

**DISPUTES RESOLUTION AUTHORITY**

Record No. DRA/2/2009

**Between:**

•

**Darren O Sioradain, Ronan Mac Suibhne, Caoimhin O Baoill, Peadar O hAinli agus Eanna O Floinn (mar ionadai ar son Craobh Cumann Cluain Geis CLG)**

**Claimants**

-and-

**Padraig O Cathail agus Seamus O Cuinn (mar ionadaithe ar son Coiste Chontae Longfoirt, Cumann Luthchleas Gael) agus Nicholas O Braonain agus Paraid O Dufaiigh (mar ionadaithe ar son Coiste Bainisti Cumann Luthchleas Gael agus Ard Chomhairle Cumann Luthchleas Gael)**

**Respondents**

**INTERIM AWARD AND STATEMENT OF REASONS**

---

**Background**

1. The First to Fourth-named Claimants are juveniles with the following ages:
  - (a) Darren O Sioradain: 7 August 1996;
  - (b) Ronan Mac Suibhne: 23 February 1996;
  - (c) Caoimhin O Baoill: 25 March 1996;
  - (d) Peadar O hAinli: 2 December 1997.
  
2. The First to Fourth-named Claimants have been registered as and have conducted themselves as juvenile members of the Fifth-named Claimant Club (“*Clonguish*”) for all of their playing careers. For reasons explained in greater detail below, it is of significance to know when the first participated in an official competition at under-12 grade or over at the time when they were no longer eligible to play under-10 (we will refer to this as playing “*official under-12*” or over). The relevant dates are as follows:

- (a) Darren O Sioradain: joined 2002/3, first registered 2005; first played official under-12 July 2007;
  - (b) Roman Mac Subhne: joined 2002/3, first registered 2005; first played official under-12 July 2007;
  - (c) Caoimin O Baoill: joined 2002/3, first registered 2005; first played official under-12 July 2007;
  - (d) Peadar O hAnli: joined 2002/3, first registered 2007; first played official under-12 March 2008.
3. Bye-Laws have long been a feature of the legislative code of the GAA. The authority to make Bye-Laws has been enshrined in various rules over the years although the stipulations relating to the making of Bye-Laws have changed slightly in that time. This will be discussed in greater detail in due course.
  4. At issue in these proceedings is the validity of certain Bye-Laws said to have been enacted and made effective in early 2007 by Longford County Committee. The Longford County Convention of 14 December 2006 was presented with a document entitled "*Proposed Coiste Chontae Longfoirt Bye-Laws 2007*" which has been opened to the Tribunal. Proposed Bye-Law 4(vii) is entitled "*Coiste Na nOg*" and it contains a number of sub-paragraphs of which sub-paragraph (f) is of greater significance here. It reads as follows:

*"Membership of an Underage Club, of an Adult Club or Clubs, shall be confined to its Catchment Area being the parish of the Adult Clubs or Club, which for the purpose of this Bye-Law shall be the district under the Jurisdiction of a Parish Priest or Administrator."*
  5. An extract from the minutes of that County Convention, which would appear not to be in dispute, states as follows in relation to the passing of Bye-Laws:

*"That Coiste Chontae Longfoirt Bye-Laws 2004 as revised and updated by the Chontae Convention on the 15<sup>th</sup> of December 2005 shall be replaced with Coiste Chontae Longfoirt Bye-Laws 2007 as presented to County Convention on 14<sup>th</sup> of December 2006. Proposed by: Coiste Chontae, many contributions, decisions; refer to Further Special Meeting after some changes noted, Approval to be sought from Croke Park, this decision taken on the proposal of An*

*Cathaoirleach and seconded by Thomas MacLaughlain (Meathas Troim)*”.

6. A series of emails have been opened to the Tribunal and it is perhaps worth setting them out here. The first is from Seamus O Cuinn, Runai Coiste Chontae Longfoirt, to Joan Cooney (Personal Assistant to the Ard Stiurthoir) dated 12 January 2007 and it reads as follows:

*“Joan, A Chara,*

*We refer to the above and wish to seek clarity on a rule.*

*In respect of Rule 33 TO 2006 Home Club (within County) can we have a Bye-Law to restrict the membership of Home Club to persons living within the Parish of the Club.*

*In respect of Rule 38 can we have Bye-Law restricting transfers to a club to persons only living in that parish at under age level and not have such a Bye-Law at Senior Level.*

*We are describing our Underage Clubs as “An Underage Club of an Adult Club or Clubs”, is this in order?*

*We would be grateful [sic] if you could revert back to us at your convenience.”*

7. It appears that a response was prepared and typed into a Microsoft Word document by Fo-Choiste Na BhFo-Dhlithe of Ard-Chomhairle (the Bye-Laws Subcommittee of Central Council) on 18 January 2007. This was attached to an email sent by Phonsie Tully of that Committee to Joan Cooney who then sent that reply to Seamus O Cuinn on 19 January 2007 (we note that this was forwarded to James Clarke of Clonguish on 7 February 2007). The document prepared by the Bye-Laws Subcommittee states as follows:

*“Queries from Choiste Cho. Longfoirt, 16 Eanáir, 2007*

*In response to queries from Choiste Cho. Longfoirt Fo-Choiste decided to recommend as follows:*

- (1) *in respect of Rule 33 TO 2006 Home Club (within County) can we have a Bye-Law to restrict the membership of Home Club to persons living within the Parish of the Club?*  
*Reply: No. This would be contrary to R 33, TO 2006.*
- (2) *in respect of Rule 38, can we have a bye-law restricting transfer to a club to persons only living in that Parish at under age level and not have such a bye-law at Senior level?*

*Reply: No. You cannot restrict a players entitlement to transfer beyond what is contained in R 38, TO 2006.*

(3) *We are describing our underage Clubs as "An Underage Club of an Adult Club or Clubs", is this in order?*

