

## **From Bosman to Brexit: What next for EPPP and Compensation in football?**

For most young footballers, being approached to join a Premier League (or Football League) academy seems like a dream come true. Parents too are bound to be excited about the opportunities being part of an academy promises.

However, a vast majority of young people who are inducted into these exclusive academies will not become professional footballers, with far fewer achieving at the top level. Michael Calvin's 2017 must-read critique of Academy football, *No Hunger in Paradise*, concluded that:

*"The survivors of the system are statistical anomalies. Only 180 of the 1.5million boys playing organised youth football in England at any given time will become a Premier League pro. That's a success rate of 0.012 per cent. Less than one per cent of the boys who enter academies at the age of nine will make it."*<sup>1</sup>

What becomes of the others? The unfortunate reality for many such players is that they will never play at the top level for reasons of merit, but what of those that claim they are barred from joining a new club by 'compensation payments' demanded by their old clubs under the Elite Player Performance Plan (known as EPPP)?

A thorough November 2017 BBC Radio 5 investigation led by Adrian Goldberg, which this writer contributed to, concluded that there are significant problems in the system that are leaving some young players – even when on the face of it they are 'out of contract' – restrained from joining a new club<sup>2</sup>. In 2016, the Daily Telegraph had investigated the issue and concluded similarly; "*children as young as 10 are being frozen out of the football academy system because of exorbitant compensation fees placed over their heads by controversial youth development rules, The Daily Telegraph can reveal*"<sup>3</sup>.

The situation seems even more bizarre when contrasted to the position of professional footballers. Alexis Sanchez, whose Arsenal contract expires at the end of the 2017/18 season so that he is free as at 1 July 2018 to join any other club in the world without Arsenal having any entitlement to recompense – be it Forest Green Rovers, Tottenham Hotspur or Real Madrid – has the freedom of movement and contract bestowed upon him by the so-called '*Bosman*' transfer<sup>4</sup>. However, with Brexit on the horizon, could *Bosman* also be destined for the scrapheap?

### **What, and who, was Bosman?**

To properly consider this issue we must first of all remind ourselves of the true detail of the *Bosman* case, which has so often been misrepresented.

In the late 80s and early 90s, Jean-Marc Bosman, a midfielder, was plying his trade with Belgian first division side RC Liège. His average monthly salary was 120,000 Belgian Francs (c. £2,009.27 in June 1990<sup>5</sup>). When his contract came to an end, he was offered a new contract on a significantly reduced wage (30,000 Belgian Francs per month, or around £502.31). He refused to agree to the new contract and was therefore placed on the transfer list with a compensation fee for his training set at a level of 11,743,000 Belgian Francs (£196,623.42).

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<sup>1</sup> *No Hunger in Paradise*; Michael Calvin.

<sup>2</sup> <http://www.bbc.co.uk/sport/football/41839083>

<sup>3</sup> <http://www.telegraph.co.uk/football/2016/12/21/youth-players-left-scrapheap-thanks-exorbitant-compensation/>

<sup>4</sup> Named after the case of *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman* C-415/93, in which the European Court of Justice ruled that an out of contract footballer could move to another club with no compensation fee

<sup>5</sup> Based on an exchange rate of 1 GBP : 59.7233 BEF

Mr Bosman was unable to secure a transfer (perhaps not surprisingly), and RC Liège suspended him. Mr Bosman commenced court action and he obtained an interim order that RC Liège continued to pay his wage and that they did not prevent him from moving elsewhere. Whilst Mr Bosman was playing his football in the lower echelons of the French and Belgian leagues, his legal battle was playing in Europe, eventually reaching the European Court of Justice (the ECJ).

Mr Bosman argued that his ability to settle and work in another member state (France) had been unlawfully obstructed by the price placed on his head by the compensation scheme. The ECJ agreed, and concluded that:

*“Article 48 of the Treaty<sup>6</sup> precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training or development fee.”<sup>7</sup>*

Therefore, Mr Bosman should have been able to move between clubs without compensation and many players immediately began to benefit from this new found freedom of movement (and do, to this day).

