

Football in Focus

Welcome

to the first issue of *Football in Focus* in 2006, brought to you by the sports law team at James Chapman & Co.

In this issue we examine how to get ahead of other clubs in the transfer market and the impact of a CAS decision on training compensation.

One step ahead of the game

The January transfer window may have closed but the competition for new players throughout the world will not cease. Whilst clubs cannot register new players until the window re-opens in May (save for exceptions in the Football League and for certain out of contract players), they can protect their interests in new players before May to steal a march on their competitors.

Approaches - Once a player has been identified, clubs should undertake a 'due diligence' exercise to determine how to secure them. The primary issue is the player's current contractual status as this will govern the club's ability to approach the player. If the player is currently under contract although under Article 18.3 of the FIFA Regulations for the Status and Transfer of Players (December 2004) a club does not need 'permission' to approach the player, it must inform the current club in writing if it intends to conclude a contract with the player before negotiations commence. The new club must not induce a unilateral breach of the existing contract but Article 18.3 does permit the new club and the player to enter into a pre-contract if the player's current contract has only six months left to run.

Clubs should note that Article 18.3 is at odds with current domestic rules governing player approaches. For example, FA Premier League Rule K.2 provides that clubs can only approach players under contract after the third Saturday in May of the year of contract expiry whereas Article 18.3 contains no such restriction. FIFA wants Article 18.3 to be binding at a domestic level but it is understood the FAPL is seeking to retain its rule which it believes is necessary to protect the sanctity of the competition. Clubs must therefore ensure they are operating under the correct approach rule depending upon where the player is registered.

Pre-contracts - If permissible, the form of contract used is referred to as a 'pre-contract' as it regulates a future employment contract. The pre-contract must therefore clearly set out the proposed employment terms to give legal certainty.

The drafting of a pre-contract requires care due to the variety of intervening events which may occur during the period between windows such as injury, long term suspension, more attractive offers from other clubs or failure to obtain a work permit etc. There may also be a change of manager at the new club who may not wish to proceed with the player.

The pre-contract should therefore regulate these risks and the relative bargaining strengths of the parties may dictate which party will bear them. The player may also require an upfront fee if he is in high demand. Bespoke provisions will be needed to protect the club. For example, a club does not wish to be contractually bound to a player if he fails a medical or does not get a work permit and it is noted that the FIFA Regulations prevent contracts of employment simply being conditional upon a medical or a work permit.

Even where a player's contract is not due to expire within six months, clubs can conclude mutually agreed transfers outside a window with the transfer of registration taking place in the next window. This means the transfer agreement between the clubs in such a situation should also take into account possible intervening events which may occur between windows and clubs should protect their interests accordingly.

Conclusion - James Chapman & Co can advise clubs on preparing forms of contract for use outside a window to put them ahead of the game so they can secure players before their competitors. If you wish to discuss these issues further, please contact us at: football@james-chapman.co.uk



Scholars: The Hidden Costs

In August 2005, the Court of Arbitration for Sport (CAS) passed a decision ordering French club Bordeaux to pay training compensation for a player whom they had only ever registered as an amateur. This ruling has raised concern amongst clubs as to when training compensation becomes payable and it may have a significant impact on the recruitment of foreign players.

The FIFA Regulations for the Status and Transfer of Players stipulate that one of the situations where training compensation becomes payable is when a player signs his first contract as a professional. The previously held view of English clubs was that training compensation was not payable when a player signed a Scholarship Agreement as this results in only an amateur registration.

This situation was similar to that in France whereby Bordeaux argued that the agreement it had signed with the player was not a professional contract, nor was it recognised as such by the French Football Federation. The player was regarded as an amateur by all concerned.

The CAS, however, rejected the arguments put forward by Bordeaux and concluded that *"the sole criterion to determine the status of a player (amateur or non-amateur) under the Transfer Regulations is the player's remuneration...the legal nature or the designation of the agreement between the team and player are irrelevant"*.

