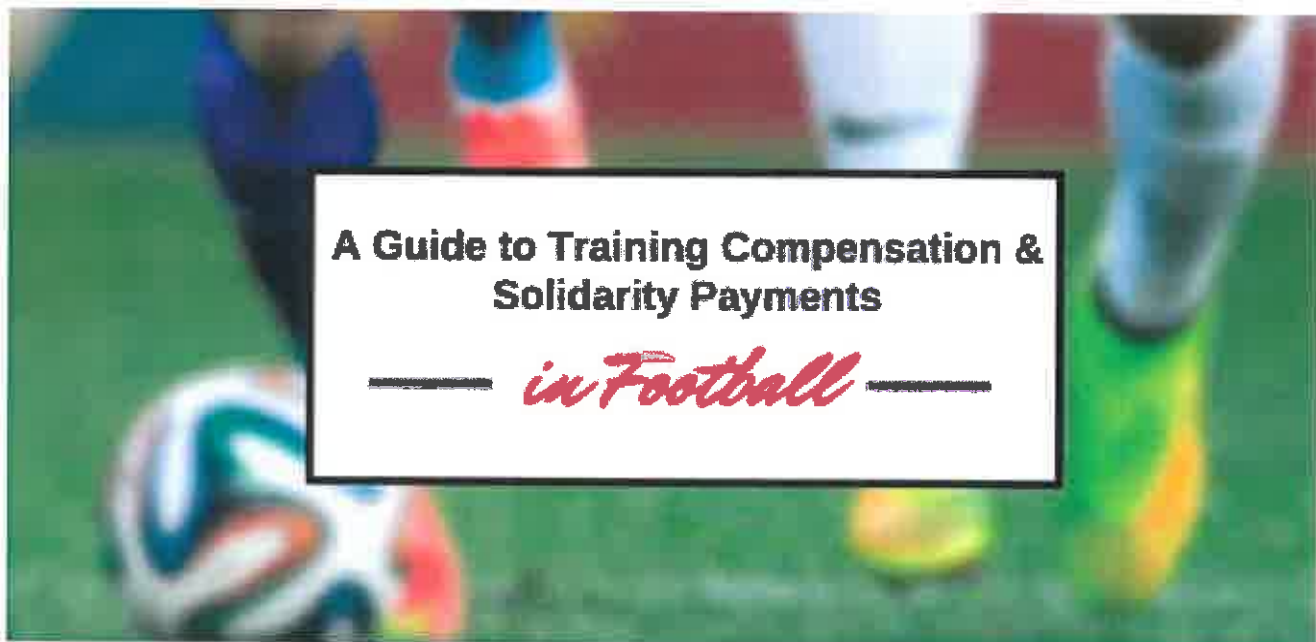


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A GUIDE TO TRAINING COMPENSATION AND SOLIDARITY PAYMENTS IN FOOTBALL

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The term "*solidarity payments*" is commonly used to describe distinct regimes for the distribution of money within the football community, including:

- i. Sums payable to clubs involved in a player's training, upon a player registering for the first time as a professional player, or upon the international transfer of a player before the end of the season of his 23rd birthday, calculated by reference to a specified formula; and,
- ii. Sums payable to clubs involved in a player's training and education, upon the international transfer of a player (prior to the expiry of his employment contract), calculated by reference to the amount of the transfer compensation.

This guide focuses on these two regimes, which are governed respectively by Articles 20 and 21, and Annexes 4 and 5, of the [FIFA Regulations on the Status and Transfer of Players](http://resources.fifa.com/mm/document/affederation/administration/02/55/56/41/regulationsonthestatusandtransferofplayersapril2015e_neutral.pdf) (http://resources.fifa.com/mm/document/affederation/administration/02/55/56/41/regulationsonthestatusandtransferofplayersapril2015e_neutral.pdf) ("RSTP").¹

Article 20 RSTP is entitled “**Training compensation**” and provides as follows:

“Training compensation shall be paid to a player’s training club(s): (1) when a player signs his first contract as a professional, and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player’s contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations.”

Article 21 RSTP is entitled “**Solidarity mechanism**” and provides as follows:

“If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations.”

The principal similarities between the two regimes may be summarised as follows:

- i. Pursuant to the RSTP, purely domestic transfers of professional players do not give rise to an entitlement on the part of training club(s) to receive training compensation or a solidarity payment (see the “*Scope*” definition in Article 1 RSTP);
- ii. Both training compensation and solidarity payments may need to be distributed amongst several training clubs;
- iii. The obligation to ensure that the regulations are complied with falls on the ‘new’ club (i.e. the purchasing club, or the club signing a player on his first professional contract);
- iv. The “*Player Passport*” (see Article 7 RSTP) will provide assistance to clubs in tracing the sporting history of players and complying with their payment obligations.