*Reply: No.*

*18 Eanáir, 2007*

*Phonsie O'Maolhuile (Rúnaí). "*

8. Our attention was also drawn to a further email sent by Phonsie Tully to John Greene (and again, we note that this was sent onwards to James Clarke of Clonguish on 7 February 2007). The document attached to this email states as follows:

*"Re: Query from Coisde Cho Longfoirt*

*Suggested wording:*

*"At underage level (i.e. up to and including Minor Grade) the Parish Rule shall apply with the following exceptions:*

- (i) A player may declare for the Parish in which he went to school and he first played Schools' football, or*
- (ii) He may declare for his parents' native parish in exceptional circumstances. The Co. Committee shall reserve the right to be the final Arbiter in any other exceptional circumstances that may arise."*
  - (a) Submit the above Motion to a Special Co. Convention.*
  - (b) If passed (by a simple majority) forward it together with ALL other Bye-Laws to Ard-Chomhairle for ratification.*
  - (c) It will not be in force until ratified. (R 57, TO 2006)".*

9. A meeting referred to as a "*Special County Board Meeting*" was held on 5 February 2007, which approved or purported to approve Bye-Laws for ratification by the Management Committee of Ard-Chomhairle. We have a copy of an email sent by Mr Clarke, the Representative of Clonguish on the County Committee, dated 6 February 2007. This was sent to Seamus O Cuinn and it requests a copy of the Bye-Laws as adopted by the Convention (meaning the Convention of December 2006) together with other documentation including copies of correspondence to and from Croke Park in relation to the Bye-Laws. Mr. Clarke makes the following comment in this email:

*“I am satisfied that the amendments to the documents circulated prior to the County Convention in December and introduced for the first time last night were not circulated prior to last night’s meeting or discussed at meeting of Coiste Bannisti [sic]”.*

10. The next significant event, chronologically speaking, is an email dated 7 February 2007 sent by Seamus O Coinn to Joan Cooney with a copy to John Greene (who is the Longford County delegate on Ard-Chomhairle) and Phonsie Tully of the Ard-Chomhairle Bye-Laws Subcommittee. Attached to this email was a copy of the Bye-Laws the subject of this claim which are stated to have been approved at a Special County Board Meeting on 5 February 2007 and the request is made that the Bye-Laws be ratified at the earliest possible time.

11. It would appear that Mr. O Cuinn provided Mr. Clarke with the documentation that the latter requested in his email of 6 February 2007, because Mr. Clarke reverted with an email on 8 February 2007 raising complaint about the validity of the Bye-Laws adopted at the meeting of 5 February 2007. More specifically, the charge is made by Mr. Clarke that the correspondence between Mr. O Cuinn and the personnel representing Ard-Chomhairle was not disclosed to the meeting of the County Committee on 5 February 2007 and that this mislead them in reaching a decision. It is further alleged that the “advice” received by John Greene (apostrophes used by Mr. Clarke) should not have been brought before the meeting on the grounds it did not constitute official correspondence from Croke Park. By way of conclusion Mr. Clarke states that the Bye-Laws were invalid.

12. It is obvious that Mr. Clarke was quite exercised by the passing of these Bye-Laws and, having regard to his position in Clonguish and in the light of the proceedings that have ultimately arisen from the passing of those Bye-Laws, this is perhaps unsurprising. The correspondence does not seem, however, to touch on the *merits* of the decision to pass Bye-Laws in the terms ultimately ratified by Ard-Chomhairle. One can imagine that the merits were probably discussed and debated at the County Convention and subsequent meetings but we have not been given evidence by any party to the proceedings as to the substance of the debates held at same.

13. It appears that a meeting of the Bye-Laws Subcommittee of Ard-Chomhairle was held on 8 February 2007 at which the Longford County Bye-Laws 2007 were recommended for ratification. So far as the Bye-Law under consideration is concerned the following represents the text of the relevant Rule as amended by Bye-Laws Subcommittee (with the amendment thereto marked in bold text and italics on the original document and in the quotation below identified by underlining):

*(f) At underage level (i.e. up to and including Minor Grade) the Parish Rule (i.e. confinement of membership of an under aged Club to persons living within the confines of a Parish which for the purpose of this Bye-Law shall be the District Under the Jurisdiction of a Parish Priest or Administrator) shall apply with the following exceptions (i) a Player may declare for the Club within a Parish in which he went to National School and he first played School's football with, or (ii) a Player may declare for the Club within his/her Parent's native Parish in exceptional circumstances...*

*...delete: "in exceptional circumstances" after "native Parish" in (f)."*

14. It would appear, therefore, that the words "in exceptional circumstances" were in the document approved by the Special County Board meeting of 5 February 2007, but were deleted by the Bye-Laws Sub-Committee in the course of recommending the ratification of the proposed Bye-Laws.

15. At a meeting of the Management Committee of Ard-Chomhairle held on 16/17 February 2007, a decision was made to approve the decision of the Bye-Laws Subcommittee relating to the Bye-Laws of *inter alia* Longford.

16. The Secretary of Clonguish wrote to the Ard Sturthoir of the GAA on 21 February 2007 seeking an interpretation of Rules 57, 53 and 49 of Treoirai Oifigiúil 2007 in the context of the passing of the Longford County Bye-Laws of 2007. In essence, the queries touched on the procedural validity of the County Bye-Laws of 2007 and the issues raised are as follows:

