim compensation. The CAS agreed with Chelsea. It gave little weight to Mutu's argument that Chelsea should have sold, not sacked him. CAS felt Chelsea were not under any such obligation.

The ruling serves as a very real warning to players and clubs. Whilst the Webster case appeared to give players the ability to buy out the remaining years of a contract for a small fee, Matuzalem illustrated that the price a footballer may have to pay (jointly with the club he transferred to, to buy out his contract) will be considerable (€11.8m in his case). It means that a player's actions can have severe financial implications. Likewise, the Mutu example illustrates the consequences for a player of having to pay back three fifths of his transfer fee.

This form of high stakes football dispute resolution illustrates the uneasy relationship between player and club. The millions that footballers earn, and are transferred for, mean the consequences for breaching such lucrative contracts can be astronomical. Apportioning who gets how much, is what the DRC, and ultimately the CAS, are left to decide.

By Daniel Geey and Henry Marshall

Calculating Mutu's Payment to Chelsea				
€22.5m 58.5 (length of Mutu's contract at Chelsea)	x 44 months remaining on his contract	=€16.9m	+ agent and signing on fees	=€17.1m

The UEFA Financial Fair Play Rules: A Difficult Balancing Act

UEFA has implemented, as part of its already functioning club licensing system, the FFPRs to ensure a club in the longer term, more or less, has to break even. UEFA's overall aim for the FFPRs is for its affiliated football clubs to balance their books, not spend more than they earn and promote investment in their stadia and training facility infrastructure and youth development. This idea of self-sustainability relates to UEFA's underlying belief that transfer fee and wage inflation continues unabated because each set of new club owners inject more money into the European football club market. This 'keeping up with the Jones's effect' spirals further because a new owner then has to outbid other high spending clubs.

Although the players are earning ever more lucrative salaries, the clubs (through their representative ECA body) have been seeking ways in conjunction with UEFA to actually limit their own spending. This may seem rather ironic in the case of Chelsea for example, given their £120m loss in 2004 but it actually makes perfect sense; Mr Abramovich, after spending over £700m, sees the fallacy of football clubs constantly outdoing one another. The very clubs that are being restricted by these rules are the ones that have actively participated in, and consented to, the proposals. Clubs are asking UEFA to save them from themselves. UEFA, along with the various interest groups have, put forward proposals in order to create a deflationary effect across UEFA affiliated national football associations.

The Basics

It should be borne in mind that the new FFPR only relate to Champions League and Europa League, and not to domestic league, participation. Each club that believes it can qualify for that season's European competitions must prior to the beginning of that season apply for a UEFA Club Licence. From the 2013-14 season, the licence stipulations will include adherence to the FFPRs. Until the 2013-14 season there are no sanctions for breaching the FFPRs.

The FFPRs will therefore start to bite from the 2013-14 season. The rules need to be borne in mind from however from the 2011-12 season onwards because the 2011-12 and 2012-13 accounts will be used to determine a club's license application in the 2013-14

season.

The rules also encourage investment in youth development and infrastructure. Such infrastructure includes stadia and training ground development and expenditure in a club's academy. Any club has the incentive to spend in these areas, should they wish to participate in European competition, because the FFPRs do not count such investment as expenditure as part of its break-even calculation. The greater the commercial revenue growth funded by long term infrastructure investment the larger the revenue to balance against expenditure.

UEFA has also been at great pains to stress that they are not anti-debt. With clubs like Manchester United's huge reported debt, Mr Platini placated various clubs with the distinction that so long as the debt is being serviced (i.e. revenue is covering interest payments) UEFA does not have a problem. Issues become more delicate when interest payments to service the debt do not cover the revenue. Prior to the latest Liverpool FC takeover, its latest accounts showed that the club's trading profit of £27.4m fell somewhat short of the £40.1m required to service the interest payments due.

Acceptable Deviation = Break Even (ish)

Usually break-even means expenditure must equal revenue. Not in this case; at least at the outset of these rules. This is because included in the break-even calculations are the acceptable deviation provisions. Clubs will not have to actually break even until 2018/19 season at the earliest.