The principal differences between the two regimes may be summarised as follows:

- i. Training compensation will be payable when a player signs his first professional contract with a club that is different from the club(s) that trained him, irrespective of where those clubs are located;
- ii. By contrast, solidarity payments will only be payable upon the international transfer of a player between professional clubs;
- iii. Training compensation may also be payable when a player is transferred between clubs belonging to different national associations, until the end of the season of his 23rd birthday, whether that transfer takes place during or at the end of the player’s contract, and whether that transfer involves a fee or not;
- iv. By contrast, solidarity payments will only be payable if a player is transferred for a fee, between clubs belonging to different national associations, prior to the expiry of his employment contract;
- v. Furthermore, such transfers (see (iv) above) occurring after the season of a player’s 23rd birthday will continue to engage the solidarity payments regime;
- vi. The amount of training compensation is calculated by reference to published “*training costs*” (to which reference is made in Annexe 5, RSTP) and the number of years a player has spent training with a former club(s);
- vii. By contrast, solidarity payments will be a maximum of 5% of the agreed transfer compensation;
- viii. A separate set of rules applies to the calculation of training compensation, in circumstances where a player moves from one association to another inside the territory of the EU / EEA;
- ix. By contrast, the same rules apply to the calculation of solidarity payments, whether a player moves from one EU / EEA country to another or not.



Training Compensation: A Summary Guide

— *Football* —

TRAINING COMPENSATION: A SUMMARY GUIDE

- How much are annual training costs?
- What training compensation is payable?
- What is the process for making the relevant payment(s)?
- What happens if a player's training history cannot fully be ascertained?
- Exceptions to the requirement to pay training compensation
- Timeframe for payment of training compensation

WHAT IS THE RELEVANT PERIOD OF TRAINING?

The starting point, or presumption, is that a player's training and education ordinarily takes place between the ages of 12 and 23. As a general rule, training compensation will be payable up to the age of 23 – the amount of which is to be calculated by reference to training incurred up to the age of 21. In calculating the amount of training compensation, a different reference period will be taken into account if it is "*evident that a player has already terminated his training period before the age of 21*" (see Annexe 4, Article 1 (1) RSTP – discussed further below).

In *Bradford City Football Club v Falkirk Football Club*,² the CAS was required to determine whether a transfer had taken place before the end of the season of the player's 23rd birthday. If it had taken place after this, then no training compensation was payable. On the particular facts of this case:

- i. The player had turned 23 on 22 June 2011;
- ii. He had been registered with Falkirk as a professional from 30 January 2006 to 30 June 2011 (i.e. until eight days after he turned 23);
- iii. He had been offered a new contract with Falkirk, in accordance with the RSTP requirements (discussed below), in October 2010; and
- iv. He was registered with Bradford on 5 July 2011; and
- v. Importantly, the Scottish Football Association's 2011/12 season, according to the FIFA Transfer Matching System, ran from 1 June 2011 to 21 May 2012.

In the circumstances, the CAS concluded (at para. 8.31) that “...*the Player in fact turned 23 within the SFA’s 2011/12 season, which means that the Player was indeed transferred to [Bradford] before the end of the season of the Player’s 23rd birthday.*” Accordingly, Falkirk was entitled to receive training compensation from Bradford.

The Panel went on to state (at para. 8.34):

“...even if the Panel had found that this case should be decided by attaching importance to FIFA’s general definition of a season, see par. 8.7, with the effect that the Player would then be assumed to have had his birthday between two seasons, then it would, in the Panel’s view, nonetheless be necessary – based on Article 7 of the Regulations – to conclude that in relation to the rules on training compensation the transfer must be found to have taken place in the same season in which the Player turned 23.”

Having resolved the particular dispute before it, the CAS went on to make some more general observations about the scope for confusion and uncertainty regarding this issue. Consequently, the Panel called upon FIFA (at para. 8.38) to “*take steps to ensure that the rules on training compensation and on the TMS set out in the Regulations are specified as soon as possible in order to ensure the unequivocal interpretation of the rules on training compensation, especially with regard to ‘birthdays in between seasons’.*”

As stated above, it is possible for a ‘new’ club to reduce its liability to pay training compensation, if it can demonstrate that the player in question had ceased to be in a period of training before the age of 21. For example, in the *Bradford v Falkirk* case, the CAS concluded that Bradford had successfully discharged the burden of proof to establish that the player had terminated his training at the end of the 2008/09 season, just before turning 20 (although it rejected Bradford’s primary submission that his training had ended earlier, at the beginning of the 2008/09 season).

Various factors may be taken into account when considering whether a player’s training period has been completed before the age of 21. These include:

- i. The level of talent of the player;
- ii. Whether or not the player is playing regularly for the first team; and
- iii. The value of the player (e.g. as may be reflected in a substantial loan fee achieved for the services of the player).³

HOW MUCH ARE ANNUAL TRAINING COSTS?

