

# 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 BSkyB's latest Premier League deal, the prospects for a Great Britain team at the 2012 London Olympics and third party player ownership in football.

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](http://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 informative. If you have any questions or comments you can contact me at my email below.

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## Contents

- |  |   |
|--|---|
| 2. Cap-ital Markets  | 12. The Sky's the Limit                     |
| 5. Team GB at the 2012 London Olympics? A Definite Maybe             | 13. Setanta's Demise, and the Rise of ESPN  |
| 8. Drugs and Football  | 15. When does football chanting go too far? |
| 10. Heroes or Villains? Third party ownership in the Premier League. | 17. Jail, Injuries and Compensation         |
|  | 21. About Field Fisher Waterhouse           |

# On The Ball

## Our regular football-focused legal round-up

### Cap-ital Markets

*"I think in football there's too much modern slavery in transferring players or buying players here and there, and putting them somewhere."*

Britain's sensationalist tabloid writers salivated upon hearing the above snippet from the ever-quotable President of FIFA, Sepp Blatter. While the quote was taken a little out of context to serve better the objectives of newspaper hacks (as the writer of this article has done also!), the furore that followed has once again brought the public's attention to the high level of wages paid to top flight footballers across Europe.

The recently launched website Footballers' Wages ([www.footballerswages.com](http://www.footballerswages.com)), is calling on football supporters to join a campaign to curb the soaring salaries of players. The website panders to the sentiments of the 'average' fan with some bold comments:

- "Did you know that with just one weeks [sic] wages, Michael Owen could afford to drink over 30,000 pints?"
- "On his current wages, Wayne Rooney pockets a cool £185,000 a day, every day!"

It urges fans to sign an online petition to be presented to all major football bodies and aims to cap salaries across all levels of the sport and keep any salary increases in line with inflation. Comparisons between the average Premier League wage and that of the Prime Minister (an average Premier League footballer earns three times as much) and a typical police officer (an average Premier League footballer earns 28 times as much) are also made.

The increasing costs to fans of following their favourite clubs, through rises in ticket prices and merchandise and new television deals, are highlighted.

*"When fans see some of those footballers being compared to slaves, it's understandable that supporters feel disillusioned with their club and the sport"*

suggests Footballers' Wages spokesman Michael Hewitt.

UEFA president Michel Platini has also recently championed a salary cap. But how could a salary cap be introduced into the game in its present form?

Indeed recently, Football Association chairman, David Triesman commented that,

*"in the current climate it could be that we have to work out [wage] restraints and what they might be... A sensible form of [wage] restraint would make sense and it is not inconceivable."*

It has been almost half a century since Jimmy Hill successfully negotiated an abolition of the 'maximum wage' of £100 per week in the football league. Since then the game has exploded commercially, so much so that today one would be hard pressed to find it referred to as just that, a 'game', rather than a multi-billion pound 'industry'.

Caps have been implemented to varying degrees of success in other sports across the world. Most notably, all four major leagues of the most popular American sports, namely (American) football (NFL), basketball (NBA), baseball (MLB) and hockey (NHL), have a form of salary cap in place.

**There are two main forms in which a salary cap can be introduced:**

<b>Hard Cap</b>	No team can spend more than a set amount per year on players' wages.
<b>Soft Cap</b>	As above except only financial penalties are imposed on breaching teams. Additionally, the rules may be bent to allow wage increases for players who stay with one club for a long time. This rewards 'sentimental favourites' (known as the "Larry Bird" exception in the US).
<b>These may be introduced with various related measures, for example:</b>	
<b>Revenue sharing</b>	Profits that are earned by all teams are shared out by the sport's governing association amongst all member clubs.
<b>Salary floors</b>	Different levels of minimum wages could be used to promote youth development (inexperienced players' minimum wage may be lower, therefore a team shall be more inclined to include such players in their squads);
<b>Marquee players</b>	One or two players per team who may be exempt for the salary cap. Like David Beckham at LA Galaxy.
<b>Luxury tax</b>	If a team were to exceed the cap a penalty payment would have to be made (this could then be divided amongst still compliant teams).

Certain measures have already been introduced into European football by UEFA and the FA in this country (see our previous On the Ball - Transfer Window Article). It is envisaged that a salary cap would facilitate the most talented players being more evenly distributed in between clubs, smaller clubs may have the chance to be contenders and fans may also find some more change in their pockets after buying match tickets.

Blackburn Rovers chairman John Williams likened the idea of a salary cap in the Premier League to,

*" racing drivers changing cars with each other to stop the same Ferrari driver always winning... A salary cap on equality would be the most fantastic thing and would lead to great sporting competition."*

The primary purpose of the system is to establish a parity of sorts in the game. Sporting reasons are the basis of the argument for the cap. A newfound equality would breed

competitiveness and make the game more exciting for the fans as a consequence.