The revenue that is taken into account for break even purposes includes gate receipts, broadcasting rights, commercial sponsorship details and profit on player transfers. Expenditure includes player transfers, wages and associated costs and other operating expenses. There are also anti-evasion mechanisms like arms length trading and related party transaction requirements which are discussed in more detail below.

The acceptable deviation provisions allow a club with some losses over a certain number of seasons to 'break even' and therefore pass the FFPR.

In taking the first row as an example, the rules come into force in the 2013-14 season (the first monitoring period). The reason why this is important is because, in the first

Acceptable Deviation Levels						
Reporting Period	Number of Years	Years Included			Acceptable Deviation (€m)	
		T-2	T-1	T	Equity Investment	Non Equity Investment
2013-14	2	N/A	2011-12	2012-13	45	5
2014-15	3	2011-12	2012-13	2013-14	45	5
2015-16	3	2012-13	2013-14	2014-15	30	5
2016-17	3	2013-14	2014-15	2015-16	30	5
2017-18	3	2014-15	2015-16	2016-17	30	5
2018-19	3	2015-16	2016-17	2017-18	<30	5

monitoring period, two years worth of accounts are used to assess whether a particular club can successfully apply for its UEFA Club License. Therefore a club's accounts for years 2011-12 and 2012-13 are used to determine the license application. This is crucial because the present 2010-11 season accounts are not taken into account (with the exception of the amortised annual transfer fee write-downs noted in each club's annual accounts- see the amortisation section below for more detail on this point).

The table shows that the acceptable deviations (i.e. losses) vary quite considerably. From the first 2013/14 monitoring period, an owner can invest up to €45m over two seasons in exchange for more shares in the club. It means an owner can after the 2013-14 season on average only exchange €15m worth of cash for shares each year to spend on transfers and wages etc. That figure is reduced to €10m per season (€30m over three seasons) for the 2015-16 season. If an owner does not put any money into a club by way of cash for shares, each club's acceptable loss (by reference to the last column in the table) is a mere €5m over three years.

Indeed, the FFPRs may signal the end of the mega transfer because a club may simply not be able to afford a £50m transfer and then breakeven. This is of course unless a club makes large commercial profits which very few clubs across Europe achieve (see <http://news.bbc.co.uk/1/hi/business/8535297.stm>). Otherwise, from the 2011-12 season onwards a club would have to make windfall revenues from their commercial activities (or sell another top player) to afford a marquee signing like Torres to balance the books. It may however be possible to take a loan to fund a large transfer so long as

the interest repayments do not send a club into the red. This has not stopped the recent Chelsea January 2011 transfer window purchases which will be assessed in more detail below.

One Early Loophole

Neatly tucked away in the last provision of the final annex of the rules is an avenue for clubs applying for a UEFA license to remove some of its wage expenditure from the break-even calculation. Annex XI(2) states that for applications for the first two monitoring periods (the 2013/14 and 2014/15 seasons) if "*the break-even deficit... exceeds the acceptable deviation*" provisions, a club will not be sanctioned so long as it:

- "reports a positive trend in the annual break-even results" ; and
- "the aggregate break-even deficit is only due to the annual break-even deficit of the reporting period ending in 2012... to contracts with players undertaken prior to 1 June 2010"

Therefore even if a club fails to meet the standard deviation target in the first two monitoring periods when applying for a UEFA license, the club can remove all wage costs from their 2011-12 accounts for players whose contracts were already in place prior to 1 June 2010. Additionally, it appears contract renegotiations after 1 June 2010 for an existing contracted player would be classed as a new contract for the purposes of this provision (see Annex XI(2)(ii)).

With the FFPRs first monitoring period being the 2013-14 season, this loophole will only be available to clubs whose players entered into a contract before 1 June 2010 with that club and whose contract had not subsequently been renegotiated or extended prior to 1 June 2010. Thus only clubs with players on relatively long term contracts entered into before 1 June 2010 will be able to benefit from the rule. See the below table for a few examples. Each of the examples bar 'Player E' is eligible for Annex XI qualification because the contract covers the 2011-12 season.

