

# Disputes Resolution Authority

An Córas Eadrána

DRA 06 of 2015

**In the matter of the an arbitration under the Disputes Resolution Code  
and the  
Arbitration Act 2010**

**Peadar O’Floinn v Coiste Éisteachta Aontroim (Antrim HC) agus Coiste Comórtas  
na gCluchí Aontroim (Antrim CCC) agus Naomh Pádraig G.L.C Lios na  
gCearrbhach (St Patrick’s GAC Lisburn)**

**Hearing:** Wellington Park Hotel, Belfast at 8pm on 22 April 2015

**Tribunal:** Mr Donard King (chair); Mr John Burke and Mr Séamus Woods

Secretary to the DRA, Jack Anderson, was also in attendance

**Verdict:** Claim upheld

**Keywords:** *Player transfer; transfer within county; R 6.5 of the Official Guide (2014); R 15 of the Antrim County Bye-Laws and Regulations (2014); whether refusal of transfer request was reasonable.*

## **List of Attendees:**

### **Claimant:**

Mr Joe Brolly representing  
Peter Flynn, father of Rory and a witness.  
Rory Flynn (aged 16) as a witness.

### **Respondent 1, Antrim**

Mr Gerry O’Hare, solicitor  
Joe Edwards, Antrim CCC  
Sean Fleming, Antrim CCC  
Frankie Quinn, Secretary Antrim GAA

### **Respondent 2, St Patricks’ Lisburn**

Mr Stuart McTaggart representing  
Chris O’Neill, Secretary St Patrick’s GAC, Lisburn

## **Factual Background**

1. In a decision dated 2 March 2015, the requested transfer of Rory Flynn from St Patrick's Lisburn to St Brigid's Belfast was not approved by Antrim CCC on the ground that the transfer did not conform to Antrim County Bye Law 15.1 (c) in that it had not been signed by the Parent Club Secretary. That decision was appealed by Dr Peter Flynn on behalf of his son to Antrim Hearings Committee who heard the matter on appeal on 11 March 2015. The appeal was dismissed on the grounds that there was no clear infringement or misapplication of rule by Antrim CCC and that the appellant's right to a fair hearing was not otherwise compromised to such an extent that a clear injustice had occurred (pursuant to Rule 7.3 and 7.11 of the Official Guide (2014)). A Request for Arbitration to the DRA was then made.

## **Preliminary Matters**

2. No preliminary, procedural matters were raised by either party. It was largely agreed by all parties that the "net" issue was the application of Antrim County Bye-Law 15.1 (c) as follows;

"A player who has played with a club at any grade from under 12 to under 18 (minor) grades in Championship or League may only transfer to another club if the player's family residence has changed to the area of the club he wishes to be transferred to or if both the current club and the club he wishes to transfer to without duress of any kind agree to sign the transfer".

## **Claimant's Case**

3. The claimant's case was presented by Mr Brolly and was twofold in nature. First, some factual background was given as to why a transfer request had been made. Second, legal argument was presented as the interpretation of Antrim County Bye Law 15.1 (c).
4. On the first point, Dr Flynn outlined that his son Rory has played for St Patrick's Lisburn since the age of 4 or 5. In 2004, the family moved from Lisburn to Belfast into the parish of St Brigid's and to a location less than 500 metres from where that club currently plays. Dr Flynn stated that for a period he kept all three of his children as playing members of St Patrick's and that this entailed a number of 20-mile round trips on some Saturdays. Two years ago, his daughter moved from U12 to U14. St Patrick's could not accommodate her and therefore she had to move to a Belfast club in order to play Gaelic Games. Unfortunately, this meant that two children often had training and matches at the same time 10 miles apart. This, Dr Flynn stated, was not sustainable. In early 2014, Dr Flynn noted that a transfer request was submitted for Rory to move to St Brigid's. This was duly signed by St Patrick's. Due to administrative errors on the form, emanating mainly from St

Brigid's, and the form's delayed submission, the transfer request was rightly rejected by Antrim. Dr Flynn noted that, although the 2014 transfer failed, it gave rise to an expectation that Rory was a St Brigid's player and it was noted by Dr Flynn that Rory had played no club football last year and had as of yet not played this year.

5. On the second point, Mr Brolly argued that the denial of the transfer was contrary to the aims and ethos of the Association (outlined in the preamble and chapter 1 of the Official Guide) in two regards – that the over-arching purpose of the Association is one of participation and in doing so to particularly safeguard the best interests of the child. With these fundamental aims in mind, and crucially given the unique personal circumstances and location of the family, Mr Brolly argued that the interpretation of Antrim County Bye Law 15.1 (c) was perversely inflexible, unreasonable and irrational. In this, Mr Brolly relied on legal authority such as *McClellan v Buchanan* [2001] 1 WLR 2425 and *Kennedy v Charity Commission* [2014] UKSC 20.
6. Moreover, Mr Brolly argued (and citing from DRA 3/2010 *Eamon Fennell* in support) that transfer rules were, of course, necessary to the good governance of the GAA in order to uphold the community-centred ethos of the GAA outlined in Rule 6.1 of the Official Guide 2014 but that transfer restrictions must be proportionate and must be no more than necessary to accomplish their legitimate purpose. Given the legal and factual circumstances at issue, Mr Brolly said that the failure by Antrim CCC and CHC to make any allowance for the exceptional circumstances of this case was grossly unfair, unjust and consequently unlawful.
7. Mr Brolly concluded by submitting that the decision to refuse the transfer be quashed and the Tribunal move to allow the transfer.