Even today, players are carefully considering their options. Due to the deep pockets of a generous owner or a well run club, the level of wages being offered to top players is so great that economists believe 'the utility of money may have reached a plateau.' This effectively means that a few extra thousand pounds will not make that much of a difference to a club wishing to retain a player. Luiz Felipe Scolari openly and honestly admitted that the salary offered at Chelsea was too good for him to turn down at his age,

*" Finance was one of the reasons, absolutely."*

Players (and their ever-altruistic agents) would consider a cap to be an unreasonable restraint of trade. Similarly, such an agreement may well be caught by the European Commission as being anti-competitive. From a European law perspective any capping agreement could distort 'trade' of players in the European football industry. FIFA, UEFA and The FA would need to find strong justifications in defence of the wage cap for it to be granted exemption.

# On The Ball

## Our regular football-focused legal round-up

### Problems

There are also various non-legal issues that present themselves when considering the impact that a salary cap may have on the game. As club football is arranged on a confederation basis (i.e. UEFA is charged with responsibility for all European national associations) there would need to be a cap for each region where clubs compete against each other. If, for example some UEFA member associations introduce their own national caps but others did not, this would not provide for a level playing field across Europe.

Michel Platini has recognised the need for consensus of clubs for universal enforcement of any capping rules:

*"Whatever we do in terms of licensing, debt and salary caps will be implemented through the strategy council and members of the football family."*

It means the regional governing body would need to enforce any salary cap obligations across their entire jurisdiction. Issues like varying tax regimes or currency fluctuations may indeed impact in varying ways on whether a cap may promote unfairness in certain instances.

Unlike many other sports leagues, nearly all football leagues also have systems of relegation and promotion in place. In any salary-capped regime, there would have to be appropriate measures in place to assist relegated clubs who would have to adhere to a much more restrictive cap when moving to a lower division. Contrary to a mass exodus that would likely occur in the above instance, a promoted club would be required to hastily find new players – this in itself might 'widen the gap' that governing bodies are so wary of doing.

### Have salary caps worked?

In the past 10 seasons there have been five different Serie A champions, four different La Liga winners and just three different champions in the Premier League. Contrast this with the NFL where, since the introduction of the salary cap in 1994, 84% of its teams have finished at least one season within one of the top six places. In the Rugby Union Premiership the competition has actually been dominated by two clubs since the implementation of the salary cap: Wasps or Leicester have won 9 of the last 11 titles.

Unknown to most, there has been a voluntary salary cap in the lower divisions of the English football league for some time now: introduced in League One in 2004 and League Two in 2003. It was proposed that clubs cannot spend more than 60% of annual income on players' wages and no more than 75% on all salaries.

As this winter's football "slave trade" (the winter transfer window) comes in and out of focus, the bumper pay packets received by those moving (or those whose agents have successfully managed to renegotiate lucrative contracts), may be well advised to save a little bit of their monthly pay cheque should they wish to continue to live their lavish lifestyles in the future. It appears that the people at the top of the game are very real in their talk of capping salaries.

**Daniel Geey, Solicitor**

# Team GB at the 2012 London Olympics? A Definite Maybe

## Introduction

Picture the scene, a bright summer's day at Wembley in August 2012. A Great Britain Olympic team is celebrating yet another gold medal at the hugely successful London Olympic Games.

Whilst the players charge the field as the whistle blows signalling a Team GB victory (players and supporters celebrating with thick Scottish, Welsh, English and Irish accents alike) it becomes clear that it could have all gone so differently had the various FA's making up the UK and Ireland not reached a consensus in allowing a Great British squad.

Rewind to 2010 and focus shifts to the continuing debate as to whether a Great British team should be assembled to compete in the 2012 Olympics. As importantly is the conundrum of who that team should consist of.

The Football Association (FA) is in the vast minority at present as the only one of the four national associations in favour of entering a Great British team in the 2012 Olympics. The Scottish FA (SFA), the FA of Wales (FAW), and Northern Ireland's Irish Football Association (IFA) are all strongly opposed to the idea (the Opposing Associations) on national identity, political and organisational grounds.

The Opposing Associations are wary of losing their separate international identity. All four of the home nations were guaranteed separate status at the FIFA congress in 1946. The SFA, FAW and IFA are concerned that agreeing to be part of a "Team GB" football team would be the first step onto a slippery slope that would lead to FIFA seeking to remove the independence of each FA. This would ultimately unite the four into a Great British football association, responsible for football throughout the UK and Ireland which for obvious reasons the Opposing Associations would be against.