- (a) Whether the County Committee had authority to approve Bye-Laws outside the context of the County Convention. A subsidiary question asked whether, if only the County Convention could make County Bye-Laws, whether a County Convention might defer the making of County Bye-Laws to a meeting of the County Committee with a power to amend the same.
- (b) Whether Rule 53 means that Motions for consideration by the County Convention may only be submitted by Clubs and the County Committee. It is also asked whether such a Motion submitted by a County Committee for consideration that the County Convention must first be considered and approved by a County Committee meeting of which notice was duly given.
- (c) Whether Rule 49 means that only one Annual County Convention can be held (as distinct from a “Special Convention” akin to a Special Congress). A supplemental question is raised regarding the formalities for such a Special Convention, if such a thing existed.
17. Nothing appearing to have happened and no response appearing to have been received, a reminder was sent by the Secretary of Clonguish on 4 September 2007. Notwithstanding this, no reply appears ever to have been received to this letter from the Ard-Chomhairle or any representative of same.
18. The Longford County Convention held in December 2007 appears to have considered amendments to the 2007 Bye-Laws. We have been supplied with a copy of the proposed amendments, which is stated to show the text to the added coloured blue and text proposed to be deleted to be shown in red. At the hearing there was a suggestion that this represented an attempt to bring the Bye-Laws in line with the amendments made by the Bye-Laws Subcommittee the previous February, but on examination of the text, this cannot be so. At all events, Bye-Law 4(viii)(f) is unchanged from the text set out in the document ratified by the Bye-Laws Subcommittee in February 2007 (and quoted above). It appears that this document was never sent to the Bye-Laws Subcommittee or the

Management Committee of Ard-Chomhairle as required by Rule 57. It was suggested on behalf of the County Committee that the reason might have been that the text was unchanged from the previous year (therefore not requiring ratification) but the document on its very face shows changes from the previous year's Bye-Laws, so that is incorrect.

19. The Tribunal was not informed until late into the second night's hearing of this matter; that in fact another Club (Abbeylara) proposed a motion to remove Bye-Law 4(viii)(f) at the County Convention 2007. No club or delegate seconded the motion and it therefore failed. It does not appear that anything of note occurred within the following nine or ten months after the 2007 County Convention.

20. Matters came to a head in September 2008 when Clonguish played an under-12 competition match against Longford Slashers GAA Club in which the First to Fourth-named Claimants played for Clonguish. The Secretary of Longford Slashers wrote a letter to Seamus O Cuinn on behalf of the County Committee making complaint about the inclusion of these players in the Clonguish Team on the grounds of eligibility. It specifically identifies four players (now the First- to Fourth-named Claimants) as living outside the Parish of Clonguish and as attending school at Melview, which was also outside the Clonguish Parish. It is an agreed fact that all of the Players did in fact live outside the Clonguish Parish and that they went to school outside the Clonguish Parish. Their addresses and the address of their National School rendered them eligible (if one applies Bye-Law 4(viii)(f) to play for one of three clubs based in the Templemichael and Ballymacormack Parish, one of which was in fact Longford Slashers itself.

21. The letter of Longford Slashers having been written on 14 September 2008, the matter was discussed at a meeting of the Longford County Committee on the 13 October 2008, at which it would appear Clonguish was represented. It does not appear that any decision was made at that meeting and on 17 October 2008 the Secretary of Clonguish wrote to Seamus O Cuinn stating *inter alia* as follows:

*“The players in question are registered players of Cumann Cluain Geis under Rule 19 of the Official Guide 2008.*

*They have played at all levels over the past four years, including under 12 Championship football, with Cluain Geis and in accordance with Rule 33 of the Official Guide 2008 we are satisfied that they have established that Cluain Geis is their Home Club. They have never participated in any training, coaching or competition with any other Club.*

*Cumann Cluain Geis further submits that Bye-Law 4(viii)(f) of Coiste Chontae Longfoirt CLG is contrary to Rule 33 of the Official Guide 2008 and therefore in breach of Rule 57 of the Official Guide 2008.*

*In the circumstances as set out, Cumann Cluain Geis is satisfied that there is no breach of any of the rules of the Official Guide 2008 which prohibits the Players in question from continuing to play with the Club and it is their intention to continue playing as heretofore.”*

22. The matter was considered at a meeting on the Competitions Control Committee of Longford County Committee on 31 October 2008. A detailed memorandum of that meeting and the deliberations of the Competitions Control Committee has been furnished to us and was furnished by email to the Secretary of Clonguish on the date it was issued. It is not necessary to set out here the full reasoning as is set out in that memorandum, as it mirrors much of the argument made on behalf of the Respondents in these proceedings, and will be dealt with in more detail below. The conclusion drawn, however, was that the players were ineligible to play for Clonguish and could only play for a Club within the confines of the Parish of Templemichael and Ballymacormack.

23. While it is intended at this juncture only to deal with the facts (disputed and undisputed) it might be worth commenting that it is correct to say that the decision of the Competitions Control Committee was not a typical disciplinary matter. It did not arise on foot of an Objection in the formal sense, as Longford Slashers did not seek to over turn the result of the game in September 2008. As such, the decision had no effect except perhaps to increase the unease of Clonguish.

24. By letter dated 5 November 2008, the Secretary of Clonguish wrote to Seamus O Cuinn reasserting the position of Clonguish in the matter and making

complaints about the manner in which the Competitions Control Committee reached its decision. Some frustration is evident in the terms of the letter that the decision was not of a type that was susceptible to appeal or challenge by means of Arbitration, and ultimately it is stated that any disciplinary action commenced against the Players would be defended vigorously. Indeed a veiled threat of Court proceedings is evident in the letter.

25. We were informed by the Respondents that the Bye-Laws (including Bye-Law 4(viii)(f) in identical form to that in issue here) were adopted at the County Convention of December 2008 and ratified in March 2009 by Management Committee of Ard-Chomhairle, but we were not given any minutes or other evidence to support this assertion. As such, we are in a position to only draw conclusions in relation to events occurring prior to that time (at any rate the pleadings before use do not address the legality or otherwise of any Bye-Laws adopted in December 2008 or ratified thereafter).

26. We were informed, again very late in the second evening of the hearing, that Clonguish seconded a motion proposed by the Abbeylara club at the County Convention of December 2008 to do away with Bye-Law 4(viii)(f), which motion was defeated. This information is relevant to the issues (including the exercise of discretion) in the case and really should have been disclosed earlier.

