

Football Governance Act Conference: 20 May 2026, Craven Cottage

The Honourable Mr Justice Morris

Introduction

Thank you for that kind introduction, Paul and good evening, everybody. It is a pleasure to join you all here in such wonderful surroundings.

Over the next 15 to 20 minutes I am going to talk to you about the role of the Competition Appeal Tribunal (CAT) under the Football Governance Act 2025 (FGA) and some of the issues which I see may arise as the new regime takes effect. In many instances, I pose questions, rather than provide answers. I understand that this will be explored in a little more detail in the final panel session led by Tim Ward KC. I shall say a few words, looking at it from the CAT's perspective.

As Paul indicated, I am one of the judges who sits as a Chair in the CAT. In thinking about my speech this evening and fully aware of my audience, I decided to resist the temptation of currying favour with you by reeling off my football fan credentials. All I can say is that, like many or most of us in the room, football and sport had been a part of my life from a very young age, going as far back and beyond my attendance at the 1966 World Cup quarter final at Hillsborough. Indeed given my age, I suspect my reference points are unlikely to be the same as yours. But just in case there is anyone here over 60, one point of clarification;

when in my speech I refer to the CAT, I will not be referring to the famous Chelsea goalkeeper, Peter Bonetti, but rather to the acronym by which the Tribunal is commonly known. And I should say that unlike one of my predecessors on the High Court bench I do know who Gazza is... I was at Wembley for the Euro 96 semi-final when he, and England, could have done with his boots being a few sizes larger.

I am going to cover four topics. First, I am going to tell you a bit more about the CAT, who and what it is, and what it does. Secondly, I'll address appeals to the CAT under the FGA – the how, who and what of an appeal – routes of appeal, standing to bring an appeal and the nature of the CAT's task in an appeal. Thirdly, I will say something about transparency and confidentiality in the appeal process; that will include consideration of the issue of fan engagement with the process. Finally, I will address what we call “case management” – the procedures before the CAT and its powers in relation to timing and its ability to act flexibly and speedily.

(1) The Tribunal

So turning to my first topic, what is the CAT and what it does. The CAT is a specialist expert court. It was set up, initially in 2000, to deal with competition law cases (monopolies, mergers and cartels), but over the years since it has been given jurisdiction in an ever increasing range of areas – such as utility regulation (including energy, telecommunications, postal services) rail and air travel,

payment services, and most recently digital markets and subsidy control. As a result it has become very accustomed to dealing with new and wide-ranging areas of areas of economic activity; and it has the flexibility to do so.

The CAT has cross-disciplinary expertise in law, economics, business and accountancy. The members of the CAT consist of legally qualified Chairs and what are termed “ordinary” members. The legally qualified chairs comprise over 25 high court judges and court of session judges and another 8 senior KCs and solicitors. Those judges themselves have a wide range of legal knowledge and skills and, outside the CAT, hear a variety of different cases. There are currently 20 ordinary members, with an even wider range of experience and expertise – as well as in law, economics, accountancy and business, including corporate governance. When it hears cases, the CAT typically sits as a panel of three – usually comprising one of the legally qualified chairs together with two ordinary members. At other times, the panel may involve two or even three of the legal chairs. Moreover the selection of a panel in any case will depend upon the nature of the issues in the case and will be tailored to those issues. The membership of the CAT has evolved over time and will continue to adapt to its changing and increasing workload. The CAT is constantly reviewing the coverage of expertise provided by its ordinary members. I understand that over the next year the CAT will be recruiting for new members. The CAT considers that it will be able to deal with appeals under the FGA. However, as it gains experience of this new regime,

it will keep under review whether there is a need to add to the existing pool of expertise. The CAT also has a dedicated team of staff, including legally qualified judicial assistants of the highest calibre.

All I can say is that the CAT is used to dealing with complex commercial, business and economic issues in all sectors of business activity and is, and has always been, alive to the need to ensure that it can adapt.

(2) The role of the Tribunal in relation to decisions of the IFR

So I turn to my second topic: the CAT's role in hearing appeals from decisions of the Independent Football Regulator (IFR). The routes of appeal, standing and merits and judicial review – or put more simply the “how, who and what” of appeals to the CAT. How does a decision of the IFR come before the CAT; who can bring a case to the CAT, and what does the CAT do when it gets a case?

The first thing to say is that the legislation provides for a complex and interrelated set of answers to these three questions. And in respect of each of those three questions, the FGA provides for two alternatives. As regards the “how to appeal”, there are two different types of decision by the IFR. As regards the “who”, there are two categories of person; and as regards the “what” there are two types of process before the CAT.