The CAS applied a strict interpretation of the Regulations and based its decision not on the label placed on the contract by the French Football Federation, but on the remuneration received by the player. The sole test applied was whether the player was deemed to have received more than the reimbursement of the expenses he incurred in connection with his football activity. The player was deemed to have received sums in excess of his expenses and was thus classed as a professional.

This means that despite the accepted position, scholars may be deemed to be professionals if the remuneration they receive under the Scholarship Agreement is considered to be more than simply the reimbursement of expenses incurred in connection with football. If a scholar is deemed to be a professional, then the liability of clubs to pay training compensation will crystallise at a much earlier point in time than currently thought, namely, when a Scholarship Agreement is signed.

Although the Bordeaux case obviously turned upon its own facts and the situation in France, the decision means that English clubs should be careful about relying on the designation of the FA that a scholar is an amateur when assessing when training compensation is payable.

If a claim is brought against an English club following the registration of a scholar, the issue would be whether the maximum allowance that a scholar can receive is sufficient to be regarded as more than the reimbursement of expenses. Any defence would require a detailed analysis of how the scholarship allowance has been constructed, the nature of the scholarship status and the justifications for the amateur classification.

In addition, FIFA and the CAS would be referred to all relevant arrangements and laws which exist at a domestic level in England when deciding any case which they are obliged to 'take into account'. Reference could for example, be made to a recent English Court of Appeal decision which suggested that 'apprenticeships' (which a Scholarship Agreement arguably constitutes) should be regarded as a common law contract of apprenticeship.

Although relevant, arguments relating to the English legal position would not however be binding on FIFA and it is recalled that the CAS concluded that *"whether a national federation allows additional payments to amateurs is irrelevant for the question whether a player qualifies as an amateur or non-amateur under the*

Transfer Regulations". The onus would therefore be on English clubs to convince FIFA and the CAS that the focus should not just be on the remuneration received, but also on the nature of the relationship between the parties and the considered view of the national association.

In this respect, reference would be made to another FIFA DRC decision passed in July 2005 in the month before the CAS decision. In this case, the DRC actually rejected a claim for training compensation brought by a training club which argued that although a player was registered as an amateur, he was in reality a professional due to the terms of the contract with his new club. The DRC concluded *"that in disputes concerning training compensation, the nature of a contract between a player and a club is determined by the relevant association. As a principle, the Chamber will not enter into the question concerning the status of the player. In such case, the autonomy of the Association must be respected by the Dispute Resolution Chamber"*.

Whilst it is clear that each case turns on its own facts, the reasoning of the DRC case could not be more in contrast with the CAS decision in the Bordeaux case. The close proximity in time of these two conflicting decisions is strange. English clubs would no doubt seek to rely on this DRC case but training clubs will argue that CAS decisions take precedence given that the CAS is the final appeals body in the FIFA legal process.

It may take a test case involving an English club before it is clear whether a scholar is to be properly regarded as a professional. Until the position is clarified, clubs should expect claims from foreign scholars' training clubs for training compensation and should prepare themselves accordingly. *If any assistance is required in dealing with such claims, James Chapman & Co would be pleased to assist given our team's extensive experience in proceedings before the DRC and the CAS.*

Sports Law Specialists

Edward Canty



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We have a dedicated team of sports law specialists here at James Chapman & Co. Both Edward Canty and Matthew Bennett have considerable expertise in the world of football. They have advised the FA Premier League, many FA Premier League and Football League Clubs as well as individual footballers in all aspects of sports law. They also have experience in handling cases before the FIFA Dispute Resolution Chamber, Players' Status Committee and the Court of Arbitration for Sport. If you would like to discuss any issues featured in *Football in Focus*, or any other football related issues which we may be able to assist you with, You can get in touch with either Edward or Matthew on: **0161 828 8000** or football@james-chapman.co.uk