27. Correspondence ensued between both sides of the dispute and the Ard Sturthoir (on behalf of Ard-Chomhairle) during December 2008 and January 2009 and ultimately the Ard-Chomhairle made a decision not to give an interpretation of a County Bye-Law “*on the basis that interpretation of a County Bye-Law that has been approved by the Bye-Law Subcommittee and Ard-Chomhairle is a matter of the Coiste Chontae*” (presumably on the assumption that the power to interpret under Rule 86(b), Official Guide 2008 related to Rules in the Official Guide and nothing else. The Ard-Chomhairle went on to “*confirm its opinion*” that the Bye-Law was not contrary to the Rules of the Official Guide. This was somewhat inconsistent with the decision not to issue an interpretation but in light of the fact that no formal interpretation was being given, and also in light of the fact that the matter is now before this Tribunal, little turns on this.

## The Claim

28. Against the background set out above, the matter now comes before the Disputes Resolution Authority and it is appropriate to set out the claim as made on the ground on which it is made, as we understand it, before dealing with the arguments made.

29. The claim form submitted by the Claimants sets out the relief sought as follows:

*“A Declaration Bye-Law 4(viii)(f) of Coiste Longfoir Bye-Laws is contrary to the Rules of the Cumann Luthcheas Gael and that the First Named Claimants are entitled to be members of and play with their Home Club (Cluain Geis) as defined in Rule 33 Treorai Oifigiúil 2008”.*

30. Strictly speaking, insofar as the declaration sought mentions Rule 33, it should also have made reference to Rule 57 of Treorai Oifigiúil because, in argument, the Claimants’ focus was equally on the procedural issues arising from the events between December 2006 and February 2007. Nevertheless, as the Claim form alleges elsewhere that there has been a breach of Rule 57, and as all the Respondents are alive to the arguments relating to Rule 57, which had been made in correspondence on several previous occasions, we do not consider that there is any technical or pleading difficulty that should prevent the Claimants from advancing this argument in the context of the arbitration.

31. In summary, therefore, there are two independent issues to consider. The first is whether the 2007 Bye-Laws as relied upon by the Respondents are valid and in force, combined with consequences arising in the event that those Bye-Laws were not validly enacted (the procedural argument). The second is whether a County Convention can ever make a Bye-Law that confines a juvenile to joining a club within his own parish or Catchment Area (the parish rule argument).

## The procedural argument: Rule 57

32. The procedural argument relates primarily to Rule 57. To begin, it is essential that the correct edition of the Official Guide is referenced as changes are made to it every year and sometimes more often (when a Special Congress changes rules). Rule 57 of the Official Guide published in October 2006 (which applied on the dates on which it is said that the impugned Bye-Laws were brought into force) provides:

*“57 County Bye-Laws*

*County Conventions may make Bye-Laws, which shall become operative when sanctioned by the Management Committee on behalf of Central Council.*

*A County Bye-Law shall not be contrary to a Rule in the Official Guide. A County Bye-Law shall not place a restriction on when Club fixtures are played or govern postponement of fixtures, as such matters constitute powers of the County Committee.*

*The Management Committee shall sanction or reject a proposed Bye-Law within one month from date of receipt.”*

33. We have seen that the minutes of the County Convention of December 2006 referred the issue of the new Bye-Laws to a further Special Meeting of the County Committee. It is stated that “*some changes [were] noted.*” It seems to us that the County Convention can itself amend a draft proposed to it and adopt the Bye-Laws as so amended. If it were the case that the purpose of the further Special Meeting was merely to confirm that the changes were correctly drafted into the text, then it would seem that the Bye-Laws would have been duly “*made*” in December 2006 for the purpose of ratification. Indeed, in limited cases it might be that a County Convention could delegate the drafting of an amended Bye-Laws to a Committee or Sub-Committee, provided a specific instruction as to the content of what was to be drafted was given. However, it seems clear to us that what was in fact sent for ratification was not a document that represented the conclusions (if any) of the County Convention of December 2006. The changes wrought were clearly the product of advices received from the Bye-Laws Subcommittee, and not the deliberations of the County Convention. Although these were ratified at the meeting of 5 February 2007, that meeting was not a County Convention. Under Rule 57 of The Official Guide in force at that time, what was sent for ratification by the Management

Committee of Ard-Chomhairle was required to be the product of a County Convention.

34. If there is doubt about the content of a proposed Bye-Law, the time to take advice is before the County Convention; alternatively the Convention might be adjourned to complete its deliberations following the obtaining of advice. That is not what happened here.

35. The argument was raised on behalf of the Respondents that a certain robustness must be expected in the governance of a sports organisation (citing *Barry and Rogers v Ginnity* (Unreported, Circuit Court (His Honour Judge McMahon), 13 April 2005)), and that a margin of appreciation must be allowed by a court or arbitrator. This is no doubt correct. However, the Association has chosen a degree of procedural strictness and that must be complied with in substance. Where a matter is reposed to the authority of a County Convention, which has a specific role in the rule making code of the Association, it is not permissible to abdicate that responsibility by handing it over to an executive committee such as, in this case, the County Committee. Moreover, it is easier to do these things correctly than incorrectly, and for this Tribunal to overlook a substantial defect in procedure such as occurred here is to invite uncertainty as to procedure.

36. For that reason, it would appear that the 2007 Bye-Laws, or at least the amendments made between the County Convention and the Special Meeting of February 2007, were not properly made. While the ratification of same by the Management Committee was procedurally and correctly done in the circumstances, the Management Committee would not have known of the errors in what had gone beforehand and consequently, their decision is not curative of the defects existing at the time it came to them.

37. What then are the consequences of this finding? While both parties have put considerable work and admirable effort into the case, the difficult questions that follow from a finding of invalidity of Bye-Laws was not treated in great detail, either in pleadings or in submissions. As a matter of law, we do not consider that a finding of invalidity renders a set of Bye-Laws null and void for all

purposes. Members and Units of the Association will have conducted their affairs in reliance upon the residual validity of the Bye-Laws and positions adopted and decisions taken by third parties will not be affected by this decision, save in the context of a challenge before the DRA which is not defeated by delay, acquiescence or on other equitable grounds.