For most decisions made by the IFR there is a first internal review process within the IFR itself. It is only once that process is completed or deemed completed that

the IFR decision can be appealed to the CAT. However, the legislation specifies 6 types of decisions of the IFR which can be appealed directly to the CAT, although, there too, there remains the option of seeking an internal review first. Those 6 types of decision are major decisions concerning an operating licence and determinations of unsuitability as an owner or officer of a club. I refer to these decisions as “the Major 6 decisions”

As regards the “who”, the FGA distinguishes between a “concerned person” – a person who the IFR considers to be “directly affected” by the IFR’s decision – and on the other hand “any other person with a sufficient interest”. The concerned person will include the person to whom the relevant decision is directed, - for example, the club, an owner or an officer, depending on the nature of the decision. By contrast a person “with a sufficient interest” necessarily covers a wider category of persons. Both categories can appeal to the CAT, but only a concerned person can seek an internal review. In the case of one of the Major 6 decisions, a concerned person will have the choice between seeking an internal review first or going straight to an appeal to the CAT. For a decision *other than* a Major 6 decision, a person with a sufficient interest can only appeal where there has been an internal review within the IFR at the behest of a concerned person.

By contrast, a person with a sufficient interest may bring a direct appeal against a Major 6 decision, even where there has been no internal review. However, if the concerned person seeks an internal review of such a Major 6 decision, no direct

appeal can be brought by such a person with a sufficient interest, whilst that review is pending. One of the issues that may arise is where the IFR makes a combination of decisions at the same time, one or more of which is a Major 6 decision and another or others are not. This gives rise to the possibility of an internal review in respect of some decisions and a direct appeal in respect of a Major 6 decision. That will raise questions for the CAT as to how it should proceed.

The CAT will have to decide at the time whether it would stay the direct appeal to await the outcome of the internal review of the other decision or decisions. I recognise that that may be somewhat theoretical, because the concerned person might well choose to seek an internal review of all the decisions. However, it cannot be ruled out that, given the likely seriousness of the “Major 6 decision”, an immediate and direct appeal to the CAT will be preferred by the concerned person. There are, in principle, other combinations of IFR decisions, which could progress to the CAT at different speeds. Theoretically at least, where the IFR takes a Major 6 decision and another decision, where only a person with sufficient interest wishes to challenge the Major 6 decision and the concerned person challenges only the other decision and seeks an internal review. In such a situation, the FGA does not prevent the appeal against the Major 6 decision from proceeding, despite the internal review being in progress.

What I can say is that the CAT will use its case management powers to ensure that issues are dealt with consistently, and with as much expedition as possible.

As regards “who” can bring an appeal, the question will arise as to who falls within the wider category of a person with sufficient interest. The FGA is silent on this; and it will be decided on a case-by-case basis. It can be expected that, if and when this issue first arises, the CAT will make a ruling setting out the principles it will apply in deciding whether someone has “sufficient interest”; and that it may well draw on principles the High Court applies in cases of judicial review of decisions of public bodies, where that same term is used as the test for bringing such a claim before the Court. In principle, it could include individuals, companies, other groups or organisations. As to who might qualify in practice, candidates might include fans or bodies representing fans, perhaps other clubs and/or local community bodies, who claim to be affected by the decision. Of course, again “sufficient interest” may well vary depending on the nature of the IFR’s decision.

One further aspect arises here – under the CAT’s general rules of procedure, a person is able to “intervene” in existing appeal proceedings brought before the CAT by someone else. That person must have “sufficient interest in the outcome” of the appeal. Whilst the CAT’s approach to a person with sufficient interest to intervene is not the same as sufficient interest to bring an appeal under the FGA, it may be that such a person will prefer to participate by intervening in an appeal

brought by the concerned person rather than by bringing its own self-standing appeal.