Linked into this issue are the political ramifications of membership of the International Football Association Board (IFAB). The IFAB is the law making body which presides over the laws of the professional game worldwide. There are 8 seats on the board, and at present four of these are held by the four home associations, with the other four being divided amongst the rest of FIFA's member nations. The Opposing Associations are worried that any attempts to join forces with the other home nations will dilute any argument for maintaining their positions on the IFAB. Certainly, anything that is seen as a threat to the current status quo would be opposed. The rationale being that a Great British team would lessen the justification for the four associations holding such powerful positions within the IFAB. There is a fear that the Opposing Associations seats on the IFAB could consequently be under threat and allocated to other FIFA nations.

For their part, FIFA has recently, and categorically, stated that a Great British team would not prejudice the current separate associations, nor their representation on the IFAB committee. These comments first emanated from Sepp Blatter, to which the Scottish FA retorted that as Mr Blatter would not be the President forever, and that his assurances could not be ultimately relied upon. Indeed, David Collins the Welsh football chief remained unmoved stating that it,

*"...makes very little difference to our stance. The FIFA president Sepp Blatter made that statement when London were awarded the 2012. But it is up to the FIFA congress, comprising its 200-odd member countries, who take that decision."*

# On The Ball

## Our regular football-focused legal round-up

His point being that it is the FIFA congress that makes the democratic decisions for the future of world football and national associations cannot conclusively rely on certain individuals in order to ensure each Opposing Associations continuing existence.

Mr Blatter had previously somewhat muddied the waters surrounding the debate by stating,

*"The best solution for London (in 2012) is that only the English team play. That's the best solution. To make a combined team is not a good idea."*

Since then, Scottish secretary Jim Murphy has been in discussions with Jerome Valcke, the general secretary of FIFA in order to seek concrete assurances over the construction of a GB international team and it ultimately playing in the 2012 London Olympics. Murphy stated that Valcke,

*"confirmed that [the] FIFA...the executive will agree that this one-off under-23 tournament could take place and it will not jeopardise the status of any of the home nations and I think that's very welcome news."*

One now has to consider how much additional assurance each Opposing Association will need in order to free themselves from the trench warfare and entrenched positions that have been dug. Rhetoric from Peter Rees the President of the FAW maintaining,

*"it will be a cold day in hell before any Wales player plays for a Team GB at the Olympics"*

suggests it may be a long and bumpy road ahead!

From an organisational perspective, there is also the tricky debate over player burnout and the extra burden placed upon players selected for the GB squad. Questions would certainly need to be asked of how the Premier League season would be organised to take account of Euro 2012 followed almost immediately by the Olympics. With the debacle of player release for the 2008 Olympics still fresh in peoples' minds, managers, throughout Europe and especially in the Premier League would presumably hold strong views on their players having little, if any break, during the traditional summer holiday period.

Notwithstanding these challenges, there is certainly considerable public support in England at least for the idea. A recent poll in the Guardian newspaper revealed that approximately 70% of respondents were in favour of a combined GB team being entered in 2012. This contrasts with the Opposing Associations and specifically Welsh FA secretary general David Collins who asserted that Welsh fans are against the idea:

*"...the Football Association of Wales with its sister associations of Scotland and Northern Ireland have been of one voice. And I believe we have the support of all football fans in Wales."*

Though as pointed out to this author (by a few of his Scottish contemporaries!), with England making up 84% of the population of the UK a polling rating of 70% in favour is perhaps not as impressive as it first sounds.

In stating that each Opposing Association's status could be under threat as a result of entering a team, it would be difficult to backtrack from this deep-rooted position in subsequently accepting a joint team. Pointing out the issue and its pitfalls only hardens the Opposing Associations stance to a Great British Team. David Cameron, the Tory leader, has suggested a play off between all the Associations with the winning team being entered into the 2012 Olympics as Great Britain's representatives. Whilst it would seem that there is a relative degree of English popular support, official opposition to the question of "Team GB" it appears will run and run.



Images supplied by Matt Nuttall Photography

As of June 2009, it appears that the FA and the Opposing Associations have come to an agreement of sorts. The Opposing Associations have apparently confirmed that they are happy for a Team GB football team to be fielded, so long as only English players are selected. However, in hopeful anticipation of a true Great British team, here is the humble football lawyers guide to who could make the eleven if the wrangling over a Great British team is resolved. Under the current rules it is permissible to have three over age players. Mine has two and are marked with an asterisk.