Football associations are required by FIFA to divide their clubs into a maximum of four categories, “*in accordance with the clubs’ financial investment in training players*” (Annexe 4, Article 4 (1) RSTP). The stipulated training costs for each category are intended to “*correspond to the amount needed to train one player for one year multiplied by an average ‘player factor’, which is the ratio of players who need to be trained to produce one professional player.*” For practical purposes, each year FIFA publishes an updated list of “[Training Costs and Categorisation](http://resources.fifa.com/mm/document/affederation/administration/02/60/64/29/circularno.1484-regulationsonthestatusandtransferofplayers_neutral.pdf)” (http://resources.fifa.com/mm/document/affederation/administration/02/60/64/29/circularno.1484-regulationsonthestatusandtransferofplayers_neutral.pdf) for each confederation.⁴ For example, this presently provides that for Category I clubs within UEFA, the annual training costs are deemed to be EUR 90,000; whereas for Category II clubs within CONCACAF, the annual training costs are deemed to be USD 40,000.

Each national association is then required, on an annual basis, to input into the FIFA Transfer Matching System (“TMS”) the appropriate categorisation of its affiliated clubs (or, for those clubs not presently listed in the TMS, to send written communication to the FIFA Players’ Status and Governance Department). Annexe

4, Article 4 (2) also makes it clear that “Associations are required to keep the data regarding the training category of their clubs inserted in TMS up to date at all times.”

WHAT TRAINING COMPENSATION IS PAYABLE?

This issue may be sub-divided as follows:

- i. Which club(s) are entitled to receive training compensation?
- ii. How much is each ‘qualifying club’ entitled to receive?

With regard to the first question, the answer (in principle) is “every club with which the player has previously been registered (in accordance with the players’ career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday” (Annexe 4, Article 3 (1) RSTP).

This is subject to the caveat that only those clubs which are properly linked / affiliated to a national football association (which itself is a member of FIFA) are authorised to claim training compensation. As the CAS held in *Brazilian Football Federation v. Sport Lisboa e Benfica-Futebol S.A.D.* (<http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1751.pdf>)⁵(in the context of a dispute regarding solidarity payments):

“...only clubs that are linked to a national soccer association, which again is a member of the FIFA, are authorised to claim the solidarity contribution. This is due to the fact that only such clubs can refer to the set of rules of the FIFA and especially to the Regulations...” (para. 16, emphasis added)

With regard to the second question, the appropriate method of calculation will depend on whether the player is “moving from one association to another inside the territory of the EU / EEA.” If he is, then the “special provisions” in Annexe 4, Article 6 RSTP will apply. If he is not, then the general provisions in Annexe 4, Article 5 RSTP will apply.

The general provisions are addressed first, before turning to consider the aforementioned “special provisions.”

THE GENERAL PROVISIONS

The first step is to ascertain – by reference to the categorisations set out above – the deemed annual training costs for the *new* club. The general position is that the system of training compensation operates on the principle of ‘what would it have cost the new club to train the player?’, rather than ‘how much did it cost the former club(s) to train the player?’

This is subject to the caveat that, in order to “ensure that training compensation for very young players is not set at unreasonably high levels”, the training costs for players for the seasons between their 12th and 15th birthdays (i.e. four seasons) are limited to the level of training and education costs for category 4 clubs (in the new club’s jurisdiction / confederation) (Annexe 4, Article 5 (3) RSTP).

The corresponding provision of the October 2009 version of the RSTP (http://resources.fifa.com/mm/document/affederation/administration/66/98/97/regulationsstatusandtransfer_en_1210.pdf) was different, providing that “...*This exception shall, however, not be applicable where the event giving rise to the right to training compensation (cf. Annexe 4 article 2 paragraph 1) occurs before the end of the season of the player’s 18th birthday.*” That remained the position until this particular provision was amended by the 2014 version of the RSTP (<http://resources.fifa.com/mm/document/affederation/administration/01/95/83/85/regulationsstatusandtransf>

[er_2014_e_neutral.pdf](#)) (which came into force on 1 August 2014). In circumstances where a dispute has arisen in connection with the payment of training compensation (or solidarity payments), it is always important to consider what provisions of the RSTP were in force at the material time.⁶

Having regard to these annual rates (or multiplicands), the training compensation payable to each 'qualifying club' is calculated as follows (in accordance with Annexe 4, Article 5 (2) RSTP):

- i. In the case of a first professional registration, by multiplying the appropriate multiplicands by the period of time the player has spent training with each club(s), during the period beginning with the season of the player's 12th birthday and the season of his 21st birthday;
- ii. In the case of a subsequent international transfer (occurring prior to the end of the season of the player's 23rd birthday), by multiplying the training costs of the new club by the number of years' training provided by the former club (and only the former club).

THE EU / EEA "SPECIAL PROVISIONS"

Again, in order to carry out the relevant calculation, it will be necessary to consult the published annual training rates (of the new and/or former club).

