Briefing for the Public Petitions Committee

Petition Number: PE1319

Main Petitioner: William Smith and Scott Robertson

Subject: Improving Youth Football in Scotland

Calls on the Parliament to urge the Scottish Government to investigate the (1) legal status and appropriateness of professional SFA clubs entering into contracts with children under 16 years; (2) audit process and accountability of all public funds distributed by the Scottish Football Association to its member clubs; (3) social, educational and psychological effects and legality of SFA member clubs prohibiting such children from participating in extra curricular activity; and (4) appropriateness of ‘compensation’ payments between SFA member clubs for the transfer of young players under the age of 16 years; and to (5) increase the educational target from 2 hours curricular physical activity to four hours per week; and (6) develop a long-term plan to provide quality artificial surfaces for training and playing football at all ages across all regions.

Introduction

The petitioner raises a number of wide ranging issues. It should be noted that petition briefings are intended only to provide background and context to the issues raised and not to offer a comprehensive discussion. This briefing pays particular attention to the issue of contracts and associated matters.

The issue of contracts and other related information

Scottish Youth Football Initiative

The programme that appears central to the petition is the Scottish Youth Football Initiative, which is a partnership between the Scottish Football Association (SFA), the Scottish Premier League and the Scottish Football League. The Scottish Government\(^1\) has advised that this is a youth development programme organised for participating clubs aiming to foster and develop the most talented young players at age levels 11s to 16s (inclusive) and dual band 16s/17s by structuring and monitoring a youth development match programme for all participating football clubs.

The Initiative comprises a two-tier structure, the ‘Performance’ and ‘Initiative’ levels, with the former being the higher level containing mainly Scottish Premier League clubs and others meeting the set criteria which include facilities, child protection, coaching, medical provision and player education and welfare.

\(^1\) Personal communication 23 March 2010
Parents sign registration forms with a club on behalf of their children, and all outcomes relating to the registration should be made clear by the clubs at that point. Players cannot register at more than one football club involved in the Youth Initiative programme at the same time, and problems can arise if clubs hold on to players’ youth registration forms, which they may see as protecting their investment in a player.

Under the Youth Football Initiative, compensation arrangements are in place to recompense clubs for their investment in youth players which includes providing the children with a range of benefits, such as educational and sporting opportunities.

It has been argued that this desire to protect a club’s investment in a young player may also include restricting these players from playing the sport at school or extra curricular level. The SFA\(^2\) has advised that a player registered for an ‘initiative’ tier club can play for his senior club and school team while a player registered for a ‘performance’ tier club can only play for the senior club. The reason for the restriction at performance level is that these players are deemed to be the ‘cream of the crop’ and, as such, the senior clubs assume full responsibility for their education and development as part of a controlled programme.

The SFA\(^3\) further argues that registration is not a contract between the parties. Rather the registration form binds the player to the club. Compensation is not paid for the transfer of youth players. Clubs are reimbursed part of the costs of training the player if he moves from youth form to youth form and clubs can only retain this right if they offer a further term of re-engagement to the player. It is then up to the player/and or parents to accept or reject. This applies to age groups 10/14. Age 15 can be taken into 16 and 16 into 17 at a club’s behest. The reason for this extended period is that it is viewed by the coaches as being the most crucial period in a young player’s development. Finally, the SFA pointed out that it has the authority to cancel a player’s youth form should it consider that there are valid reasons to do so.

**Relevant contract law**

In relation to the legal status of professional SFA clubs entering into contracts with children under 16 years, it should be noted that SPICE cannot provide legal advice or opinion, or comment on the merits (or otherwise) of any particular contractual arrangement. The legality of such contractual arrangements is, of course, distinct from the question of whether such contracts are in the best interests of the development of football talent in Scotland.