The final aspect of this area is that the FGA prescribes that the CAT itself is to adopt a different approach to the appeal, depending on whether or not the appeal is in respect of a Major 6 decision. In cases other than a Major 6 decision, the CAT will apply judicial review principles – that means that it will not readily interfere with the IFR’s decision – and will do so only if it concludes that that decision was irrational, procedurally improper or contained legal error. Speaking in VAR terms, you might say that this is the legal equivalent of “clear and obvious error”. In this situation, the scope for the CAT to act is relatively well defined. By contrast, an appeal against one of the Major 6 decisions is “an appeal on the merits”. Whilst clearly such an appeal will require a more in depth examination by the CAT of the IFR’s decision, it remains to be seen what, in practice, that means. I say that because there are other types of case before the CAT where the appeal is “on the merits”; and the approach of the CAT varies between different types of case – for example, in telecommunications cases and competition cases. Questions that may arise on an appeal on the merits against a Major 6 decision will include: whether or not the CAT will hear oral evidence with cross-examination; whether it will admit new evidence which was not before the IFR; and whether or not there will be orders for disclosure of documents. These matters will also have to be set against the possible need for the CAT to hear and decide

the particular case quickly. This is certainly one of the issues which is likely to surface at an early stage in the regime.

(3) Transparency, confidentiality and fan participation

I turn then to my third topic. Transparency, confidentiality and fan participation. The CAT is a public court and part of the court system for the administration of justice. Its proceedings are conducted in public and, as in all courts, are open to the public. The principles of open justice and transparency of process are at the core of the court system. In this way, the CAT's proceedings are different from proceedings in arbitration or under the rules of governing bodies of sport. The CAT has its own modern premises and court rooms. Physical space for members of the public to attend is however rather limited. But as a modern court, the CAT has a well established and efficient system for the live streaming of its proceedings in public, available to anyone to watch through the internet. You may wish to take a moment to go the CAT's website and click on the live stream button and observe what is happening in the court on any particular day. Given the arcane nature of some of the cases that come before the CAT, you may find that your virtual visit to the court is rather short. Nevertheless, if you are not familiar with the CAT, this may be something well worth doing. There are no action replays. This live streaming may well turn out be very important in the context of FGA cases. It is very possible, if not likely, that there will be substantial interest in a case, from the public and in particular from fans. The CAT's live stream system

should be able to deal with most cases. For example, in September 2021, there was a hearing in the CAT relating to the takeover of Newcastle United. I understand that there were over 15,000 people (mostly fans) from more than 50 countries who watched the hearing on the CAT's live stream.

Having referred to the principle of open justice, nevertheless the CAT has a well established and sophisticated procedure to ensure the protection of commercially sensitive and other confidential information. This is done by a procedure for redaction of information and for the setting up of confidentiality rings, so as to limit the persons who can have access to such information. The CAT will however scrutinise carefully claims for confidentiality to satisfy itself of the need for that protection. Finally in this regard, where confidentiality so requires, the CAT will sit in private session if need be and, in that event, the live stream will be temporarily halted.

(4) Case management issues

Finally, I turn briefly to what I call “case management” issues. The new system for appeals from the IFR will give rise to new challenges for the CAT – to ensure a process which will be both fair to all concerned and one which can respond, if need be, quickly and efficiently. The CAT has a very detailed set of procedural rules and tools available to it to meet those demands. Those rules contain specific provision for appeals under the FGA. Most of the CAT's rules of general application will apply also to these cases. The CAT can act with great speed if

need be. It can, and usually will, convene a procedural hearing – a case management conference – very soon once the proceedings have been started. It will give procedural directions, address confidentiality and has powers to make interim orders and injunctions. As with the High Court, the CAT has the power to stay – that is put on hold – the decision which is being appealed. However under the FGA, certain of the IFR's decisions are required to remain in place and cannot be stayed. These are set out in section 82(8) of the Act and include decisions in relation to conditions on an operating licence, certain decisions suspending or revoking an operating licence and certain directions relating to unsuitable owners and officers. In those cases where there is no power to suspend or stay the IFR decision, then the CAT will be likely to move quickly to minimise any potential prejudice while the decision remains in force. Where necessary the CAT can move very quickly – in merger cases for example the CAT has been able to act within a matter of days. Ultimately, though, the CAT has to ensure that the process is fair for all parties and that they have sufficient time to prepare and advance their case.

We are all in the very early days of this new legislative regime. At the beginning, as with all such new regimes, there will be issues which need ironing out whilst the CAT works out the principles. However, over time I am confident that these issues will be resolved and guiding principles will be established by the CAT (and perhaps beyond). Once they are established, the need for the involvement in the

legal process and in particular the CAT is likely to lessen. All I can say at this stage is that my impression is that the CAT is as prepared as it can be at this stage, and is well able to deal with the cases with which it is presented, in a fair and balanced way.

Conclusion

I think it was Bill Shankly who said “the trouble with referees is that they know the rules, but they do not know the game”. I hope I have shown that the CAT will understand the rules, and is prepared to learn about the game.

Thank you.