In terms of ascertaining the correct multiplicands, Annexe 4, Article 6 (1) RSTP provides as follows:

"a) If the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs.

b) If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower-category club."

Although the drafting of the RSTP does not make it entirely clear whether these "special provisions" remain subject to the 'first four seasons at Category 4 level' rule (as set out in Annexe 4, Article 5 (3) RSTP), the practical example given on pages 124 – 125 of the FIFA Commentary on the Regulations for the Status and Transfer of Players ("[the FIFA Commentary \(http://www.fifa.com/mm/document/affederation/administration/51/56/07/transfer_commentary_06_en_1843.pdf\)](http://www.fifa.com/mm/document/affederation/administration/51/56/07/transfer_commentary_06_en_1843.pdf)")⁷ states that they do.

Once the appropriate multiplicands have been identified, these are multiplied by the number of years' training provided by the former club(s) at the relevant time.

WHAT IS THE PROCESS FOR MAKING THE RELEVANT PAYMENT(S)?

The FA website⁸ stipulates that:

"Payments to clubs belonging to other national associations in respect of transfer fees, solidarity and training compensation are...required to be made via The FA Clearing House.

When a payment is made to The FA, the payment instruction form below must be completed detailing who the payment is for, what it is in relation to and the bank details for the beneficiary."

Whilst this particular webpage does not in fact contain a link to any "payment instruction form", such a document (in the form of an Excel file) may be downloaded [here \(http://www.thefa.com/~media/files/thefaportal/governance-docs/agents/standard-forms/payment-instruction.ashx\)](http://www.thefa.com/~media/files/thefaportal/governance-docs/agents/standard-forms/payment-instruction.ashx).⁹

WHAT IF A PLAYER IS SIGNED ON LOAN?

Article 10 (1) RSTP provides as follows:

“A Professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned. Any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and the solidarity mechanism.”

The FIFA Commentary explains the position thus (on page 32):

“A loan is subject to the same rules that apply to the transfer of players, including the provisions on training compensation... In other words, the club receiving a player on loan is entitled to claim training compensation ... for the time the player remained with it and it can claim training compensation if the player transfers to a third club provided the player is younger than 23.”

A detailed and helpful discussion of the interaction between loan arrangements and training compensation, and decisions of the DRC and CAS on this issue, may be found in [other articles \(/articles/employment-law/item/the-on-going-football-dispute-over-training-compensation-and-player-loan-panionios-v-parana\)](#) published by LawInSport.¹⁰

WHAT HAPPENS IF A PLAYER'S TRAINING HISTORY CANNOT FULLY BE ASCERTAINED?

Annexe 4, Article 3 (3) RSTP provides as follows:

“An association is entitled to receive the training compensation which in principle would be due to one of its affiliated clubs, if it can provide evidence that the club in question – with which the professional was registered and trained – has in the meantime ceased to participate in organised football and/ or no longer exists due to, in particular, bankruptcy, liquidation, dissolution or loss of affiliation. This compensation shall be reserved for youth football development programmes in the association(s) in question.”

EXCEPTIONS TO THE REQUIREMENT TO PAY TRAINING COMPENSATION

Pursuant to Annexe 4, Article 2 (2) RSTP, training compensation will not be payable in three specific situations:

- i. If the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs);
- ii. If the player is transferred to a category 4 club; or
- iii. If a professional player reacquires amateur status on being transferred.

Another important exception appears in Annexe 4, Article 6 (3) RSTP. In circumstances where a player moves from one association to another inside the territory of the EU / EEA, no training compensation will be payable if the former club fails to offer the player a contract, *unless* the former club can “*justify that it is entitled to compensation.*”

The issue of “justification” was considered in *FC Nitra v. FC Banik Ostrava* (<http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/2890.pdf>),¹¹ where the CAS held as follows:

- i. “...in order to justify entitlement to training compensation, the training club should at least show a bona fide interest in retaining the services of the player for the future. At the same time, in order to encourage player training, the Panel considers that compensation should be granted whenever it would appear contrary to common sense to conclude that the training club was not at all interested in keeping the player” (para. 69);
- ii. “...the RSTP provisions do not require that evidence be ‘unambiguous’ or ‘documentary’ to ground a

claim" (para. 71);

- iii. *"...the circumstances adduced by the Appellant lead to the reasonable conclusion that it desired to keep the player on its roster with a view to keeping alive the option of granting him a professional contract at a later stage. It is in fact beyond doubt that the Player is a talented player, who, already in 2009, had many chances to pursue a successful career. Indeed, the Player at the time of his transfer to Banik, had already been fielded with the first team of the Appellant, and was involved in the training session for the following season. In such context, it seems unreasonable to assume that Nitra intended to write-off its investment in the training of the Player and to forfeit any claim to training compensation. It is also to be noted that the Respondent previously (and specifically) stated that: 'we naturally do agree that the Claimant is entitled to receive the training compensation for the professional football player and the matter of dispute between the parties is just the high costs of this compensation' (paragraph 9 of the Decision). Finally, it is also not disputed that the Player has been with Nitra since he was 6 years old and the club has therefore invested considerable time and expense in his formative training and education. This is a further relevant factor that the Panel takes into account"* (para. 73).