In 2010 the ECJ had a second look at the matter when French defender Olivier Bernard sought to move from Olympique Lyonnais to Newcastle United, instead of signing his first professional contract with the French club<sup>8</sup>. Under the Charter of the French Football Association for the 1997/1998 season, a ‘*joueur espoir*’<sup>9</sup> should sign his first professional contract with the club that trained him and that, if he did not do so, substantial damages were due.

The ECJ found that the Charter was an obstacle to free movement of workers, however it found that a right of first refusal for a club could be acceptable in so far as it encourages clubs to provide training for young players. It stated that:

*“It follows that a scheme providing for the payment of compensation for training where a young player, at the end of his training, signs a professional contract with a club other than the one which trained him can, in principle, be justified by the objective of encouraging the recruitment and training of young players. However, such a scheme must be actually capable of attaining that objective and be proportionate to it, taking due account of the costs borne by the clubs in training both future professional players and those who will never play professionally”<sup>10</sup>*

In this case, the ECJ held that a right to compensation must be calculated on the basis of the costs actually borne by the training club, rather than the ‘value’ of the player. Under the French Charter the payments due for Mr Bernard were “*not of compensation for training, but of damages*”<sup>11</sup> and as such it failed on proportionality. At this period of time, in the UK, there was a Tribunal system that determined levels of compensation that were due (on a discretionary basis by reference to the player’s talent and potential) if a youth player moved clubs (absent an agreement between the two clubs).

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<sup>6</sup> The Treaty Establishing the European Community

<sup>7</sup> *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman* C-415/93

<sup>8</sup> *Olympique Lyonnais v Olivier Bernard and Newcastle United FC* C-325/08

<sup>9</sup> Roughly ‘Hopeful Player’, referring to players between the ages of 16 and 22 employed as trainees by a professional club, which Mr Bernard was.

<sup>10</sup> *Olympique Lyonnais v Olivier Bernard and Newcastle United FC* C-325/08, para 45

<sup>11</sup> *ibid*, para 46

One year after the *Bernard* decision, EPPP was born. It is probably worth noting that both *Bosman* and *Bernard* were fought on the basis that the compensation schemes in force in Belgium and France respectively were obstacles to free movement under European Union rules, as both involved a player moving between member states. They did not strictly affect a player's move within the United Kingdom, but the reality soon became that the domestic rules had to reflect the *Bosman* position. It may be that EPPP could be subject to a similar challenge for a cross-border move, however given the looming spectre of Brexit and the speed at which cases progress through national and European courts (Mr Bernard was no longer a 'hopeful player', and had in fact had retired from football, by the time the ECJ gave its judgement), it is likely that such a challenge would be of limited value. But can we extrapolate principles from these cases, or at least understand why it is that a youth player can face significant financial restraints to be allowed to freely move clubs, even if his period of registration (or contract) has expired?

This article will now consider whether the EPPP compensation scheme (and the way it is operated by clubs, the Premier League and the Football League) accords with the principles of contract and employment law and consider the merits of a potential legal challenge; could it, too, succumb to a *Bosman*?

### **What is EPPP?**

EPPP is a part of the FA's Youth Development Rules, which in turn is incorporated into the rules of the Premier League and the Football League. Under the Rules, when a young player leaves an academy (unless the club release the player in certain circumstances), a compensation payment will be payable by any other club before they can sign the player. The amount due will depend on the category of the training club's academy (ranked from 1 to 4, with 1 being the highest), the age of the child and the amount of time they spent at the club.

Each season at a Category 1 academy between under-12 and under-16 level will generate a compensation fee of £40,000 to be met by a future club. If, for example, a player who has been at a Category 1 academy from the season in which they turn 12 wants to leave aged 15, a new club wishing to sign him will have a compensation bill of £160,000.

This may not seem like a lot in a world where Neymar can command a £198m transfer fee, but our notional 15 year-old is not Neymar, and it is very unlikely that he will ever be as good as one of the world's best players. Instead, he may want to sign for a club in the third tier of English football – League 1. The average entire transfer spend per club in League 1 in the 2017/2018 season was £135,300<sup>12</sup>. A club in League 1 is very unlikely to be able to (let alone be willing to) pay over double its season's transfer outlay on an untested 15 year-old, with bags of promise but no experience beyond under-16 level. That fee would, after all, make our 15 year-old the sixth most expensive signing in League 1 this season<sup>13</sup>.