38. What we have here, however, are four young players who have carried on in their playing careers, no doubt on the advice of their senior club officers, in reliance upon the invalidity of the Bye-Laws, and this position has been openly stated on their behalf. Having taken the claim, they are *prima facie* entitled to the fruits of the finding of invalidity (subject only to the discretion available to this Tribunal to withhold the relief sought on equitable grounds, which will be dealt with in due course).

39. The practical consequences will be dealt with below, but first, it is appropriate to consider the second main argument advanced on behalf of the Claimants.

#### **The parish rule argument**

40. The second ground put forward by the Claimants for the relief sought goes to the *vires* of the County Convention itself to make a Bye-Law in the terms of Bye-Law 4(viii)(f). This turns on what is contended to be an inconsistency between that Bye-Law and the requirements of the Official Guide.

41. At its essence the difference between the Parties is whether a County can:

- (a) Apply a “*Parish Rule*” *ab initio*. In other words, whether County Bye-Laws may confine a person who has never before participated in an official competition under the Rules of the Association to membership of a Club within a particular Catchment Area (a wide term which usually, but not necessarily, coincides with a parish) in which he or she resides or attends at school; or

(b) Only operate such a rule to control the choice of Clubs to which an existing member can *transfer*. In other words, whether a person who has never before participated in an official competition is entitled to join whatever Club he or she wishes, regardless of whether or not he or she resides or goes to school in the Catchment Area of that Club, so that it is only in the context of a transfer that he or she may be confined to joining Clubs within his or her own Catchment Area.

42. We must begin by identifying the rules that were applicable on the dates that the First- to Fourth-Named Claimants first played official under-12. The significance of these dates will be explained in due course. As identified previously, the First- to Third-named Claimants first played in this category in July 2007 and the Fourth-named Claimant played within this category in March 2008. The relevant Rules at issue here were identical on these two dates.

43. Numerically, the first relevant rule is that part of Rule 33 (headed “Definitions”) which defines “Home and Club (Within County)”. This definition is as follows:

“Home Club within the County shall mean the Club with which a player first legally participated in Club competition (under 12 or over) organised by the County Committee or one of its Sub-Committees, subject to that participation being at an age not more than two years younger than the designated age level of the competition.”

44. Rule 38 (headed “Transfers Within County”) provides as follows:

“(a) A County shall have a Bye-Law governing the transfer of Players from one Club to another within the County.

(b) A County Bye-Law may confine membership of a Club to a Catchment Area, which may be a Parish. A Parish for the purpose of this Rule shall, subject to County Boundaries, be the district under the jurisdiction of a Parish Priest or Administrator.  
A Catchment Area shall be fundamentally based on permanent residence of players, subject to a player being entitled to play with his Home Club.  
Permanent Residence shall be defined in County Bye-Law.

*A County shall also have the option within County Bye-Law, to allow a Player to play with a Club in the area in which he works.*

(c) *A Player who wishes to leave one Club to join another in the same County must apply to the County Committee for a transfer.*

(d) *A County Committee has the right, acting within its Bye-Law, to grant or not to grant an application for Transfer.*

(e) *A County Committee may delegate to a Sub-Committee the authority to deal with Applications for Transfer but a County Committee shall retain the right to take final adjudication on an application.*

***Penalty: for playing without transfer – 12 weeks suspension.”***

45. The Respondents draw our attention to a number of incidences within the Official Guide evidencing the ethos of the Association in relation to Club membership, and in particular loyalty to ones locality. A good example is Rule 31, which (under the heading “*Transfers and Declarations – Association’s Ethos*”) provides:

*“As the Gaelic Athletic Association is community centred, based on the allegiance of its members to their local Clubs and Counties, the Transfer and Declaration Rules in this Official Guide and in County Bye-Laws reflect that ethos. A player is considered to owe allegiance and loyalty to his Home Club and County, as defined in these Rules.”*

46. It is common case however, that in the absence of any Bye-Law relating to the Catchment Areas (and assuming (contrary to the Claimant’s submission) that such a Bye-Law can in fact be made), a young person may attend at a Club of his or her choice, whether or not that Club is in his or her Parish of residence or school, and may – by participating in their first official competition under the Associations Rules with that Club – become attached to that Club so that it becomes their “*Home Club*”. That is why the dates the First- to Fourth-named Claimants first played official under-12 are so important: if there was no Bye-Law in place on those dates, then Clonguish would have become their Home Club and no subsequent Bye-Law could prevent them from competing for that Club.

47. But of course, the Claimants go further than this. They contend that no Bye-Law may ever control a new member's choice of first Club. They submit that the location of the entitlement to have a Parish Rule of any type in the Rule headed "*Transfers within County*" is an indication that the capacity of a Bye-Law to confine membership by reference to Catchment Area is operable only in the context of Bye-Laws governing transfers.

48. A short history of the "*parish rule*" has been opened to us and we propose to examine it here. The earliest incidence brought to our attention of such a rule appears in the 1943 Official Guide. There, it was stated in Rule 36 as follows:

*"County Committees shall have the power to confine membership of Clubs to the Parish in which Players reside or work. A Parish for the purpose of this rule shall be the district under the Jurisdiction of a Parish Priest.*

*The Parish Rule shall not apply to Cities, or to Towns of more than one Parish."*

49. The Official Guide of 1973 shows a slight amendment in that the words "*subject to County Boundary,*" are inserted before the words "*a Parish for the purpose of this Rule shall be*".