Accordingly, on the facts, the CAS concluded that FC Nitra was entitled to receive training compensation, notwithstanding its failure to offer the player in question a professional contract.

In *VfB Admira Wacker Modling v. A.C. Pistoiese s.p.A.* (<http://arbitrationlaw.com/file-download/45771/27885>),¹² the CAS rejected a claim for training compensation, in circumstances where a professional club had failed to offer a new contract to one of its own players, who was already a professional. The CAS concluded that, on the facts of the case, the principle of "bona fide and genuine interest" did not apply.

In *MTK Budapest v. FC Internazionale Milano S.p.A.* (<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCIQFjAAahUKEwi5psqi4OzGAhUDWBQKHfd6Ak4&url=http%3A%2F%2Fjurisprudence.tas-cas.org%2Fsites%2FCasLaw%2FShared%2520Documents%2F1757.pdf&ei=0IGuVbn-KYOWuff1ifAE&usq=AFQjCNGBsSkQHuuDhYPWfIN0wl0lhGZHhA&sig2=qPSWfLCIA5i94eBp4EW52g&bvm=bv.98197061.d.d24>),¹³ the CAS added the following observations on this issue (at para. 22):

"...in the case of a player who has already signed a professional contract, a training club is more likely to have been able to reap at least some of the rewards for the training efforts it has made insofar as the player is already performing a paid (i.e. professional) service for the club. In other words, if a player becomes a professional at the club where he was trained as an amateur then his training club may already be receiving at least some return on the investment that it has made."

Further and significantly, a former club will not necessarily retain a right to receive training compensation merely by virtue of having offered a contract to the player in question. Annexe 4, Article 6 (3) RSTP imposes substantive and procedural requirements on that contract offer – specifically, that it is:

- i. Offered in writing;
- ii. Via registered post;
- iii. At least 60 days before the expiry of the player's current contract; and
- iv. At least of an equivalent value to the current contract.

The FIFA Commentary states (on page 125) that a failure to comply with these requirements will result in a situation "as if the club did not offer a contract at all, with the consequence that if the player moves to another club within the EU/EEA, no training compensation is payable to the former club."

As outlined above, it is not necessarily the case that a failure to offer a contract, or a failure to comply with all four of the requirements stipulated above, will result in no training compensation being payable to the former club.¹⁴ Nonetheless, it is clearly sensible to ensure that the requirements stipulated in Annexe 4,

Article 6 (3) RSTP are always complied with (to the letter).

Furthermore, it should be noted that the particular exception contained in Annexe 4, Article 6 (3) is stated to be *“without prejudice to the right to training compensation of the player’s previous club(s).”* In other words, a failure or oversight on the part of one club does not necessarily extinguish the right of previous club(s) to be paid training compensation.

Finally, it is possible for a club to *waive* its right to receive training compensation, in the course of negotiations with another club. There will, however, only be a valid waiver in circumstances where it is *“unmistakeable that the renouncing club had indeed intended to waive its right to training compensation.”*¹⁵ A helpful discussion of the principles regarding waivers in this context may be found in [another article \(/blog/john-shea/item/football-player-contracts-waiving-training-compensation\)](#) published by LawInSport.¹⁶

TIMEFRAME FOR PAYMENT OF TRAINING COMPENSATION

The deadline for payment of training compensation is relatively short, being 30 days following the registration of the professional with the new association (Annexe 4, Article 3 (2) RSTP).

DISPUTES REGARDING THE AMOUNT OF TRAINING COMPENSATION

Annexe 4, Article 5 (4) RSTP provides as follows:

“The [FIFA] Dispute Resolution Chamber (“the DRC”) may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review.”

There is, however, a jurisdictional limitation on the competence of the DRC. Pursuant to Article 22 (d) and Article 24 RSTP, the DRC has jurisdiction to hear disputes relating to training compensation between clubs belonging to *different* football associations. As the FIFA Commentary explains (on page 67):