Unless he finds a club who are willing and able to pay £160,000 to his former club, this player (who has never been paid for playing football) and all of his potential are lost to the game. This is the reality for many young people up and down the country.

### **Is this legal?**

For our hypothetical player, this is the £160,000 question. As noted above, it is all too easy to convince yourself that the money in football is all mad, and that the normal rules of contract law, restraints of trade and equity do not apply. However the usual law of the land (whether or not

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<sup>12</sup> [https://www.transfermarkt.co.uk/league-one/transfers/wettbewerb/GB3/saison\\_id/2017](https://www.transfermarkt.co.uk/league-one/transfers/wettbewerb/GB3/saison_id/2017)

<sup>13</sup> [https://www.transfermarkt.co.uk/league-one/toptransfers/wettbewerb/GB3/plus/?saison\\_id=2017&land\\_id=alle&ausrichtung=&spielerposition\\_id=alle&altersklasse=alle&w\\_s=&zuab=zu](https://www.transfermarkt.co.uk/league-one/toptransfers/wettbewerb/GB3/plus/?saison_id=2017&land_id=alle&ausrichtung=&spielerposition_id=alle&altersklasse=alle&w_s=&zuab=zu)

that incorporates European law) does apply, just as Mr Bosman was able to demonstrate. On what basis, then, could the EPPP compensation scheme be challenged?

### **Incorporating terms into a contract**

At its most basic level, a contract requires ‘a meeting of the minds’ between the two parties, with intention to create legal relations, consideration and a sufficient degree of certainty. In order for a meeting of the minds to occur, each party must know the terms of the agreement (or at least have the terms of the agreement available to them). Where one party later seeks to rely on terms which the other party hasn’t seen and had no way of reviewing before the contract is formed, those terms cannot be included in the contract<sup>14</sup>.

However, the Premier League has said, in a statement, that it sends its charter (explaining the compensation rules) out to parents only after their child has signed a contract with a Premier League club<sup>15</sup>. As in *Thornton*, (where onerous terms and conditions were only visible to customers when they had bought their ticket to enter a car park) it must follow that it could be argued these terms are not included in the young player’s contract, and therefore not binding.

The Premier League may of course say that parents have accepted these terms by conduct, and that even if the term wasn’t originally in the contract, it was varied by the parents’ lack of opposition over the intervening period.

It is perhaps surprising that the Premier League did not say (but it does not mean that they would not subsequently contend) that at the point the child signs with his first club, the registration forms amount to a contract which clearly incorporate and adopt the Youth Development Rules in their entirety (later explained in more detail in the ‘Charter’ that they send out). However, whether they were to contend this or rely on a conduct argument, particularly onerous terms may still not be incorporated into the contract if insufficient attention was drawn to those terms. In the *Thornton* case, Lord Denning famously held:

*“I quite agree that the more unreasonable a clause is, the greater the notice which must be given of it. Some clauses which I have seen would need to be printed in red ink on the face of the document with a red hand pointing to it before the notice could be held to be sufficient.”<sup>16</sup>*

As noted above, the scheme is particularly onerous in that it has the potential to completely prevent a young person playing football at a professional level and/or at another academy in the meantime. Far from being printed in red ink on the face of every contract signed by a young player, the Premier League’s stance would appear to be that they only provide (at least full) details of the compensation scheme after the contract is signed. The fact that this contract also involved a minor (to whom the law provides greater protection) and a restraint of trade (which the law frowns upon) it seems likely that the Court would take a stricter view of these provisions. These points will be considered in more depth below.

### **Restraint of trade**

It is not uncommon for employment contracts to contain clauses which prevent employees (particularly senior employees and directors) from joining a particular competitor or competitors within a certain period of the leaving employment.