This leads to a number of avenues open to clubs to use this provision to their advantage. This rule would appear to include the wages of a player that has left the club but had a valid contract with the club during the 2011-12 season. Presumably, the club applying for the UEFA license would be able to include the cost of such wages in the Annex XI calculation. Similarly, what if a contract extension is negotiated in July 2012 from an original contract entered into in January 2010 (i.e. prior to the 1 June 2010 cut-off). Can the cost of the original (January 2010) contract, because it was negotiated prior to 1 June 2010 and covers the 2011-12 season, be included in the Annex XI calculation? The answer would appear to be yes.

This author's understanding of Annex XI is that it will provide to clubs the temporary benefit of postponing sanctions for the first two years of the FFPRs. This is because the 2011-12 season accounts are included in:

- the first monitoring period (the two year period 11-12 and 12-13); and

- the second monitoring period (the three year period 11-12, 12-12 and 13-14).

This will give clubs some breathing space to deduct such wage costs from their bottom line in order to fulfil the Annex XI criteria.

Andrea Traverso, of UEFA recently stated:

" should a club be in breach [of the FFPRs break-even requirements] and they are able to prove that the breach is exclusively due to salaries for players under contract before 1 June 2010, and they can also show an improvement trend in their accounts, they will not be sanctioned."

(See <http://www.sportingintelligence.com/2011/02/01/revealed-why-chelsea-dont-fear-uefas-ffp-rules-wages-dont-count-for-first-two-years-010205/>)

Such a provision demonstrates that UEFA is giving clubs every chance to adhere to the rules, though some may argue that such a regulation merely fudges the break-even test further. Either way it will be possible for a club

Player	Date Signed	Length of Contract (in years)	Expiry of Contract	Eligible for Annex XI Qualification?
A	June 2009	5	June 2014	Yes
B	June 2009	4	June 2013	Yes
C	June 2009	3	June 2012	Yes
D	May 2010	5	May 2015	Yes
E	July 2010	5	July 2015	No, as the contract was signed after the 1 June 2010 deadline

applying for a UEFA license in the first and second monitoring periods to fall significantly outside of the standard deviation provisions but still obtain a UEFA license.

Related Party Transactions

In Annex X (E) of the FFPRs reference is made to “*related party transactions and fair value of related party transactions.*” The specific provisions of this rule are to ensure that owners of clubs are not able to artificially inflate a club’s revenues in order to bolster the chances of passing the FFPRs by providing the club with a massive sponsorship deal from one of the owners other company’s. In many instances it could be particularly difficult to measure concepts of fair value for an asset or a discharged liability but UEFA is keen to ensure that few loopholes are available. Annex X(E.7) states:

“ A related party transaction may, or may not, have taken place at fair value... An arrangement or a transaction is deemed to be ‘not transacted on an arm’s length basis’ if it has been entered into on terms more favourable to either party to the arrangement than would have been obtained if there had been no related party relationship.”

Therefore UEFA will need to assess the counter-factual position should question marks be raised over a particular transaction. The devil is obviously in the detail but issues over how revenue can be correctly valued may become a particularly thorny issue. In order to investigate a shirt sponsorship deal to assess fair value it would be necessary for UEFA to use comparatives to identify whether a particular deal is extraordinary in any particular way. In using a rather blunt example, should an entity with a relationship to Premier League club X who has Champions League aspirations enter into £50m per season in shirt sponsorship deal with Club X, UEFA would almost certainly study the top shirt deals in the Premier League and see that the largest deal is around £20m per season. FFPRs alarm bells would start ringing rather loudly. UEFA would then have to assess the true

value of the contract for the purposes of the FFPRs calculations.

Chelsea January 2011 Transfer Window Spending

It did not go unnoticed that on the same day that Chelsea announced £71m losses it spent an almost identical amount in transfer fees on David Luiz and Fernando Torres (see <http://www.bbc.co.uk/news/business-12330303>). Many commentators believed that such expenditure would put Chelsea in real trouble of passing the FFPRs standard deviation provisions. However chief executive Ron Gourlay of Chelsea, recently stated:

“ [t]he club is in a strong position to meet the challenges of Uefa financial fair-play initiatives which will be relevant to the financial statements to be released in early 2013”.