#### **Respondent 2, St Patrick's Lisburn**

8. Mr McTaggart replied briefly for the above and noted that generally the Antrim County Bye law in question was just and reasonable and was set firmly and fairly against Rule 6.5 of the Official Guide. This contention was supported by the Antrim Secretary Mr Quinn who noted that the bye-law in question was introduced in 2011 and that all Antrim clubs had had the opportunity to raise queries on its application at the various County Conventions since but that no club had done so. Mr McTaggart then outlined that St Patrick's Lisburn had suffered from a player or "talent drain" over the last number of years and that half a dozen transfers had been requested over recent years. In that light the club had at its annual general meeting on 3<sup>rd</sup> December 2014 decided to adopt the approach outlined in Antrim County Bye Law Rule 15.1 (c) in dealing with transfer requests.

## Respondent 1, Antrim

9. Mr O'Hare made various but succinct arguments on behalf of this respondent, what follows is a summary of same.
10. First, he noted that the role of the DRA is specifically one of "review" as analogous to a judicial review court role and thus the DRA Tribunal should confine itself to a review of the "legality" of the decision made by Antrim CCC and CHC (citing DRA/04/2003 and DRA/09/2003 in approval).
11. Second, and in light of the application of R 15.1 (c) of the Antrim County-Bye Laws, Mr O'Hare noted that as St Patrick's Lisburn (Rory Flynn's First Club pursuant to Rule 6.4 of the Official Guide (2014)) had not agreed to sign the transfer, the only ground on which the appellant could succeed is if he could establish that "the player's family residence has changed to the area of the club he wishes to be transferred to". This the appellant could not do because at the time he made his first appearance for the under 12's at St Patrick's Lisburn he was resident at his current address in Belfast. In fact, he had been a resident there from 2004 and thus Antrim CCC and Antrim CHC had little option but to refuse the transfer.
12. Third, and in line with Rule 6.5 of the Official Guide (2014), Mr O'Hare highlighted that there is no provision either in the County Bye-Law or Rule for Antrim CCC to exercise its discretion or to apply "exceptionable circumstances". Antrim CCC therefore correctly applied the Rules and the Bye-Law and rejected the claimant's application. Further, Antrim CHC also had limited powers when dealing with the appeal from a decision of Antrim CCC. With regard to transfers any appeal is governed by Rule 6.5 (f) of the Official Guide 2014 which states "an appeal may only be upheld on the basis of the provisions outlined in Rule 7.11(o) TO2014".
13. Fourth, Mr O'Hare noted that Rule 7.11(o) of the Official Guide 2014 states as follows;

"An Appeal....shall be upheld only where;

- (i) There has been a clear infringement or misapplication of Rule by the Decision Maker or;
- (ii) The Appellant's right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred. No determination of fact by the Decision Maker shall be set aside unless shown to be manifestly incorrect".

In this case, Mr O'Hare remarked, Antrim CHC heard the appeal as a complete re-hearing. Everyone was present/or represented (except it would appear St. Brigid's Club). The claimant was asked to put the case in context which he did (through his father). The claimant accepted - and this was

noted in the minutes of the meeting - that he was not able to quote any Rule that might have been misapplied by Antrim CCC. Antrim CHC concluded that there had been no misapplication of Rule and that the appellant's right to a fair hearing had not otherwise been compromised.

14. Fifth, Mr O'Hare noted that, yes, the "purpose" of the Association is clearly set out in the preamble and chapter 1 of the Official Guide but that the GAA has many aims. Participation is only one of a number of way in which the GAA expresses itself. Of crucial importance, Mr O'Hare noted, is that participation can only be proper participation if it is carried out in accordance with the ethos (Rule 6.1 of the Official Guide (2014)) and Rules (e.g., Rule 6.5e of the Official Guide (2014)) surrounding player transfers and this is what Antrim CCC and CHC had done in this instance.
15. Sixth, Mr O'Hare argued that the appellant's interpretation of Rule 1.13 of the Official Guide (2014) was taken completely and partially out of context in that in related to "the protection of children from all sorts of abuse".
16. Seventh, Mr O'Hare argued that there were no exceptional circumstances in this case. St Brigid's does not have a catchment area. There is no parish rule in Belfast. Rory Flynn has lived at his current address from when he was aged 6 years and has had no difficulty playing for St Patrick's during that time. Subsequently, it had been his choice not to play for St Patrick's. The option to play with St Patrick's remains open to him
17. Finally, Mr O'Hare noted that the decision in the case of DRA/04/2013 *Aidan Griffin* was very significant in this case because the decision of that Tribunal was to the effect that there was "nothing irrational or unreasonable about the finding of Kildare CHC". In *Griffin*, Kildare CHC had the possibility of looking at its discretion and yet the Tribunal decided that as long as Kildare CHC came to a decision which was open to it having regard to the facts of the case then it could not be deemed to have reached an unreasonable or irrational decision. In this case clearly, according to Mr O'Hare, Antrim CHC reached a decision which was open to it, having regard to the facts of the case and that decision could not be criticised as being irrational or unreasonable.