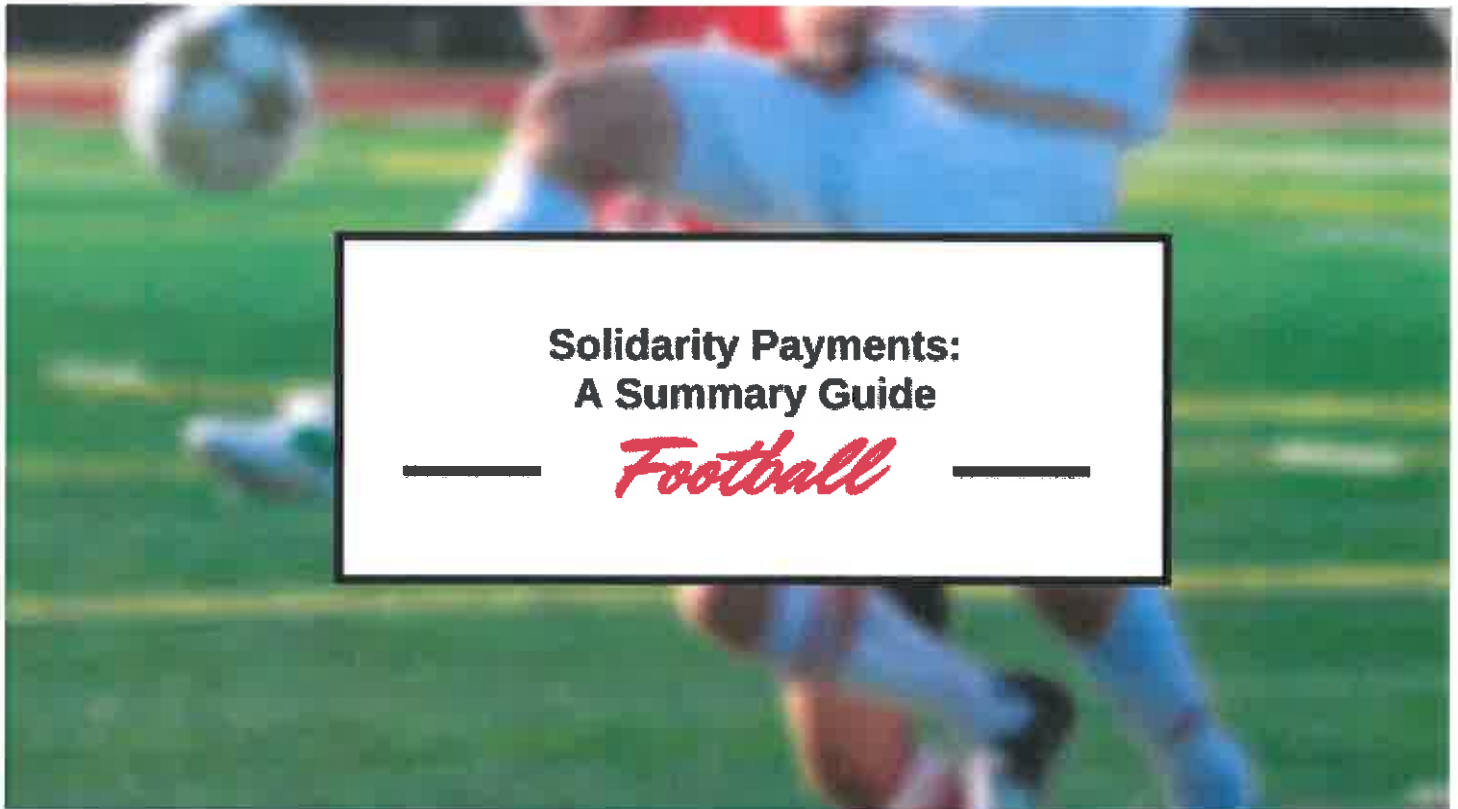
“Disputes between clubs belonging to the same association related to training compensation and the solidarity mechanism shall be settled in accordance with national regulations.”

With regard to application of the *“clearly disproportionate”* test, in [Parma FC S.p.A. v. Manchester United F.C.](#) (<http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1908.pdf>)¹⁷ the CAS held as follows:

- i. *“...it is one of the key features of the system of training compensation to provide a quick and unbureaucratic reward to former club for the training of the player”* (para. 69);
- ii. *“...since training compensation is a reward and an incentive rather than a claim for refund of training costs, Appellant bears the burden of proving to the comfortable satisfaction of this Panel that such compensation is clearly disproportionate when considering the truly particular circumstances involved in the case under review and that therefore the calculated compensation must be adjusted. Appellant has to satisfy its burden of proof on the basis of specific documents, such as invoices, costs of training centres, budgets, and other documentation of expenses showing that the expenses bear a clear relation to the training of its youth sector. In the absence of such evidence, the indicative amounts apply”* (para. 43);
- iii. Payments made to players’ agents and talent scouts ought not be taken into account,
- iv. *“...the wording of the relevant FIFA provisions concerning training compensation do not expressly provide for the ‘value and quality of a Player’ as relevant factors for the assessment of clear disproportionality pursuant to Circular 826”* (para. 66);
- v. In addition, *“the value of a future transfer of a player is not an element that shall be taken into*

consideration when adjusting the training compensation” (para. 70);

- vi. Rather, *“it is under the solidarity mechanism that a training club can benefit from a rising value of the services of a player that it has trained, in case this player is transferred at a later stage during the course of an employment contract between two clubs belonging to different associations” (para. 70).*



SOLIDARITY PAYMENTS: A SUMMARY GUIDE

- What solidarity payment(s) are payable, and to whom?
- What is the process for making the relevant payment(s)?
- What if a player is signed on loan?
- What happens if a player's training history cannot fully be ascertained?
- Timeframe for making solidarity payments
- Disputes regarding solidarity payments

WHAT SOLIDARITY PAYMENT(S) ARE PAYABLE, AND TO WHOM?