Craig Gordon\* (Scotland & Sunderland)

Jonathan Evans (N. Ireland & Manchester United), Jack Hobbs (England & Leicester), Chris Gunter (Wales & Tottenham)

Theo Walcott (Arsenal & England), Aaron Ramsey (Wales & Arsenal), Gareth Bale (Wales & Tottenham), Scott Sinclair (England & Chelsea), Jack Wilshere (England & Arsenal)

Wayne Rooney\* (England & Man Utd), Daniel Sturridge (England & Chelsea)

**Daniel Geey, Solicitor & Henry Marshall, Solicitor**

# On The Ball

## Our regular football-focused legal round-up

### Drugs and Football: Further Regulation and Recent Events

With many high profile doping scandals traditionally in the fields of cycling and track and field, the Premier League is in the process of beefing up its anti-doping rules in order to bring them into line with the World Anti Doping Agency (WADA) code.

The WADA code has been in operation for many years in other sports where drug abuse has been viewed as more widespread. Football in the UK has a drug testing programme in place but these additional steps signal the football authorities' intentions to further safeguard the integrity of football matches in the face of the continuing threat of drugs.

In May 2008 Sepp Blatter announced that FIFA had come to an agreement with WADA regarding the new code to be adopted which included certain exemptions relating to the WADA mandatory two year suspensions for a positive drug test.

The new proposals would see players tested for both recreational and performance enhancing drugs at set times throughout the working week including home visits. The new regulations will mean that footballers will face similar conditions to athletes who have to notify drug testers where they will be for one hour of each day (the whereabouts rule). The fairly recent example of the whereabouts rule being enforced is the story of British Olympic gold medallist Christine Ohuruogu, who missed three drugs tests in 2006 and was banned for one year. In similar circumstances, Rio Ferdinand was banned for eight months after failing to attend one drugs test in 2003. United captain Rio Ferdinand has however backed the new whereabouts programme, saying,

*"it sounds fair. If it brings us up to the level of all the other sportsmen, then I'm in favour."*

In March 2009, FIFA asked for WADA to relax their rules relating to the whereabouts regulations insisting that teams rather than individuals should be tested and that this should occur in season time only.

### Missed drug test v failed tests

Ferdinand is just one of the high profile players that have fallen foul of the drug testers. While Ferdinand only missed a test and as a result was banned, former Chelsea goalkeeper Mark Bosnich and Romanian international Adrian Mutu both failed drug tests and had to serve playing bans. Both were found guilty for having tested positive for cocaine. In both cases, Chelsea sacked the players for breaches of their employment contracts. Chelsea claimed compensation from Mutu for the transfer fee Chelsea should have received from a purchasing club for his services. This was on the basis that Mutu was released on a free transfer after having his contact terminated. Quite how Mutu is responsible for having any say in his transfer value that Chelsea claim they are now owed by Mutu was subject to a Court of Arbitration for Sport (CAS) appeal decision. The CAS ruled in July 2009 that Mutu was indeed liable for paying Chelsea €17.1m. At the time of writing, Mutu has appealed the decision to the Swiss Federal Supreme Court and has also been charged with a new doping offence.

A good illustration of the doping conundrum that is facing footballers is an Italian decision from last year. On the 29 January 2009 two Italian footballers Mannini & Possanzini, were selected for a random drugs test after a game. Just as they were about to be tested they were told in no uncertain terms - after their third consecutive defeat - by their manager and president to return to the changing rooms rather than attend the drugs test immediately. An infamous 20 minute rant by the manager followed before they were released to take the drug test. It turned out that they missed the drug test and faced WADA sanctions as a result. Even though they took the test 25 minutes later and the tests proved negative they were banned by the CAS for a year under the WADA code. Many argued that such a decision was extremely harsh bearing in mind the players merely followed the team manager's instructions. Interestingly in July 2009, new evidence that was not presented at the initial CAS hearing meant that CAS agreed to a new hearing which resulted in the players' bans being reversed and they were thus not deemed to have refused or failed to have submitted to a drugs test.



The combined effects of either missing a drugs test (which can be subject to a straight ban) or not being present where you should be when the drug testers come knocking (the three strikes and your banned whereabouts rule) means that in the future (when the current dispute between WADA and the various football authorities is resolved), it is likely that a combination of the football clubs, the players themselves, club doctors and agents will have to be responsible for passing on each player's weekday whereabouts for an hour a day to the relevant doping body (UK Sport).

One can envisage widespread debate about the need for such stringent rules if a leading England international was banned under the three strikes whereabouts rule even if no actual doping offence had been committed. Conversely, UK Sport, the agency that runs Britain's anti-doping programme, has explained that the whereabouts rules have worked well in other sports for years and therefore football should pose no significant problems.

### From an Athlete's Perspective

The Professional Footballers' Association (PFA) chief executive Gordon Taylor has commented that he feels the whereabouts rule may be quite a draconian rule to enforce.