### **Reasoned Decision**

18. To reiterate, this case concerns an unsuccessful transfer by Rory Flynn (date of birth - 9<sup>th</sup> September 1998), a 16 year old Gaelic football player. The factual circumstances giving rise to the transfer have been clearly set out by Dr Peter Flynn and Rory Flynn in the papers and subsequently very well articulated by them to the Tribunal; with some assistance from Mr Brolly. The Tribunal have found the account given by Dr Flynn to be entirely genuine; and moreover the manner in which it was given to be extremely impressive. It was evident that he was proud to have been involved with St. Patrick's GAC

and appreciative of the efforts being made by the Club. His comments at the hearing that “St. Pat’s were fantastic. We owed St. Pat’s our continued loyalty” were very much backed up by his actions and those of his family until the present family circumstances began to take shape. Indeed there was a tangible sense of resignation and sadness in stating how the family commitment to St. Patrick’s GAC had become unsustainable. The Tribunal are treating the circumstances peculiar to the Flynn family as exceptional.

19. The correct approach to be taken by Antrim CCC to the transfer was the focal point of the competing arguments by the parties and these have been set out above. The Tribunal take the view that in this case it was essential that Antrim CCC in its decision making progress take into account all of the factual circumstances peculiar to this case; the ethos of “taking part”; and T.O. (1.1.13). Furthermore, Antrim CCC ought to have been mindful of the dangers posed by any rules which are (a) inflexible or (b) interpreted inflexibly. By this stage it is well established law that rules which are inflexible and/or interpreted inflexibly have an obvious potential for injustice.
20. The Tribunal has arrived at the conclusion that Antrim CCC by refusing the transfer, have not given any consideration whatsoever to the unique factual circumstances of Rory Flynn and his family; the ethos of striving to promote participation in Gaelic games and the provision of T.O. (1.1.13). Inextricably linked to this conclusion the Tribunal is entirely satisfied that Antrim CCC has taken a rigid and flexible interpretation of Antrim County Bye Law 15.1.C. The Antrim CCC mind set was best illustrated upon an enquiry by the Tribunal as to whether the Antrim CCC could ever envisage a set of circumstances where a transfer would be successful in the absence of the signature of the current Club. A negative response was elicited. Disappointingly minds which ought to have been open and alive to the matters summarised in the preceding paragraph were shut tight.
21. In consequence of the failings set out at paragraph 20 above Antrim CCC reached a decision to deny the transfer which we regard as being unreasonable and we are bound to say that in the course of our collective deliberations we found the test formulated in the case of *Kennedy v Charity Commission* (2014) UKSC 20 (26<sup>th</sup> March 2014) to be of enormous assistance and we consider that it is worth setting out that test at this point:

“the Court involved in the review will take the following steps:

- (a) The identification of the legitimate objective(s) to be pursued by the restrictions;
- (b) Establishing a rational connection between the restriction and the achievement of one or more of those legitimate objectives; and

(c) A proportionality test, namely that the restriction must be a proportionate response, and must be no more than necessary to accomplish the legitimate purpose in question”.

22. Arising from our collective deliberations on this case we would like to add that a constructive debate on Bye Law 15.1 (c) by the relevant Committee may prove to be a useful exercise with a view to effecting an amendment to expressly include an element of flexibility or discretion so as to render it compatible with the requisite principles which we have identified in this decision. For example, the following words could be added to the existing Rule “.. or where refusal to sign has been unreasonable”. In the case of an unreasonable refusal it would be for the proving party to show that the refusal was unreasonable; what is unreasonable in each case will depend on the facts of each case and there should be a high threshold for establishing an unreasonable refusal to grant a transfer equating to a decision that is wholly and perversely irrational both to the circumstances of the case and to the desired and overriding ethos of the playing and transfer rules of the Association.

#### **Award**

23. The Tribunal awards in final and binding determination of this dispute as follows:-
- (i) A declaration that the decision of Antrim CCC dated 2<sup>nd</sup> March 2015 to refuse the transfer of Rory Flynn is unlawful.
  - (ii) Quashes the decision of Antrim CCC dated 2<sup>nd</sup> March 2015 to refuse the transfer of Rory Flynn.
  - (iii) Substitutes its own decision pursuant to Section 11.3 of the Disputes Resolution Code and grants the transfer of Rory Flynn.

#### **Costs**

24. The Tribunal directs that all parties bear their own legal costs and expenses and that the claimant’s deposit be returned less the balance of the costs associated with the arbitral hearing, as calculated by the Secretary of the DRA.

Dated of Oral Hearing: 23 April 2015

Date of Agreed Award: 30 April 2015 .

Signed: Donard King

*Donard King*

Seamus Woods

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