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<sup>14</sup> *Thornton v Shoe Lane Parking* [1971] 2 Q.B. 163

<sup>15</sup> <http://www.bbc.co.uk/sport/football/41839083>

<sup>16</sup> *Thornton v Show Lane Parking*, per Lord Denning M.R.

In order to strike a balance between the interests of individuals (who need to earn a living) and businesses (who need to protect their interests), the law provides that restrictions in employment contracts must go no further than is reasonably necessary to protect the legitimate proprietary interests of the old employer<sup>17</sup>.

However, young players at academy level are not employees. They are not paid to play football, and they are no more employees of the club whose academy they play in than they are of the school they attend. If a school were to attempt to extract a compensation payment from any other school a child went on to attend, it is very unlikely that the court would uphold this kind of restriction (there is clearly no legitimate proprietary interest in the registration of a schoolboy to a particular school).

How does this position differ to that of an academy player and their academy? Premier League clubs would of course say that a young person in their academy has the potential to be a top player and whose registration is worth tens (or hundreds) of millions of pounds. They could say that their training contributed to this value, and therefore they deserve to recover at least an element of this value.

The statistics paint a very different picture. In reality it is suggested that only 1% of academy players will go on to play football at a professional level (and therefore have any value to the club which trained them)<sup>18</sup>. On the basis that a huge majority of academy players will never play professional football, it is difficult to identify the 'legitimate proprietary interest' which the EPPP compensation scheme seeks to protect.

If there were a legitimate proprietary interest to protect in the registration of players who will most likely never play professional football or attract any transfer fee, clubs would then have to show that the level of compensation goes no further than is necessary to protect that legitimate interest. It could be said that the pre-EPPP system did this, since compensation was assessed on a case by case basis by a Tribunal taking into account the specifics of that player and what his real value was.

Under the current system, it is not open to players to negotiate their own level of compensation, either at the outset of the training or at the end. Whilst two clubs can agree a lower compensation figure for a young person (or agree to waive the fee altogether), the EPPP scheme gives a contractual right to demand up to the full amount. In the example of our notional 15 year-old, his training club can prevent him from going to any other club which is not willing to pay £160,000. Further, the notional 15 year-old could be the best 15 year-old player in the EPPP system in the country, or one of the worst; his compensation fee remains the same (a stark contrast from the former system, which would have placed wildly different valuations in these circumstances). Where the compensation fee is not linked at all to the value or merit of the player, can that really go no further than is necessary to protect the club's legitimate interest?

One might argue that employers can recoup training costs that they spend on an employee following the employee's departure, and so is not the EPPP system akin to that? The Court of Appeal has considered the enforceability of repayment of training costs provisions and found that they are arguably a restraint of trade, in that they provide a disincentive to leave the employer<sup>19</sup>. This Court also found it arguable that the repayment clause was not intended to secure repayment of training costs, but instead to prevent the employee from joining a competitor. It was a similar argument to this that proved fatal to Olympique Lyonnais' case in *Bernard*; the Charter provided for damages which acted as a disincentive for young players to leave, rather than compensation for training. For a repayment of training costs provision to be

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<sup>17</sup> *Office Angels v Rainer-Thomas and O'Connor* [1991] IRLR 214

<sup>18</sup> <http://www.independent.co.uk/sport/football/premier-league/does-the-lack-of-academy-graduates-in-the-premier-league-simply-reflect-its-growing-quality-a6730551.html>

<sup>19</sup> an unreported interlocutory hearing in *Electronic Data Systems Ltd v Hubble* [1987] IDS Brief 363

enforceable, the employer must show that they are recovering no more than they have actually incurred training that particular employee.

So, even if the EPPP compensation scheme is not unenforceable *per se* as not protecting a legitimate proprietary interest, does it represent reasonable compensation for the training costs incurred in training the young player, or is it in fact just a disincentive for players to move elsewhere?

Football clubs at the highest level place significant investment into youth development and perhaps understandably take the view that another club (who may be in direct competition with the training club) should not be able to benefit from the fruits of their rivals labour. In 2012 (the year after the EPPP compensation scheme was approved by clubs), a study by the European Club Association reported that Premier League big hitters Arsenal spent €3m (c. £2,375,700 at the time<sup>20</sup>) per year on their academy of circa 180 players (or an average of £13,198.33 per player)<sup>21</sup>.