*" We feel to invade the privacy of a player's home is a step too far. If we complain about anything to do with drug-testing people think we might have something to hide, but football's record is extremely good and there has been a virtual absence of any performance-enhancing drugs over decades."*

In mid January 2009, to muddy the waters further, a group of athletes from a variety of sports, under the representation of the Sporta organisation, brought a challenge against WADA's whereabouts rules in the Belgian courts citing Article 8 of the European Convention on Human Rights, which relates to an individual's right to privacy. They argue that an athlete should not have to reveal to anyone where they are based for the administration of the whereabouts rule. Although a final

decision is unlikely in the near future it is interesting to see the lengths that athletes are looking to go to in order to protect their livelihood.

United manager Alex Ferguson expects that the new rules,

*"...will cost the Football Association a fortune and the implementation will be very difficult."*

Once WADA and FIFA settle any differences of opinion over the scope and duration of the whereabouts rule, the proof of the pudding may be when high profile football stars due to laziness, forgetfulness or other reasons (shopping with the WAG not being a good enough excuse) are not where they should be three times in a row. Although not a betting man, this author's money is on this happening sooner rather than later and a high profile ban shocking players and clubs alike into the realisation that tough sanctions are in place if you do not play by the new rules.

**Daniel Geey, Solicitor**

# On The Ball

## Our regular football-focused legal round-up

### Heroes or Villains? Third party ownership in the Premier League

After one of the quietest transfer windows on record and the reported high debt levels of Manchester United, Liverpool and Portsmouth, it appears clubs are becoming more risk averse in 'splashing the cash'. Indeed, some companies have been looking to tap into the potentially lucrative UK transfer market.

Investors have, for some time, been looking at alternative products within the football industry to make money. Increasingly, cash-strapped clubs are looking for alternative ways to borrow significant sums. New investment vehicles providing guidance and monetary assistance for up and coming foreign footballers are growing in number and sophistication. They quite legitimately claim to give many young footballers the chance to live the dream in the popular and lucrative European leagues.

Take the Hero Global Football Fund for example. Dubai's national bank has reportedly invested £27 million in the fund, alongside other companies and individuals. It has strong links with Alan Hansen, former Premier League referee David Ellary and David Davies, the former executive director of the F.A. Its aim is to invest in young players and make profits for the Fund by selling the economic ownership in the player to European clubs willing to pay transfer fees to recruit top talent. If the fund owned 50% of the rights in a player transferred for £20 million it would pocket £10 million.

This is an arrangement which has caused many a sleepless night for West Ham and Premier League administrators alike. Taking the often cited story of Carlos Tevez whose economic rights were not owned by West Ham but by a third party investment vehicle, the third party company inserted a clause in the contract that stated West Ham had no veto over the sale of the player or for how much. It meant that an outside party had material influence over the decision making of a Premier League club.

That of course does not mean that every third party arrangement has similar provisions. If no such provisions existed in the Tevez issue, there may not have been a problem. A common misconception at the time was that any third party agreement would have been in breach of the Premier League rules when in fact it was the clause giving the owners of Tevez influence over West Ham (plus the non disclosure of the agreement itself) which incurred the Premier League's wrath. It was for this reason that West Ham were judged to have breached the old Premier League rule - Rule U18 and fined £5.5 million by the Premier League.

In reaction to "Tevezgate", the Premier League drafted new rules L34 and L35 from the start of the 2008/09 season in order to outlaw any type of third party agreement from the beginning of that season. At its AGM in June 2008, the new rules were brought in to protect the integrity of the Premier League competition, which many felt was damaged by the Tevez affair. As Tevez was still partly owned by investment vehicle MSI (until his signing by Man City), the rule change appears not to be retrospective in nature.

It seems that FIFA, football's governing body, is also aiming to restrict this practice, at least as far as a third party's influence is concerned. Article 18 of FIFA's Rules on the Status and Transfer of Players states that,

*"No club shall enter into a contract which enables any other party to that contract or any third party to acquire the ability to influence in employment and transfer related matters its independence, its policies or the performance of its teams."*

It would appear that this does not prevent a team from signing a player whose registration is owned by a third party. Therefore the new Premier League rules go much further than the FIFA rules governing third party ownership. The principle of the FIFA rules is to outlaw outside influence, whereas the Premier League rules actually ban any agreement regardless of whether there is a material influence clause or not. The Premier League argues that their rules are necessary to retain public confidence in Premier League.

Given the stance taken by FIFA and other leagues, the Premier League's outright ban could be viewed as a draconian overreaction taken in the immediate aftermath of the embarrassment caused by the Tevez saga.