There appears to be little in the way of legal authority, either in the form of legislation, case law or literary sources, specifically on the subject of minors entering into contracts with sports clubs (although a recent high profile case is considered below). Nor is there much in the way of legal discourse on the

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2 Personal communication 12 April 2010
3 Personal communication 12 April 2010
subject. It may be advisable, therefore, to seek specialist opinion and comment on how the law relating to legal capacity is applied in the context of contracts between football clubs and minors and the extent to which such contracts are legally binding. However, the following comments are intended to provide a broad overview of the law and policy in relation to the age of legal capacity in Scotland.

Section 1(1) of the Age of Legal Capacity (Scotland) Act 1991 provides a general rule that persons under the age of 16 have no legal capacity to enter into any transaction (defined in section 9 of the 1991 Act as any “transaction having legal effect”).\(^4\) As a general rule at common law, contracts with minors are voidable. However, a contract with a minor may be binding if:

- it can be classed as a contract for “necessaries” or for employment/apprenticeship/training (or is regarded as analogous to those sorts of contracts); and
- it is for the minor’s benefit

An adult must perform the legal undertaking on behalf of a person under the age of sixteen (taking into account the views of the child). Under the Children (Scotland) Act 1995, the child's mother has parental responsibilities and rights and can therefore act as the child's legal representative. The child's father has parental responsibilities and rights, including the capacity to act as the child's legal representative, if married to the mother or by registered agreement with the mother) and certain other persons may acquire parental rights and responsibilities by court order. The child's legal representative is obliged to act as a reasonable and prudent person would.

When a person reaches the age of 16, they have full legal capacity to enter into legal transactions. However, special protections exist for persons aged between 16 and 18. They can, for example, apply to the court to have the transaction set aside on the ground that it was a prejudicial transaction.

In Proform Sports Management Ltd v Proactive Sports Management (2007), the court found that Wayne Rooney’s initial contract with a sports agent was voidable owing to the fact that, at the time of its making, Rooney was a minor. It should be emphasised that this contract dispute was between a player and a management agency (not with the football club) and it was only voidable because it did not meet the conditions referred to above.

Motion S3M-5606\# by Trish Godman on the registration and transfer of youth football players expresses concern at the child welfare and legal implications of professional Scottish football clubs entering into contracts with children.

Additional SFA information

The SFA believes that the initiative works for the majority of young people involved, offering the best of talent in Scotland the best available coaching and development. It believes that the senior clubs are investing significant

\(^4\) Children under 16 do, however, have legal capacity to raise a court action, make a financial claim or instruct a solicitor. Furthermore, those under 16 may enter into binding contracts that are “of a kind commonly entered into by persons of his age and circumstances” and “reasonable”.

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sums of money in their youth academies to develop young players on and off the pitch and that these young players are vital in securing the future success of the international team. A club, therefore, should be compensated if it loses a player to another club involved in the Initiative.

It should also be noted that, in February 2009, the SFA president George Peat announced that Henry McLeish would chair the Scottish Football Review Committee, which was expected to include a broad range of people with connections to football in Scotland. Sponsored by the SFA, the committee’s mandate is to examine proposals that might advance the game in Scotland. It is possible that this Committee may consider issues related to the petition.

Scottish Government view
The Scottish Government has advised that, as the recognised governing body for football and the independent authority responsible for all decisions regarding the operation of their sport, the SFA are the appropriate authority to resolve these issues and they encourage dialogue with them to resolve any issue in their sport. However, while the Scottish Government is sensitive to what the SFA may perceive as unwarranted Government interference in their sport (which could have implications with the sport’s worldwide governing body, FIFA), it will continue to monitor the situation.

Research into the social, educational and psychological effects of the system
Whilst links between emotional wellbeing and physical activity (including sport) have been demonstrated through research, a (non-comprehensive) search of the NHS eLibrary database has found no studies which consider the issues raised by the petitioner.

However, studies were found that considered injuries in children playing sport, the psychological effects of professional coaching on children (though this appeared related to the style of individual coaches) and the success or otherwise of apprenticeships and traineeships in professional football.