50. By 1988, the parish rule had become a sub-rule of a Rule dealing with the powers of the County Committee. So far as is relevant it provided as follows:

*"57. The County Committee shall also have the following powers:*

*(a) To confine membership of Clubs to the Parish in which Players reside or work. This shall not apply to Cities or Towns of more than one Parish but a County Committee shall have the option of applying it and determining its Application in Minor grade.*

*A Parish for the purpose of this rule shall be, subject to County Boundaries, the district under the jurisdiction of the Parish Priest or Administrator..."*

51. A definition for "*Home Club*" had been introduced by 1988. It provided as follows:

*"Home Club shall mean:*

- (a) *The Club and the Player's native Parish, or*
- (b) *The Club with which a Player legally participated for the first time in officially recognised Club competitions, or*
- (c) *The Club (or its successor) of which he was a playing member immediately prior to moving his Home County."*

52. Returning to the parish rule, by 2003, the term "Catchment Area" had been introduced. Rule 57 provided:

"58. The County Committee shall also have the following powers:

- (a) *To confine membership of Clubs to the Parish in which the Players reside or work. This shall not apply to Cities or Towns of more than one Parish, but a County Committee shall have the option of applying it and determining its application in minor grade. It shall have the power to define and enforce suitable Catchment Areas in Towns with a population over 5,000 for Clubs catering for Players up to and including Minor Grade. A Parish for the purpose of this rule shall be, subject to County Boundaries, the district under the jurisdiction of a Parish Priest or administrator..."*

53. In the 2003 Official Guide, the definition of "Home Club" had changed somewhat also. Rule 31 provided *inter alia*:

"Home Club shall mean:

- (a) *The Club in the Player's Native Parish or*
- (b) *The Club with which player legally participated for the first time in officially recognised Club Competition (i.e. under 16 or over).*
- (c) *The Club (or its Successor) of which he was a playing member immediately prior to leaving his Home County.*
- (d) *In the case of a player borne in Co. Dublin (i.e. whose parents were permanently resident in Co. Dublin at the time of his birth):*
  - (i) *a Club for which his Father played for or had declared his Home Club under Rule 34, and if neither is applicable a Club for which his Father was qualified under (a) above.*
  - (ii) *The Club of birth of his Mother (i.e. the Club, in whose area his Mother's parents were permanently resident at the time of her birth),*  
*- providing the Club being declared for is in a County allowed by Central Council to avail of the terms of this Rule under the definition of Home County (c), and the Declaration is sanctioned by Dublin County Committee.*  
*A Player must be over eighteen on the 1 of January of the year in which he applies to qualify, and he must supply requisite proof in his application.*

(e) *A Player who avails himself of this rule may not thereafter declare for a Club in another County.*"

54. Pausing for a moment, it seems clear to us that, up to and including 2003, the authority to limit membership by reference to parish or catchment area of residence was set out independently of any rule relating to transfers. Moreover, there is no reference to "Home Club" in the rule conferring that authority on a County Committee (indeed formal Bye-Laws were not even required to exercise that authority). It is clear to us that a Bye-Law in terms of No. 4(viii)(f) was within the power of a County Committee up to 2003.

55. We should also make clear that, contrary to what was contended for by the Claimants, we believe that the term "parish rule" (or "catchment area rule") has at all times since, at the latest, 1943, had a particular meaning in the administration of the GAA: it referred to the confining of membership by geographical area in accordance with such Rule of the Official Guide as made provision for it. The question is what that Rule allowed and allows today.

56. As we have seen above, from 2004 the parish rule became listed in Rule 38, the heading of which refers to transfers. It is common case that the change came about as a result of Special Congress in 2004, which amended several rules relating to membership. The minutes of this Congress have been opened to us and both sides have sought to rely on the input of various speakers at the Congress, including the speakers introducing the motions by which these changes were made.

57. We consider that Congress minutes are of limited, if any, value in the interpretation of Rules. They are akin to Dáil debates analysed in the context of the interpretation of the Statutes. The Supreme Court in the case of Crilly v T & J Farrington Limited [2001] 3 IR 251 determined that recourse to Dáil debates should not be had as an aid to the interpretation of Statutes, and we believe that the rationale for that approach applies similarly when one is considering minutes of Congress. Quite apart from the fact that the views of any one delegate do not necessarily represent the views of Congress as a whole

exercising its democratic authority, recourse to such minutes would introduce uncertainty into the Rules. The Official Guide should be treated in its own terms: it is a detailed enough document in itself without the added complication of Congress minutes. At all events, we do not think that the various contributions opened to us by the Parties are conclusive as to what purpose was sought to be achieved by relocating the provisions relating to Catchment Area in (what became) Rule 38. On the other hand, it is often appropriate and permissible to consider the history and development of a rule (as expressed in the Official Guides of the past) as an aid to interpretation where ambiguities or disputes as to interpretation arise.

58. As we have said, a Bye-Law in terms of Bye-Law 4(viii)(f) would have been perfectly regular prior to 2004. Two questions arise. The first is whether the introduction of a reference to “*Home Club*” in the parish rule changed that position, and (if the answer is negative) the second is whether, the relocation of the Parish Rule in 2004 (combined with the reference to Home Club) effected such a change.

59. It is appropriate first to deal with the introduction of a definition of “*Home Club*”. Let us consider, then, what the position would be if the definition of “*Home Club*” was as it appeared in the Official Guide after 2004 but the parish rule remained located in Rule 58, which dealt with miscellaneous powers of the County Committee. The Claimants maintain that the definition of “*Home Club*” makes no reference to any parish rule and consequently that it is not considered to be effected by any parish rule. They draw attention to the definition of a “*Catchment Area*” in Rule 38, which makes reference to places of residence of players but is stated to be “*subject to a player being entitled to play with his Home Club*”. On one view, the inclusion of these words was to demonstrate that the parish or Catchment Area rule does not apply to the establishment of one’s Home Club.

60. The alternative view is that the inclusion of these words is a recognition that whereas one’s Catchment Area may change, one cannot be compelled to leave one’s Home Club and join a new club in one’s new Catchment Area. The

Respondents, in addition, refer to the terminology in the definition of Home Club which references "*the Club with which a Player first legally participated in Club Competition*". The stipulation "*legally*" is, they maintain, to ensure that a Player who acts outside Rule or Bye-Law (including a Bye-Law confining membership to a particular Parish) cannot become attached to a Club solely by reference to having played in a particular competition. The Claimants contend that the use of the word "*legally*" concerns the more general requirements of the rules such as playing in the correct age division, not playing while suspended etc.