Even on this (somewhat crude) analysis, it is easy to see how the EPPP scheme (which sets the compensation level at £40,000 per season for players aged between 11 and 15 at a category 1 academy) could lead to a club making a profit from their academy far in excess of the amount spent training a young player.

Given that 99% of academy players will not end up playing professional football (and so their registrations would be worthless) it may be more enforceable to only apply compensation rules when a player signs their first professional contract, or has played a certain number of professional games, only. In any event, applying a blanket compensation fee to all young players simply because they have been at an academy – irrespective of any other factors - seems arguably to fall foul of the very limited circumstances in which restraints upon trade are acceptable. This would not be the case, perhaps, for the pre-EPPP system whereby compensation was assessed by a Tribunal taking into account all of the relevant factors that go to the fair value of that player or the methodology used by the Professional Football Compensation Committee, for professional players outside of the EPPP system but aged under 24)<sup>22</sup>.

## Ending the contract

Whilst the Premier League claim that last season compensation was waived in 87% of cases, and the Football League have reported that compensation was waived in 90% of cases in the last 12 months, this will be of little comfort to those who are forced out of the sport by EPPP compensation. Those statistics also miss the point somewhat; it is those youngsters that are unable to leave *because* of the system (and thus never become either a leaver or a waiver statistic at all) that are the primary issue.

If, for whatever reason, a young person is unhappy at a club and wishes to leave, his parents will usually be presented with a Form YD10. The very brief form states:

*“The registration of [name of Academy Player] held by [name of Club] Football Club has today been cancelled by mutual consent. Unless otherwise set out below the Club will retain rights to compensation in respect of the Academy Player pursuant to the Premier League Youth Development Rules and the Fifa regulations for the Status and Transfer of Players.”*

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<sup>20</sup> Based on an exchange rate of 1 EUR : 0.7919 GBP

<sup>21</sup> ECA Report on Youth Academies in Europe (August 2012)

<sup>22</sup> i.e. the PFCC matter of Danny Ings : <http://www.liverpoolfc.com/news/first-team/218864-liverpool-fc-statement-on-danny-ings-fee-decision>

This is then followed by signature lines for the academy player, their parent and the club.

There are a number of ways in which a contract can be terminated. In these circumstances, the contract to be terminated is the contract between the club and the academy player under which the club provides training to the academy player. In order to effectively terminate this contract, the YD10 must be a valid contract too, having all of the necessary elements of a contract. Moreover as the academy player will be a minor, the law also places extra constraints on the types of contracts which may be valid and enforceable.

For a contract to be formed, there must be some benefit (or consideration) conferred on either party. If one party enters into a contract whereby they promise to do something without getting anything in return, this contract will be unenforceable (unless entered into as a deed). So is the YD10 a binding contract terminating the earlier agreement, or just a bare promise?

From the Club's point of view, there is a clear benefit emanating from the YD10; they are released from their obligations to provide training to the young player and no longer have any obligations towards him.

From the point of view of the young person, the benefit is less easy to identify. A club may say a young person benefits from no longer being obliged to attend training. However this is not a true benefit as a young person could decide, without having signed the YD10, not to attend training. A club may also suggest that the young player has benefitted in that he can sign for another club. Once again, this is not a benefit for the young person, as he could walk out of the club without signing a YD10 and the club would in all likelihood release him. He could sign for a new club and would be subject to the same compensation rules as if he had signed the YD10. A savvy player could also argue that, due to the onerous compensation provisions, he couldn't sign for a new club at all. Signing the YD10 therefore doesn't provide any change to the young player's position. On the face of it, the YD10 is nothing but a bare promise, incapable of terminating the earlier contract.

Another problem for club arises as a result of the young person's age. As a general rule, any contract entered into by a minor<sup>23</sup> is voidable at his option<sup>24</sup>. This is subject to certain exceptions: contracts for necessities, contracts of training, employment or apprenticeship and a broad category of contracts which are beneficial to the minor.