There has also been bad news for the Hero Fund. On 21 January 2009 the Premier League announced that,

*"The Hero Fund's proposed business model, in our opinion, falls within the prohibition of Third Party Investment contained within our rules. We have written to our member clubs and the Fund to advise them of this."*

The Hero Fund now faces a conundrum. It may argue that a blanket restriction over a company's ability to own the economic rights of a player playing in the Premier League is a disproportionate restriction and is illegal under English or European law. Alternatively they could decide to take the players' whose economic rights they own, to other lucrative European league destinations. The third avenue is to fall in line with the Premier League rules, which may be as simple as relinquishing all economic rights in return for a larger transfer fee when transferring one of their players to a Premier League club.

Supporters of the Fund argue that its arrangement allows clubs to field players it would otherwise not have been able to afford. It is doubtful that West Ham could have bought Mascherano and Tevez for £40 million. It also shields the club from the risk of poor player investment which is shouldered by the investor and not the club. It means underperforming players can be moved in or out without significant capital outlay or loss for the club.

However, other commentators are more sceptical. Of particular concern is the impact third party ownership would have on smaller clubs. Despite all the training and coaching a club may give a player, an increase in the value of the player could not be enjoyed or realised by the training club if the player was not their asset. The delicate existence of many clubs from the Championship down to the Ryman Premier League relies on them being able to develop players from the grassroots level and then sell the brightest prospects to bigger, richer teams. Without the right to receive financial reward for this, many clubs would go out of business. Of course, this is remedied to some extent by clubs retaining a stake in each player.

Wishing to avoid another Tevez style escapade, the Premier League's position on the issue of third party ownership of footballers seems resolute. In the short to medium term at least, this stance is extremely unlikely to change. It will be of interest to see which, if any, other national associations go as far as the Premier League has gone to outlaw this new alternative way of funding and profiting from the global transfer system. So far, it does not look like any will do so.

**Daniel Geey, Solicitor & Tim Coles, Trainee Solicitor**

# On The Ball

## Our regular football-focused legal round-up

### Premier League Broadcasting: Setanta's Demise, and the rise of ESPN

#### The Recent PL Domestic Broadcasting Auction

Last year, Sky won five of the six auctioned packages for live Premier League (PL) matches for three years from the 2010-2011 season. Sky muscled out its then competitor Setanta by snatching one of the packages that had been previously won by Setanta. This article highlights the consequences of the latest PL auction for Sky, ESPN, Setanta and briefly charts the process that led to the untimely demise of the Irish broadcaster.

The auction results mean that from the 2010-2011 season, Sky will screen five of every six live Premier League games. This converts into 92 games in the current 2009-10 season and then 115 games in each of the following three seasons.

Setanta, who had won two live PL broadcasting packages in the last auction, were relegated to one package from the 2010 season. Only days after the auction results were announced Setanta's future was thrown into doubt. Setanta

would have had only 23 games per season to market and promote to its subscribers from 2010-13 and many analysts saw this as the beginning of Setanta's financial meltdown. The PL's decision to reclaim its rights for the 2009-10 season (and subsequent 2010-13 package) after Setanta missed an extended payment deadline, meant that Setanta's move into administration appeared a mere formality before it was finally confirmed on 23 June 2009. Only a day before Setanta's administration announcement it had been publicised that Disney-owned ESPN had bought the rights to Setanta's 09-10 package of 46 games and also the 23 matches to be broadcast from the 2010-13 season. Richard Scudamore, Premier League chief executive, said

*"The timescale of our process was tight, to say the least, and it is to the great credit of ESPN that they committed themselves to adding Barclays Premier League football to their already impressive portfolio of sports rights."*

**Table 1: Packages Reclaimed by the PL from Setanta and Re-auctioned and Won by ESPN**

Type of Package	How many games per season?	Price paid by Setanta per game/total paid
Setanta package for the 2009-10 season (Saturday teatime and Monday evenings)	46	£8.5/£392m
Setanta package for the 2010-13 seasons (Saturday teatime)	23	£6.9m/£159m

## Broadcast arrangements and cost

ESPN launched its eponymous UK sports channel, 'ESPN' on 3 August 2009. Live coverage began with Everton v Arsenal on the opening day of the 2009-2010 season. Alongside English and Scottish Premier League (SPL) football the channel shows some US sports to which ESPN owns rights and football coverage from the top-flight domestic competitions in Germany, Portugal, Russia and the Netherlands.

ESPN operates as a 'top-up' option on Sky's digital platform but Virgin Media's 3.5 million cable customers gain free access to ESPN's live PL coverage if they subscribe to its XL television pack. Virgin's subscribers on M or L packages can subscribe to ESPN for £10 a month or £8 a month if they already subscribe to any combination of Sky Sports services on Virgin.

### ESPN's acquisition of UK football rights

Despite ESPN's global presence their acquisition of PL rights marked the Disney-owned company's first foray into the UK domestic market. After initially losing out to Setanta and Sky in the February 2009 auction, ESPN has signalled its intent by scooping live PL football in the UK.