61. We have come to the conclusion that the Respondent's submission on this issue is the correct one.

62. First, while it is true that Rule 38(b) appears as one of a number of Rules under the heading "*Transfers within County*", that is insufficient to confine everything that appears within that rule to the process of applying for and obtaining transfers. For example, one sees the provision for a penalty at the end of Rule 38: this is nothing to do with the process of applying for and obtaining a transfer. The penalty is for playing with a Club to which one has not transferred. In other words, it is for playing with a Club for whom one is not entitled to play.

63. Secondly, whereas Rule 38(a) requires County Committees to have a Bye-Law governing the transfer of players from one Club to another within the County, sub-rule (b) does not state that the Bye-Law confining membership to a Catchment area must be the same or a connected Bye-Law as that governing transfers. It commences with the words "A County Bye-Law may confine membership of a Club to a Catchment area...". Thus the obvious opportunity to link Rule 38(b) with Rule 38(a) was not taken by Congress.

64. Thirdly, the words chosen in Sub-Rule (b) are closer to the free-standing Rule found in the older Official Guides (e.g. 1943 and 1973) than a changed Rule limited to transfers. The operative words "*a County Bye-Law may confine membership of a Club to a Catchment Area...*" might have stated "*a County*

*Bye-Law may confine transfers to Clubs within a player's Catchment Area*". As we have identified above, prior to 2004, there was no argument available that would limit the operation of the Rule to transfers. Accordingly, it must be shown that there was an intention (expressed in the terms of the Rule) to change this position. In our view, this required more than a repositioning of the Rule. The words ought (if that change was intended) to have reflected this narrowing that the Claimants contend for.

65. Fourthly, while the words might be clearer, in our view, the definition of "*Home Club*" does not alter the matter. We agree with the submission of the Respondent that a definition is only a tool and does not constitute an operative Rule. This tool is used in a number of Rules in the Official Guide applicable at the relevant time e.g. Rule 24, Rule 35, Rule 39 and indeed Rule 38(b) itself. In our view the issue must be determined by reference to the operative words in Rule 38(b) (*a County Bye-Law may confine membership of a Club*"). The relevance of the Home Club definition is limited to its impact on the proviso that a player remains "*entitled to play with his Home Club*". That proviso must be seen in its context. Its context is the definition of Catchment Area:

*"A Catchment Area shall be fundamentally based on permanent residence of players, subject to a player being entitled to play with his Home Club."* (*emphasis added*)

66. So it is clear that the only reference to Home Club in Rule 38(b) is itself a definition, a tool, whereas the operative words of Sub-Rule (b), are those set out above which concern the confining of membership. The words are directed at the Club, not the individual. Without this proviso in the words in emphasis above, it is arguable that the imposition of a Bye-Law imposing a Parish Rule, so called, would have the effect of requiring a Club to expel a member who moved away out of the parish or catchment area. That, in our view, is the reason why the proviso relating to Home Club is included.

67. In the result, we conclude that the various County Committees by adopting County Bye-Laws at County Conventions and by having the same ratified by Management Committee in the manner prescribed by the Official Guide, are entitled to confine first membership to a Club within one's Catchment Area.

**Practical consequences of the findings above**

68. What then is the position obtaining between the Claimants and Longford County Committee? The First- to Third-named Claimants first played official under-12 football in July 2007. Was there a Rule or Bye-Law in place at that time – in the absence of Bye-Law 4(viii)(f) – that prevented them playing for Clonguish? It is common case that the 2004 Longford County Bye-Laws as amended in 2005 were validly adopted and ratified. As such, in light of our finding, any parish rule found in these Bye-Laws might be valid and effective as well after the purported adoption of the 2007 Bye-Laws as beforehand. However, the 2004 Bye-Laws were silent on the question of the parish rule or any similar type of restriction.
69. The investigations carried out in relation to previous rules relating to parish rule revealed no County Bye-Laws pertaining to Longford containing a rule of similar type relating to juvenile members. However a document was presented to us that ran to 2 pages (22 paragraphs) setting out basic rules relating to Juveniles including a provision that “*the Parish Rule [should] apply....*” The precise date or source of this document was not identified but the Respondents contended that, prior to the adoption and ratification of the 2007 Bye-Laws, these “bye-laws” were relied upon throughout the County. In light of our finding in relation to the 2007 Bye-Laws, their status (and possibly also their meaning) falls to be considered.
70. These “bye-laws” seem to fall within the category of regulatory instruments to which we will refer as “*old Minor Board Bye-Laws.*” It seems that, prior to 2004, control over juveniles (i.e. players under 16 years of age) was somewhat extraneous to the Association. Thus, in the absence of any rule governing the question, Minor Boards (or Juvenile Boards, the terms being interchangeable), held Conventions at which they passed their own Bye-Laws. As a result of Special Congress 2004, control of Juveniles from under-12 upwards was brought within the ambit of the Association, and what were once autonomous Minor Boards became Subcommittees of County Committees, subject to the control of the latter.

71. It would seem that one of the results of these changes was a hangover of old “Minor Board Bye-Laws” including rules relating to player eligibility, which did not have the express status of County Bye-Laws (since they were not adopted by County Conventions or ratified by the Management Committee). The changes to the Official Guide did not include rules governing the transition from the old Minor Boards and new youth subcommittees. The first question is, therefore, whether it was implicit that old Minor Board Bye-Laws would have the status of County Bye-Laws until replaced by County Bye-Laws dealing with the issues were put in place. We think not. Even if it were the case that some interim validity attached to the old Minor Board Bye-Laws, the fact that there were two County Conventions between the Special Congress of 2004 and the disputed County Convention of December 2006, means that there was ample time to put in place proper Bye-Laws to deal with juveniles and any transitional validity of the old Minor Board Bye-Laws as County Bye-Laws would have expired.