Does this mean that the whole training arrangement is potentially voidable? Some young sportspeople and performers have brought cases to seek to rescind contracts made during their minority in relation to their craft. In *Doyle v White City Stadium Ltd*<sup>25</sup>, a professional boxer sought to rescind a contract he had made with the British Boxing Board of Control in which he agreed to be bound by the rules of boxing and would forfeit any prize or appearance money if he was disqualified. The Court held that the contract had benefitted the minor (and had allowed him to make a significant amount of money) and therefore he should not be allowed to rescind it.

In *De Francesco v Barnum*<sup>26</sup> the Court considered a contract between Signor De Francesco (a dance instructor) and a student. The contract gave Signor De Francesco wide ranging contractual discretion as to how he taught his students and when and where they performed. There was no indication that Signor De Francesco had misused his contractual discretion (and in fact the court found quite the opposite) but that the contract "*place[d] in his hands an inordinate power*" and therefore the contract could not be upheld as being for the benefit of the

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<sup>23</sup> i.e. a person under 18 years of age, as per the Family Law Reform Act 1969

<sup>24</sup> i.e. he may elect to rescind the contract during his minority or within a reasonable time of reaching majority.

<sup>25</sup> [1935] 1 K.B. 110

<sup>26</sup> (1890) 45 Ch. D. 430

minor<sup>27</sup>. May a court also find that the EPPP compensation scheme places in the hands of the clubs an “*inordinate power*”, notwithstanding the claims by the Premier League and the Football league that (like Signor De Francesco) this discretion was not misused? If that were the case it would certainly have a huge impact on the academy system as a whole.

However, it is more likely that a Court will fall somewhere in the middle of the two. In *Roberts v Gray*<sup>28</sup> a young billiards player agreed to a world tour with notable player Mr John Roberts. The Court found that the young player was bound to benefit from playing with a player of Mr Robert’s quality, and that the contract was therefore one for his benefit.

The YD10 on the other hand is not a contract for training, nor is it for the minor’s benefit. Therefore it seems arguable that even if the YD10 is not void for lack of consideration, then it is possibly voidable at the option of the minor. If the YD10 falls away and (following legal action or judgment on this point) this is reflected in the player registration system administered by the governing bodies, this will certainly strengthen the position of a young player seeking to move to a new club.

The issues with the YD10 do not end there, as the writer is well aware from disputes he has seen that parents and young players are often provided with this document and encouraged to sign it without taking proper advice and/or are misled about the club’s intentions with regard to compensation. In some more extreme cases, this may allow a player (or his parents) to rescind a contract for duress (where the pressure applied by one party had effectively deprived the other of practical choice) or as an unconscionable bargain (where one party takes illegitimate advantage of the other’s lack of independent advice or inexperience). This will, of course, depend on individual circumstances of each case, and it is not suggested that every club acts illegitimately when providing the YD10 and most will act quite properly and within the rules they are allowed and expected to operate within.

### **What next?**

As noted above, the *Bosman* and *Bernard* decisions were made on principles of EU law which prevent member states from obstructing free movement of workers, effectively dismantling the systems of compensation in place at the time. These decisions were momentous for players (who benefit from greater freedom, negotiating power and wages), but resulted in clubs losing out on transfer fees and compensation payments.

Whilst this article ponders the legitimacy of any form of compensation system for out of contract players, are the Premier League in turn eyeing a return of pre-Bosman style compensation arrangements once Britain withdraws from the European Union?

Officials at Premier League clubs are reportedly uneasy about the amount of money leaking out of the game to agents and players as a result of *Bosman* transfers<sup>29</sup>. With free movement of workers between Britain and the EU looking likely to come to an end, the *Bosman* and *Bernard* decisions will no longer be binding on UK Courts; this would leave the FA free (from an EU perspective at least) to reintroduce compensation for senior players and/or strengthen the EPPP compensation rules.