With regard to calculating the 'pot' of money that falls to be distributed amongst 'qualifying clubs'. Annexe 5, Article 1 RSTP provides as follows:

“If a professional moves during the course of a contract [between clubs belonging to different national football associations], 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years...”

As summarised by the CAS in [Genoa Cricket and Football Club S.p.A. v. Club Bella Vista](http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/2944.pdf) (<http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/2944.pdf>)¹⁸(paras. 37 – 38):

"...the new club has to retain 5% of the transfer compensation, with the consequence that the amount received by the transferor club is reduced correspondingly.

The ratio legis of this system is that it is easier for the new club to determine the former clubs of the Player. The Player being at the disposal of the new club, he can assist in this task..."

In the [Genoa](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCIQFJAA&url=http%3A%2F%2Fjurisprudence.tas-cas.org%2Fsites%2FCaseLaw%2FShared%2520Documents%2F2944.pdf&ei=kIOaVcauOMrfUaSkgoAP&sg=AFQjCNFkSBp5rmqi0_dV8e5UOYb2AGxH0w&sig2=hrcldr-RnpTHxZb6OEy39w&bvm=bv.96952980,d.d24) (http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCIQFJAA&url=http%3A%2F%2Fjurisprudence.tas-cas.org%2Fsites%2FCaseLaw%2FShared%2520Documents%2F2944.pdf&ei=kIOaVcauOMrfUaSkgoAP&sg=AFQjCNFkSBp5rmqi0_dV8e5UOYb2AGxH0w&sig2=hrcldr-RnpTHxZb6OEy39w&bvm=bv.96952980,d.d24) case, the CAS also made it clear that the level of solidarity

payments is to be calculated by reference to the full transfer compensation payable by one club to another, in order to acquire the player's services. In this case, the transfer documentation had been drafted such that EUR 2 million was expressed to be payable as the "price of the definitive transfer", and EUR 510,000 was expressed to be payable for "all other obligations inherent [to the price of the definitive transfer]." The CAS concluded that both payments should be taken into account when calculating the appropriate level of solidarity payments.¹⁹

With regard to the method of distribution, Annexe 5, Article 1 RSTP continues as follows:

"This solidarity contribution reflects the number of years (calculated prorata if less than one year) he was registered with the relevant club(s) between the seasons of his 12th and 23rd birthdays, as follows:

- *Season of 12th birthday: 5% (i.e. 0.25% of total compensation);*
- *Season of 13th birthday: 5% (i.e. 0.25% of total compensation);*
- *Season of 14th birthday: 5% (i.e. 0.25% of total compensation);*
- *Season of 15th birthday: 5% (i.e. 0.25% of total compensation);*
- *Season of 16th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 17th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 18th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 19th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 20th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 21st birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 22nd birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 23rd birthday: 10% (i.e. 0.5% of total compensation)."*

Again, it should be noted that only those clubs which are properly linked / affiliated to a national football association (which itself is a member of FIFA) are authorised to claim a solidarity payment.²⁰

The payment structure set out above means that, in practice, a total of 5% of the transfer compensation will often *not* be payable. As the FIFA Commentary explains (on page 129):

"If a player who is younger than 23 transfers during the validity of his employment contract and a solidarity contribution is payable to his former training clubs, the total deduction from the transfer compensation will be less than 5%. For every year that the player is younger than 23, 0.5% shall be deducted from 5% (e.g. for a player who is in the season of his 21st birthday, the relevant percentage will be 80% of 5%, i.e. 4% of the compensation paid for the transfer of the player."

This principle was confirmed by the CAS in *Confederação Brasileira de Futebol (CBF) v. Bayer 04 Leverkusen Fussball* (http://www.centrostudisport.it/PDF/TAS_CAS_ARCHIVIO/180.pdf)²¹ (at para. 6):

“...one cannot possibly accept that the 5% figure was intended as an absolute requirement rather than a ceiling. The inference is overwhelming that it is the latter.”

As outlined above, solidarity payment obligations will be triggered whenever a player is the subject of an international transfer, accompanied by the payment of a fee by the purchasing club to the selling club, prior to the expiry of his employment contract.