72. Nevertheless, in our view, the old Minor Bye Laws had *some* status. Under the 2004 Bye-Laws, referenced above, which the Claimants contend were the Bye-Laws in place at the relevant dates in 2007 and 2008, there is provision relating to the control of juveniles as follows:

*“Coiste na nÓg: each shall consist of the Cathaoirleach, Leas-Chathaoirleach, Runai, Lear-Runai, Cisteoir and PRO (all elected at the AGM and sanctioned by the Coiste Chontae, plus two representatives from each affiliated club that fields a team in an underage championship, one of whom shall have voting rights. Subject to the overall control of the Co. Committee, it shall be responsible for all matters, excluding discipline, appertaining to football up to and including the under sixteen age-group. Objections and matters of discipline shall be dealt with by the GAC.”*

73. In light of the wide-ranging control this vests in the juvenile board (i.e. Coiste na nÓg), there is little doubt that “bye-laws” or regulations of some sort could be put in place (or carried over) by the juvenile board without need for any sanction from Management Committee as a Bye-Law. However, in the specific case of confining membership to a Catchment Area, the Official Guide provides that it must be done by County Bye-Law. Consequently, while the Minor Bye-

Laws put up by the Respondents as being the Bye-Laws in place at the relevant time prior to the 2007 disputed Bye-Laws, may have status in relation to much of what is contained therein, without going through the procedure of adoption at County Convention and ratification by the Management Committee, the portion relating to Catchment Area cannot operate.

74. It follows that, at the time when the First- to Third-named Claimants first participated in an under-12 competitions after passing the age-limit for under-10, they were entitled to do so as members of Clonguish. The position would seem to be the same for the Fourth-named Claimant as the circumstances had not changed in 2008 (due to the fact that no ratification by Management Committee occurred on foot of any motion passed at County Convention 2007).

75. As stated earlier, we do not know whether Bye-Laws containing a Catchment Area rule have since been adopted by the County Convention of December 2008 (and ratified by Management Committee of Ard-Chomhairle in 2009). If they have, then the Catchment Area Rule would be back in place. We do not have enough evidence to come to any conclusion on that.

76. Turning then to the question of discretion, while there are certain aspects of the case that cause us some disquiet, for example the failure to bring a motion before the County Convention of 2007 to remedy, within the internal machinery of the Association, what the Claimants contend is a defect in the Bye-Laws; nevertheless given that the Claimants are young and have pledged their hopes to Clonguish, we consider that there are insufficient grounds to deny them a declaration that permits them to continue to play for that Club.

77. It has been alleged by the Claimants that Longford County Committee freely accept that many players in the County other than the Claimants are playing in similar circumstances (i.e. they have played their first official game with clubs outside the parish of their place of residence or school), and against whom no action is proposed. This was not accepted as factually correct by the Respondents.

78. In the result, it is not necessary to resolve this factual dispute, because the Claimants in this arbitration have had the “*benefit*” of the absence of any “*parish rules*” at the relevant dates. For the avoidance of doubt, however, we would indicate our opinion that the failure to enforce a rule against one or some members of the association does not create a prohibition or estoppel on enforcing the rule in any given case. There might be extreme cases in which a universal policy of non-enforcement has been adopted and there is evidence of targeted malice; however, that would not appear to have been asserted here, and, as we have concluded, the result renders the issue moot.

**Relief to be granted**

79. We must then consider the relief to be granted having regard to the claim made and the circumstances of the case. We have indicated our reasons above for determining that the absence of reference to Rule 57 in the specific relief sought is not fatal to the Claimants’ claim in that regard, due to the clear references to that rule in the broader terms of the claim form.

80. The challenge of the Claimants is only to Bye-Law 4(viii)(f) of the 2007 Bye-Laws. Although, as we have found, the Bye-Laws were not properly passed (and consequently could not properly be ratified) it is unnecessary to the essential relief sought by the Claimants to declare the entire 2007 Bye-Laws to be ineffective. It may be that in some future arbitration proceedings, some Claimant may seek to attack some other provision of the 2007 Bye-Laws, but as relief is discretionary in these types of cases and as it is at least arguable that only the changes to the Bye-Laws made on 5 February 2007 are vulnerable to challenge, there is no guarantee that any such claim would be successful. The relief granted will therefore be confined to Bye-Law 4(viii)(f).

81. We will give a declaration that, on the dates upon which the First- to Fourth-named Claimants first participated in an official under-12 competition (i.e. when their participation was at an age not more than two years younger than the designated age level of the Competition), Bye-Law 4(viii)(f) of the 2007 County Bye-Laws of Longford was not effective, and consequently, that Clonguish is

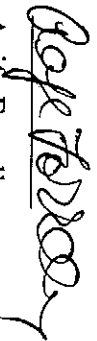
the Home Club of each of those Claimants within the meaning of Rule 33 of the Official Guide.

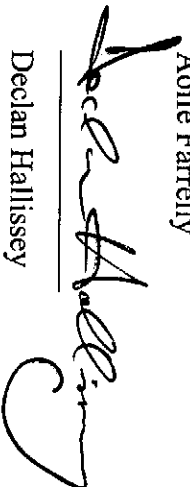
82. In light of the foregoing, it would seem that any other young player in a similar position to the Claimants will be in a position to assert similar rights. As such, this decision represents an opportunity to the County Committee (if they have not already done so in the context of the 2008 County Convention) to start afresh with a clean slate, without compelling young players to uproot from one club to another.


83. It is also relevant to set out here, our conclusion that neither Rule 33 nor any other Rule of the Official Guide prevents the imposition of a “*parish rule*” or “*Catchment Area rule*” in the format purportedly (but ultimately invalidly) put in place by the County Committee February 2007.

84. This is an interim decision insofar as the question of costs has been left over to be considered in light of the content of this decision.

Signed

  
Aoife Farrelly

  
Declan Hallissey

  
Micheal O'Connell

Dated: 23<sup>rd</sup> May 2009.