Public funding and governance arrangements
Scottish Government sport funding is distributed through sportscotland, the national sports agency. In its Corporate Plan 2007-2011, which is aligned to the national sport strategy, Reaching Higher, it outlines its key priorities, to be taken forward with a range of partners including sports governing bodies. These priorities include: coaching, community sport and facilities. In the first of its annual reviews of the corporate plan period, for 2007-08, the financial summary showed that £1,272,800 went directly to the governing body ie the SFA for distribution (p 32). Its Annual Review 2008-09 noted that in that financial year £1,345,000 went to the SFA for distribution (p 30).

The Scottish Government also provides funding to the SFA through the Cashback for Communities Programme. This is a diversionary programme of activities for young people aiming to increase the opportunities they have to develop their interests and skills in an enjoyable, fulfilling and supported way, using funds recovered from the proceeds of crime. For 2008-09 this
amounted to £880,000 and, for the three years 2008-09 to 2010-11, will amount to over £4.535m.

As regards the governance and monitoring of funding, sportscotland\(^5\) has advised that it works closely with governing bodies, through a partnership management approach, to support them in developing their sport. This support can include investment of Scottish Government and National Lottery funding against specific objectives identified within their strategic plans, which meet the agencies priorities. As part of its investment process, sportscotland has stated that it monitors progress against objectives and ultimately governing bodies are held to account on their delivery. However, there is an onus on the governing body to manage any distribution of this investment to member clubs. The agency also advised that it conducts regular governance monitoring using independent experts to ensure that governing bodies are fit for purpose and that public money is being appropriately handled. It added that the SFA underwent a fit-for-purpose audit in February 2008 and, as a result of this, sportscotland is confident in the organisation’s governance structures.

**The commitment to provide two hours of physical education**

The original proposal that every child should receive two hours of physical education per week was a recommendation by the Physical Education Review Group in its 2003 report. This was subsequently adopted by the then Scottish Executive in 2004, which wanted this to be in place in all schools by 2008.

The target was considered in depth by the Health and Sport Committee in its recent Pathways into Sport inquiry. It discusses the origins and development of the target to its present inclusion within the Curriculum for Excellence programme, and goes on to discuss findings from Audit Scotland and the interest from the Public Audit Committee in the issue. Its report, ‘Pathways into Sport and Physical Activity’, was published in May 2009, and amongst a range of other issues it noted:

“To the Committee’s knowledge, no assessment or announcement was made by the Scottish Executive or the new Scottish Government about the success or failure to reach this target in the allotted four year period.” (para 65).

It stated the Committee’s view on the importance of ensuring that the target was delivered as a minimum. It was also critical that nobody or no organisation appeared to take responsibility for the policy (see paras 88-95).

The Scottish Government responded to the Committee’s report in August 2009. Amongst other matters it reiterated its commitment to the target and discussed how it had been included in the new Curriculum for Excellence programme. In terms of assessing progress towards meeting the target, the response noted this work would be undertaken by Her Majesty’s Inspectorate for Education, which would include district inspectors liaising with individual local authorities.

\(^5\) Personal communication 25 March 2010
Improving and enhancing facilities

Members will recall from previous briefings considering sporting facilities, eg PE1041, PE1205 and PE1256, that assessments have been carried out on the state of sporting facilities in Scotland. In addition, Members will recall that such matters largely depend on who runs the facilities. Local authorities operate most facilities, and are therefore responsible for them. However, they may receive national funding support through sportscotland for facilities that match the priorities of the national agency.

Equally, those facilities provided through Sporting Governing Bodies, such as the SFA or their member clubs, will be a matter for them, though, as discussed above, funding may be available should the plans for projects meet the strategic priorities of sportscotland. They may also obtain grants through local authorities, again depending on the nature of the project and whether or not it meets the strategic aims of the authority.

In addition, it may be that the issues raised by the petitioner in terms of facilities will be addressed by the Scottish Football Review Committee, discussed above.

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