See <http://www.telegraph.co.uk/sport/football/competitions/premier-league/8297380/Chelsea-and-Manchester-City-confident-they-will-meet-Uefa-financial-fair-play-rules.html>

Indeed, when taking into account Chelsea spending on youth development and infrastructure which can be deducted as a cost from the FFPRs, wage reductions from high earners like Carvalho, Ballack, Deco and Joe Cole who left the club, profits on transfers and deductions on Annex XI wages for contracts entered into pre-June 2010, it starts to become apparent that it may well be possible for Chelsea to make a ‘standard’ accounting loss in the next few years but still receive a UEFA license to participate in the Champions League.

For a more in-depth assessment of where Chelsea may commercialise their revenues further to break-even, see http://swissramble.blogspot.com/2011/02/chelseas-financial-fair-play-challenge.html?utm_source=BP_recent

Sanctions

The Club Financial Control Panel will conduct club audits to ensure that the system is applied correctly. If the Panel believes that the FFPRs have not been fulfilled, it can refer the case to the UEFA Organs for Administration of Justice with the ultimate sanction being a ban from UEFA competitions. The UEFA Disciplinary Regulations do provide for a whole host of possible sanctions including a reprimand, a fine, disqualification from competitions in progress and/or exclusion from future competitions or withdrawal of a licence.

UEFA's general secretary, Gianni Infantino, has recently stated

"There may be intermediate measures. We would have to ask why, maybe there would be a warning, but we would bar clubs in breach of the rules from playing in the Champions League or the Europa League. Otherwise, we lose all credibility."

It should be borne in mind that Real Mallorca were refused entry into the 2010/11 season's Europa League because they failed to meet the UEFA Club Licensing entry criteria. Such an instance does illustrate the powers UEFA has to refuse a club license application. When the FFPRs are added to the license criteria in time for the 2013-14 season, the rules will be stricter than those that applied to Real Mallorca. A future high profile UEFA refusal of a club license application should not however be ruled out.

Consequences for Clubs and Conclusion

It could be argued that the FFPRs are an effective barrier to entry for mid level teams. It therefore entrenches the top clubs who are able to receive Champions League money and commercialise their rights more effectively leading to more revenue to off-set their cost base against. The flip side to this is that if clubs do not wish to play in UEFA competitions, they can spend whatever they want (so long as there are no domestic FFPRs that are put in place). Indeed, a club

strategy may be to invest heavily in transfer fees and wages knowing that they will not pass the FFPRs on the basis that finishing top of the Premier League is more lucrative than participation in the Champions League. Most clubs would try and do both. Players may also be less likely to be attracted to clubs who are not able to participate in European competition.

Additionally, the FFPRs may actually have a distortive effect on domestic leagues. Whilst the clubs wishing to participate in UEFA club competitions will have to ensure they adhere to the FFPRs, the remaining teams will not be under such an obligation. Therefore a club owner of a mid table team may have a competitive advantage over a team in the Champions League for domestic competitions because there is a looser financial straightjacket being imposed on his club.

It appears that the FFPRs will not stop a benefactor wishing to spend and inject capital into a club. It does however stop an owner spending if they want to play in UEFA competitions. It means that:

- equity injections must be restricted to the standard deviation limits;
- spending is encouraged on youth development and stadium infrastructure (i.e. long term ventures); whilst
- clubs are dis-incentivised from shelling out large sums on short term transfers and wages.

It ultimately means that the avenues for instant success will be narrowed which may well have the effect of encouraging more organic football club investment and growth.

By Daniel Geey, Solicitor

On the Ball: Premier League broadcasting rights threatened by Advocate General's Opinion

This morning, Advocate General (AG) Kokott's Opinion was published in relation to the long running pub broadcasting cases. The AG sided with publican Karen Murphy and decoder supplier QC Leisure. This case is of major significance because:

- It may change how rights- and not only football rights - are sold to broadcasters throughout Europe - it may remove the ability for rights owners to segment national markets
- It may change how consumers buy television content - it may be far easier for consumers to subscribe to foreign broadcasters by using decoder cards and other equipment that is available in other member states

Brief Recap

Mrs Murphy is a pub owner who used decoder cards imported from Greece to show Premier League games. QC Leisure is a stockist and supplier of foreign decoders to pubs and the general public in the UK. Mrs Murphy was prosecuted by Media Protection Services Limited for the use of an "illicit" Greek decoder card. QC Leisure were sued for copyright infringement by the FA Premier League. In their defences Mrs Murphy and QC Leisure both raised important questions about the relationship between the EU principles of free movement of goods and services and highly lucrative European broadcasting rights. This led to a series of questions being referred to the European Court of Justice (ECJ) by the English courts.