As a result of Setanta's administration, the SPL's twelve clubs agreed to a £65m deal with Sky and ESPN to screen 60 live SPL games each season for the next three years across the UK and Ireland. Compare this to the £125m that Setanta had agreed to pay and it is somewhat understandable that the Old Firm Celtic and Rangers were at pains to stress their disappointment in the SPL for originally approving the Setanta deal. Celtic chairman John Reid said:

*"Last year's decision to reject the Sky bid and opt for Setanta - arrived at against the strong opposition of Celtic, Rangers and Aberdeen - has proved to be the disastrous misjudgement we indicated it might be, with Setanta now in administration."*

ESPN however did not complete a clean sweep of the rights previously held by Setanta. Sky captured all rights to screen the Community Shield UEFA in a 3 year deal with each game worth around a £1m.

With ESPN's parent company, Disney, worth nearly twice as much as Sky's parent company News Corp (\$24bn), the competition for Premier League broadcasting rights may in the future become as fierce as the action at the Emirates or Anfield.

**By Daniel Geey, Solicitor**

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Images supplied by Matt Nuttall Photography

## Supporting your team: When does football chanting go too far?

### Introduction

Collective chanting by fans encouraging their team or insulting the opposition is at the very core of what it means to be a football fan. In turn clubs actively encourage fan atmosphere by aiming to create fortresses where visiting sides will struggle to get a result: imagine the pressure of taking a penalty in front of the baying Kop, or defending a corner whilst the Pompey chimes bellow out from Fratton Park. How often do you hear of the importance of the so-called twelfth man? However when do the actions of some supporters go too far?

### A chant too far?

During the Teesside-Tyneside derby match in December 2008, Mido, the ex-Middlesbrough Egyptian forward, was subject to Islamophobic taunts from Newcastle United fans. It resulted in two men being found guilty of "indecent or racist chanting" under the Football Offences Act 1991 (the "Act"). More recently, four Tottenham Hotspur fans

were banned from every football ground in the country after admitting to abusive chanting directed at Sol Campbell, their former defensive lynch-pin, who had signed for arch-rivals Arsenal back in 2001.

The conviction of the Tottenham Hotspur fans was a direct result of an investigation by Hampshire Police called 'Operation Decorum' after a complaint was made by a member of the public regarding the treatment of Campbell. Portsmouth Magistrates Court was shown a ten-minute video of CCTV footage which captured the chants made by the fans, ultimately leading to their conviction. This is not the first time that the authorities' scrutiny has followed football supporters: prior to Liverpool's two games against local rivals Everton in January of this year, Merseyside Police compiled a 'dossier of offensive chants' with Chief Superintendent Dave Lewis stating that they would:

*" speak to the CPS (the crown prosecution service) to see if what is sung is viewed as abusive".*

## The Law

There are two separate offences, chanting which is “indecent” or “racialist”. Nick Hawkins, Chief Prosecutor for Hampshire and the Isle of Wight in the case against the Tottenham fans, stated that,

*“we draw the line between good natured, humorous chanting at football matches and indecent abuse”.*

So when is that line crossed? The Newcastle fans chanting at Mido claimed that they were merely referring to Mido’s apparent resemblance to the infamous shoe bomber, Richard Reid – and therefore they claimed that their actions were not racist or indecent, but humorous. However, the court disagreed and the chant was deemed to have crossed the line.

An “indecent chant” cannot be defined; instead it will be for the police and the courts to decide what will fall into this category, and ultimately each case will have to be decided on its merits. In his summing up following the ruling against the Tottenham fans, the judge said,

*“Whether or not Mr Campbell was offended, decent members of the public found this offensive and so did the bench. Anyone who indulges in this disgusting behaviour will be dealt with very seriously by the courts.”*

It is worth noting that there were seven other defendants, including three minors, charged in the Campbell case who all pleaded not guilty. On 15 May 2009, two individuals were banned by Portsmouth magistrates from going to football matches for three years for directing homophobic chants at Campbell. The CPS confirmed that this was the first case of indecent chanting to be brought to the court’s attention.

Although no-one would condone the abuse directed at Campbell, abuse that is in poor taste should not necessarily be illegal. Having a case by case approach to what is indecent clearly reflects this fact; however, this flexibility also brings problems of its own.

Inconsistency is not the only issue, after his preparation of a ‘dossier of offensive chants’ Chief Superintendent Dave Lewis stated,

*“we won’t be arresting hundreds as we haven’t got the resources to do so and could prompt a melee”.*

This attitude is reflected in the Statistics on Football-Related Arrests and Banning Orders for the 2007-2008 season released by the Home Office in November 2008. This shows that the number of arrests made due to offensive chanting was only 23 in the 2007-2008 season. Police sometimes consider the punishment of offenders to be an issue for the club itself; therefore actions infringing the Act which may be considered non-harmful e.g. a good-natured, small pitch invasion. Usually arrests are only made when such actions are likely to result in the committing of more serious offences.