In *C.A. River Plate v. Hamburger S.V* (<http://www.arbitrationlaw.com/file-download/45718/27832>),²² the CAS confirmed that it is permissible for the selling and purchasing club to reach an agreement as to who bears the financial burden of paying the solidarity payment(s), and/or in what proportions. On an ordinary reading of the Regulations, if the agreed transfer fee is EUR 1 million and the full 5% solidarity payment is payable, the buying club will in fact only transfer EUR 950,000 to the selling club, with the remaining EUR 50,000 being distributed (by the new club) in accordance with the solidarity payments regime. It is, however, permissible for the parties to reach an agreement whereby (for example) the agreed transfer fee is EUR 1 million; the full transfer fee is paid by the purchasing club to the selling club (without any deduction); and the purchasing club bears the ‘extra’ financial burden of distributing the appropriate solidarity payment (in this illustrative example, EUR 50,000).

In the *River Plate v Hamburger* case (<http://www.arbitrationlaw.com/file-download/45718/27832>), the CAS held (at para. 26):

“...the [purchasing club] had to know that it was its duty to retain and to pay the amount of 5% corresponding to the amount of solidarity. In order to avoid the risk of being obliged to pay an additional amount above the [agreed transfer fee], it was clearly its responsibility to make sure that this issue be discussed, negotiated and ruled by the transfer agreement.”

Having regard to the above, it is important that contractual agreements between clubs clearly stipulate who is responsible for bearing the financial cost of any applicable solidarity payments.

On a related point, in the same way that it is possible for clubs to waive their right to receive training compensation (as discussed above), it is also possible for clubs to waive their rights in respect of solidarity payments.²³

WHAT IS THE PROCESS FOR MAKING THE RELEVANT PAYMENT(S)?

In addition to the requirement set out above (the submission of a completed payment instruction form to The FA Clearing House), the FA website stipulates that:

“When a player is transferred between two clubs in different countries, 5% of the transfer fee paid is due as solidarity to the clubs who trained the player between the ages of 12 and 23. The calculator below can help to determine the amount due to these clubs. A completed version must be submitted whenever a solidarity payment is made via The FA Clearing House.”

Again, although this particular webpage does not in fact contain a link to any such calculator, one may be accessed (in the form of an Excel file) [here](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.the-fa.com%2F~%2Fmedia%2Ffiles%2Fthefaportal%2Fgovernance-docs%2Fagents%2Fstandard-forms%2Fsolidarity-calculator.ashx&ei=dHKaVav-OofXU9LWpbgL&usq=AFQjCNHJLA_fQYpw5CDMEAYGZ6ReQQCrnw&sig2=uE0qLD2GY32kvvTpi4Zag&vm=bv.96952980,d.d24) (http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.the-fa.com%2F~%2Fmedia%2Ffiles%2Fthefaportal%2Fgovernance-docs%2Fagents%2Fstandard-forms%2Fsolidarity-calculator.ashx&ei=dHKaVav-OofXU9LWpbgL&usq=AFQjCNHJLA_fQYpw5CDMEAYGZ6ReQQCrnw&sig2=uE0qLD2GY32kvvTpi4Zag&vm=bv.96952980,d.d24).²⁴

WHAT IF A PLAYER IS SIGNED ON LOAN?

In addition to Article 10 (1) RSTP (referred to above), the FIFA Commentary explains the position thus (on page 32):

"A loan is subject to the same rules that apply to the transfer of players, including the provisions on ... solidarity mechanism. In other words, the club receiving the player on loan shall retain 5% of the loan fee and distribute it to all clubs that contributed to training the player between the ages of 12 and 23. At the same time, the club receiving a player on loan is entitled to claim ... a solidarity contribution for the time the player remained with it..."

WHAT HAPPENS IF A PLAYER'S TRAINING HISTORY CANNOT FULLY BE ASCERTAINED?

Annexe 5, Article 2 (3) RSTP provides as follows:

"An association is entitled to receive the proportion of solidarity contribution which in principle would be due to one of its affiliated clubs, if it can provide evidence that the club in question – which was involved in the professional's training and education – has in the meantime ceased to participate in organised football and/or no longer exists due to, in particular, bankruptcy, liquidation, dissolution or loss of affiliation. This solidarity contribution shall be reserved for youth football development programmes in the association(s) in question."

TIMEFRAME FOR MAKING SOLIDARITY PAYMENTS

The deadline for making solidarity payments is again relatively short, being:

- i. 30 days after the player's registration with the new club; or
- ii. In the case of contingent payments, 30 days after the date of such payments (see Annexe 5, Article 2 (1) RSTP).

DISPUTES REGARDING SOLIDARITY PAYMENTS

Pursuant to Article 22 (d) and Article 24 RSTP, the DRC has jurisdiction to hear disputes relating to solidarity payments between clubs belonging to different football associations. Disputes between clubs belonging to the same association related to the solidarity mechanism shall be settled in accordance with national regulations.

[References \(http://www.lawinsport.com/articles/item/a-guide-to-training-compensation-and-solidarity-payments-in-football#references\)](http://www.lawinsport.com/articles/item/a-guide-to-training-compensation-and-solidarity-payments-in-football#references)

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