Mrs Murphy and QC Leisure argue that the way in which the Premier League enters into its contracts with various broadcasters throughout the EU, among other things, infringes EU principles of free movement of goods and services and EU competition law. They argue that the Premier League's contractual provisions restrict the ability of Premier League rights holding broadcasters to screen live pictures outside their own designated

territory. They also contend that this restricts the capacity of Mrs Murphy or QC Leisure to either view, or purchase decoders to view, live Premier League matches from any source other than the exclusive national Premier League rights holding broadcaster (i.e. Sky and ESPN can only broadcast their exclusive pictures in their allotted UK territory). Such restrictions, they say, are incompatible with EU principles of free movement and EU competition law.

The FA Premier League, in response, relies on a range of provisions in EU copyright and broadcasting law as well as ECJ precedent going back to the 1970s which supports, or appears to support, the notion of exclusive licensing in the context of broadcasting rights.

The Opinion

The AG does not mince her words. She describes such territorial restrictions as a

"serious impairment on the freedom to provide services"

and brands the territorial exclusivity granted by the Premier League to Sky as

"tantamount to profiting from the elimination of the internal market."

Moreover, she is unable to see any countervailing justification for such restrictions. Economic considerations are brushed aside with the statement that

"there is no specific right to charge different prices for a work in each Member State. Rather it forms part of the logic of the internal market that price differences should be offset by trade"

Similarly, protection of the intellectual property rights in live football transmissions is given short shrift:

" a partitioning of the internal market for the reception of satellite broadcasts is not necessary in order to protect the specific subject-matter of the rights to live football broadcasts ".

The AG does, however, recognise the right of broadcast rights holders to apply different charging models and licensing terms as between domestic users and pubs provided that this does not involve territorial restrictions.

The Impact

The AG's Opinion is of course not binding. The ECJ may still take a different approach in its judgment which is expected later this year. Whilst Advocate General Opinions are followed more often than not, it is not unusual for the Court to take a different view especially in controversial cases. However, if the Court follows the AG's Opinion, its ruling will strike at the very heart of the Premier League's lucrative European broadcasting rights deals. Exclusivity has been the cornerstone of the Premier League's highly successful broadcasting revenue strategy. Should the Opinion be upheld by the Court, the implications for rights holders and consumers could be groundbreaking.

Should the ECJ side with the AG, the Premier League will need a fundamental rethink of how it sells its lucrative rights. This is because it could no longer guarantee total exclusivity on a national territorial basis for broadcasters. This may lead to, for example, the Premier League marketing its rights on a pan-European wide basis. Similarly, if the ECJ confirms the AG's Opinion, consumers will be able to lawfully purchase the cheapest European channel broadcasting Premier League matches without the threat of prosecution. This then would allow for price competition for broadcasters and consumers alike on a European-wide basis.

An ECJ ruling along the lines of the AG's Opinion would reverberate beyond football and indeed beyond sport into the licensing of broadcast content generally. Any rights holder that sells its broadcasting rights on an exclusive territorial basis would need to carefully review the way its rights are sold in the EU. Everyone is now awaiting the ECJ judgment which could still be several months away.

It must not be forgotten though that the ECJ may yet rule in favour of the Premier League and uphold its territorial exclusivity.

Expect the final decision on 4 October 2011. Mrs Murphy and QC Leisure are one nil up but it's only half time!

By Daniel Geey

On The Ball

Our regular football-focused legal round-up



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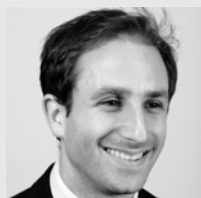
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On The Ball

Our regular football-focused legal round-up

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