**Daniel Geey, Solicitor & Tom Pond, Trainee Solicitor**

# On The Ball

Our regular football-focused legal round-up



Images supplied by Matt Nuttall Photography

## Jail, Injuries and Compensation: All in a Day's Work for a Professional Footballer

### Introduction

What happens on the pitch stays on the pitch. Many a football autobiography has used this immortal phrase. The law is becoming increasingly involved in on-the-field incidents. Issues like mistimed tackles or a flying elbow highlight examples of where the law and sport are uneasy bedfellows.

English football has been littered with high profile incidents. Examples include referee Paul Alcock's unfortunate comic book fall after being pushed over by Paulo Di Canio, to the attempted re-enactment of the Ali versus Frazier's 'Rumble in the Jungle', performed aptly by Newcastle's Kieron Dyer and Lee Bowyer.

Fortunately only egos were bruised in the above examples, yet what is of greater concern is when a player is injured as a result of a reckless challenge. There is a general understanding when a player enters the field of play as an amateur or professional, anyone who decides to play accepts the inherent risks involved and the possibility of sustaining an injury.

### Criminal and Civil Action

The vast majority of football incidents are handled by the FA. It means that the bulk of on-the-field incidents are dealt with by the FA's internal disciplinary procedures and that these processes are usually considered adequate. There are however occasions when incidents involve players and supporters. Jamie Carragher was red carded, banned for three matches and interviewed by the police (although no further action was taken) as a result of throwing a coin back into the Highbury crowd during a feisty Liverpool v Arsenal game in 2002. More recently Didier Drogba, was cautioned for common assault for coin throwing at Stamford Bridge during



Burnley's shock victory over Chelsea. However, there are occasions when the crown prosecution service decides that there is enough evidence and individuals are prosecuted.

Probably one of the most infamous incidents in recent times involved Eric Cantona's iconic kung-fu kick on an opposition supporter at Selhurst Park in 1995. He received a nine month ban from the football authorities and was stripped of the United captaincy. Cantona was sentenced to 120 hours of community service for his actions. Lee Bowyer's £200,000 fine for his on-pitch brawl with Dyer (the equivalent of six weeks wages) and three match ban was in addition to the £600 fine that the court imposed for using threatening behaviour.

The most severe punishment was handed out to Duncan Ferguson in 1994 in a match between Glasgow Rangers v Raith Rovers, where Ferguson head butted John McStay. He managed to avoid a red card but was subsequently sentenced to three months in prison.

In light of these incidents it is worth questioning whether the courts have any role to play in dealing with on the pitch misdemeanours. In short, the answer must be yes. Whilst there have been few criminal acts on the football pitch, courts have increasingly played an important role in dealing with civil claims, i.e. where an injured player seeks damages for a challenge that has either ended or severely restricted their playing career.

## Player Compensation

The claim of Ben Collett in 2008 for loss of future earnings highlighted the willingness of the courts to make substantial awards based on the potential of a player. Collett had been a promising young player for Manchester United. According to Sir Alex Ferguson, he had an 'outstanding' chance of being offered a professional contract when he turned 18. However before this could happen he was injured in a youth match by a Middlesbrough player and had his leg badly broken as a result of a tackle. Both the player and the club admitted liability and the court held that an award in the region of £4.5 million was adequate compensation.

Whilst the Collett claim may be seen as highlighting the important role that courts can play in awarding large sums of money, there have also been instances where compensation has not been awarded. In 1994 Paul Elliot, who was playing for Chelsea at the time of his career ending injury, sued Dean Saunders of Liverpool because of a tackle made by Saunders. The claim failed in part because the judge believed that Saunders was legitimately trying to challenge for the ball. This can be distinguished from the Collett claim because the player and the club admitted fault for the tackle and the only issue to be decided was the amount of compensation due.

## Conclusion

George Orwell once noted that,

*"serious sport has nothing to do with fair play.... it is war minus the shooting."*

One would be hard pushed to equate today's sports athletes to soldiers. Those who compete in amateur and professional sport alike however, have the right to expect that the old fashioned value of playing 'hard but fair' is still applicable in modern football and sport more generally. It therefore is only in limited circumstances where court decisions will impact on the sports field.

**Daniel Geey, Solicitor & Rajan Patel, Trainee Solicitor**

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## About Field Fisher Waterhouse and Football Aid

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

## About our Sports Group

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

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

## About our Regulatory Group

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

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

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

# On The Ball

## Our regular football-focused legal round-up

### About our Editor



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