Perhaps now is the time, therefore, for a proper challenge to the EPPP system to be brought, if the sport of football is not prepared to review it themselves. It is one thing to lament the lack of compensation that Arsenal may receive when Alexis Sanchez chooses to move on; it is quite

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<sup>27</sup> *ibid* 443

<sup>28</sup> [1913] 1 K.B. 520

<sup>29</sup> <http://www.skysports.com/football/news/11095/11127389/premier-league-club-officials-growing-concerned-at-free-transfers-and-money-leaving-football>



another to defend the compensation that must be payable for our notional 15 year-old who wishes to move to a League One club.

It is therefore more important than ever that the footballing authorities are reminded that their obligations under English law do not end in March 2019 and that they ought to have real concerns already about the compensation system (at least for youth players) before they even consider strengthening their position in a post-Brexit sport. However, until the next *Bosman* steps forward to take on the legal challenge, it is likely that clubs, the FA, the Premier League and the Football League will continue to fail the many young people who are barred from playing professional football at any level by a compensation system that is as flawed as it is potentially unlawful.

### **What would the alternatives be? Can the interest of the club and the player be balanced fairly?**

As alluded to above, one approach the EPPP could have taken would have been to allow a young player to move freely at the end of his period of registration with a club, but that the former club would retain compensation rights that would become effective as and when that player signs his first professional contract or makes his professional debut. That approach would not be perfect and in itself could still amount to a restraint of trade (one can imagine a scenario where a player is denied his first professional contract or debut as his then employer simply cannot afford it), but it is less restrictive and fairer than the current system.

A second approach would be to introduce a Tribunal system akin to that operated by the PFCC, who seem content to place a fair value on a player in those circumstances where two clubs have been unable to agree terms. This would mean our notional player who was the best 15 year-old in the land might actually command a fee way in excess of his EPPP valuation, but if he is one of the worst 15 year-olds in the land his value would be nothing at all (and only a foolhardy former club would allow the matter to reach a Tribunal).

Alternatively, if the EPPP must remain in its current form, then steps could and perhaps must be taken to ensure that parents and young players are given proper advice and information in advance of signing for a club and again at the point of being presented with a Form YD10. Parents/players could then be made aware of their options and given the ability to negotiate or at least consider different arrangements, either on entry to the club or at the exit stage. Why is it that an adult employee cannot exit his or her employment on agreed terms unless he or she receives independent legal advice and signs a Settlement Agreement<sup>30</sup>, yet there is no such requirement to obtain independent legal advice when exiting a football club and signing a YD10? Why is the law less paternalistic towards the young footballer than it is the adult employee (both in regards to independent advice and restraint of trade issues)? The reality is that the law may not be less paternalistic once tested; it is just that the law has not been asked the question.

One final point which the footballing authorities may struggle to explain; when a professional footballer signs an employment contract with a club, represented by an intermediary (commonly referred to still as a football agent) that the FA themselves have registered and approved, he nonetheless is not only advised to take independent legal advice as part of that transaction (by the Football Association IM forms that he must sign) he must expressly declare that he has chosen to do so or not do so<sup>31</sup>.

However, no intermediary may approach a young player before 1 January in the year they turn 16<sup>32</sup>. This means that young players will usually not have the benefit of an intermediary until

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<sup>30</sup> Employment Rights Act 1996, Section 203

<sup>31</sup> <http://www.thefa.com/football-rules-governance/policies/intermediaries/standard-forms>

<sup>32</sup> FA Regulations on Working with Intermediaries 2017-2018, Regulation B8

they have been at an academy for a number of years and will therefore already have a weighty compensation value attached to their registration.

That the governing bodies of football consider that a declaration of independent legal advice to be a vital requirement of the fair and binding transaction for the adult footballer who has the benefit of being represented by a FA Registered Intermediary, but do not consider it a necessary requirement for the minor (who has no intermediary) when he signs his contract with a club (or signs a Form YD10) is striking, if not incredible. It is hard to know if it says more about the disregard that the authorities have for their own Registered Intermediaries (such that the adult footballer represented by that intermediary requires more protection than a minor who is not legally permitted to have an intermediary representing him), or the disregard for the protection of the minor. One can only speculate.

One can also only speculate as to what Lord Denning would have had to say about it all. Surely, though, the time for speculation will soon be at an end and we will see what a Court will ultimately say about it as somebody, using football parlance, will 'do a Bosman'.