Legal Advice from An Advocate Specialising in Criminal and Public Law. Feb 2019

Subject: Re: SFA LICENSING PROCEDURES AND UEFA MONITORING AND COMPLIANCE PROCEDURES 2011/12
Date: Mon, 25 Feb 2019 17:17:51 +0000
From: J <redacted@ntlworld.com>
To: J<redacted @sky.co.uk>

Hi J

I trust this finds you well.

Apologies for the delay in getting back to you. I have been thinking about this and analysing in my mind possible scenarios. This email focuses on the ones that I think are realistic at this stage.

Firstly, the factual matrix, as outlined in G's letter, the High Court pleadings in the Whitehouse and Clark case and your email, is clear. The conclusions are also clear. However, it would seem that the SFA are not responding to your correspondence. There is something highly unusual, not to say suspicious, about this. Moreover, the comment by The Rangers in May, 2018 about the SFA's purported position is something that most definitely needs clarified. There is no basis for their comment.

I attended the last Celtic AGM and the granting of the 2011/12 Euro licence was raised by one of the Resolution 12 shareholders. They were unhappy about the time this was taking. From my recollection Michael Nicholson said that the matter was with the SFA and Celtic awaited their response. You might remember the exchange better. I was in the cheap seats in the overspill room. The AGM was over 3 months ago and one would imagine that the club has had a response from the SFA by now.

The first thing is to establish standing or title and interest. The party with a direct interest in this is the member club/company, in this case Celtic. They have a responsibility to act on behalf of their shareholders. Therefore, I think that the most effective way of pressurising the SFA for a response is by this route. The SFA surely cannot stonewall forever!

However, I take it from the question raised at the AGM, and from your email, that the Resolution 12 shareholders are still unhappy that Celtic have not yet secured a response from the SFA. If that is the case then a more robust approach should be considered. In the circumstances of this case, Celtic should be breaking the SFA's doors down by now.

I have thought for a long time now that there was something not quite right about how the old Rangers secured a Euro licence for the season 2011/12. Fraud was always a possibility. As you are aware, fraud is a crime in which some kind of deception is used for personal gain. In Scotland it a common law crime which consists of dishonestly bringing about a practical result (but not necessarily a financial advantage) by means of a false pretence. In order to be guilty of fraud the fraudster has to induce someone to do something that they would not have done but for the false pretence. That is what appears to have happened here.

If there is evidence that a fraud has been committed then the first place to go is the police. Although you could go to the prosecution services they would redirect you to the police. HMRC and DSS also investigate fraud.

In England fraud is a statutory offence and the definition is slightly different.

I attach a Fraud Advisory Panel Information Sheet which helpfully deals with Fraud in Scotland here: https://www.pinsentmasons.com/PDF/Fraud in Scotland (Pinsent Masons).pdf It mostly talks about the investigation of fraud here. However, it also talks about investigations in England and, in UK wide frauds, about concurrent investigations. It is important to note that this Sheet was prepared and distributed by Pinsent Masons. They are, by chance, Celtic's external solicitors.

On the face of it, there appears to have been a fraud committed here. The first question is: what court has jurisdiction? I note that one of your colleagues wants to take this case to England, and to the City of London police, for the understandable reasons given. However, I would, at this stage, caution against doing this until the issue of jurisdiction is settled. I see the advantage of trying to avoid Police Scotland having any involvement. However, I would remind you that the Craig Whyte fraud case was prosecuted in Scotland. On the contrary, Whitehouse and Clark, in which jurisdiction was founded in England, was a civil case rather than a criminal case.

In the first instance I would suggest that Celtic are approached again to see whether the SFA have responded. If they have not then I would suggest that Celtic are asked to take the opinion of their external solicitors and Senior Counsel on 1) whether a crime has been committed and, if so, 2) the issue of jurisdiction. As mentioned, Pinsent Masons are extremely knowledgeable about this area of the law. It is clearly a proper use of the company/club's resources in seeking this opinion, in the interests of shareholders.

If the answer to 1) was in the affirmative there would then follow an extremely delicate and nuanced discussion with Celtic over what to do with that information. One false move could be counter-productive. Para removed to preserve anonymity.

It might be decided at this meeting that the SFA should be told of the Opinion of Senior Counsel/Pinsent Masons and that consideration is being given to making a complaint to the police within a specified timeframe. That might have the effect of "a grenade in a crowded room" and might bring the SFA to deal with this satisfactorily within that timeframe in order to prevent a police investigation.

If it does not have that effect then it would not preclude the making of that complaint to the police. If this resulted in conviction(s) then the SFA would be forced to act on the point made by the Resolution 12 shareholders.

My suggestions may be ignorant of some critical information. In which case they should obviously be ignored!

I hope that this helps.

Kind regards,

J.