

COUNTDOWN TO THE REFERENDUM:

A series of articles by Matrix that will explore a number of legal topics surrounding the UK referendum on 23 June 2016.

8: Brexit and Premier League Transfers



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Synopsis

- *Discusses the system for signing non-EU players, highlighting the discretion left to the Governing Body Endorsement Panel in reaching its decisions on recruitment of talent from outside the EU.*
- *Argues that England's Premier League clubs would view a Brexit vote with concern because it could extend the use of that system.*

1. As we draw closer to the EU Referendum, it is timely to consider the consequences of a Brexit vote on the ability of Premier League clubs to sign overseas talent. Although the Premier League officially adopts a stance of neutrality on this decision, there can be little doubt that England's elite clubs would view a Brexit vote with concern.
2. The starting point for our analysis is the existing system for signing overseas players. The system has radically different approaches for EU and non-EU talent. In the case of EU talent the position is relatively straightforward: if a club want to sign an EU-based player they are free to do so under free movement principles. This means that the recruitment of such players is left to the sporting judgement of the clubs concerned and their managerial staff.

Signing non-EU players

3. So far so good. However the position for non-EU players is radically different. If a club wishes to sign a non-EU player they have to obtain a [Governing Body Endorsement](#) ("GBE") from the FA. Obtaining a GBE is not straightforward and the system is viewed with concern by most Premier League clubs.
4. The underlying purpose of the GBE system is tolerably clear. It seeks to ensure that only elite players can be recruited. It seeks to achieve this aim through mixed automatic and discretionary criteria. The first stage requires a player to meet criteria relating to their international record and that of their national team. A sliding scale is in place. At the top of the scale are the elite nations that are ranked in the top 10. A player from such a nation will obtain a GBE if they have played in 30% of that team's internationals in the past 2 years. The bottom of the scale involves national teams which are ranked between 31 and 50 in the world. Players from these nations need to have played in at least 75% of that team's internationals in the equivalent period. If these thresholds are met the GBE is automatic.
5. However, if a player fails to fulfil the relevant automatic criteria a discretionary system applies. Under this system the relevant GBE Panel is required to consider other criteria along with the player's international record. These include the transfer fee and the salary to be paid to the player. In effect a judgment is left to the market. Importantly, however, a residual discretion remains in the hands of the GBE Panel.
6. The difficulty with this is that it provides a significant level of discretion to the GBE Panel even where objective criteria are applied. It follows that even where a player meets the discretionary criteria the Panel reserves the right to refuse the GBE. This is a highly undesirable system for a series of reasons. First of all it creates great uncertainty. It is not unknown for GBE Panels to

undermine the objective criteria where they have only narrowly been met. Even though the wording of the Rules permit them to do so this can only lead to uncertainty and lack of consistency in decisions. These are the hallmarks of bad administration. Secondly, it leaves clubs at the mercy of the particular GBE Panel that is considering the application. Such a margin of discretion under the Rules is, it is suggested, unhealthy. Thirdly, it brings football administrators into conflict with the sporting decisions of clubs and managers. The current system enables the GBE Panel to second guess the sporting decisions of a club manager whose job may depend on whether or not a particular player is signed. This is undesirable and difficult to justify. Surely it is the club's Manager who can best determine how his or her team's requirements are best met.

Disadvantage of discretion in the GBE system

7. In many respects the GBE system is analogous to the debate on Brexit itself. The current system for non-EU players is highly politicised and seeks to use a system of work permits to achieve a distinct political purpose. The purpose behind the policy is said to be to strengthen the England national team, by restricting competition for places on Premier League teams. The contrary view is that the way to improve the prospects of the national team is by improving levels of coaching and facilities at the junior end. It can also be argued that the best way to improve standards is to play with the best players and coaches, and this requires free movement of talent. Indeed history would suggest that the performance of the England team is not linked to the numbers of foreign players in the Premier League at all: England have had a better qualification record for tournaments in the Premier League era than under the equivalent period for the old First Division when it was full of domestic players.
8. On any view Brexit will have a dramatic effect on Premier League Transfers. It is a salutary thought that if the current rules applicable to non-EU players were applied to EU players in recent times some of the best talent would not have made it to the Premier League (Dimitri Payet anyone?) It follows that the system will need fundamental reform to ensure that the correct balance is struck between the interests of the national team, players, clubs and supporters.

On a personal note I have always considered the criticisms of the national team in the last 20 years to be exaggerated and historically inaccurate. There was never really a bygone golden era for the English national football team as has often been suggested. It is also dubious that restricting foreign talent will make England overcome their penalty shoot-out curse which, in large part, has been the proximate cause of England's exit from major tournaments in the modern era. But for this

curse England would have almost certainly featured in 3 or 4 major finals in the past 26 years. That would have been a substantial improvement on the previous 40 years since England saw fit to take part in international competition.

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Further information

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