

RACISM AND FOOTBALL – WHAT ARE THE POSSIBLE SOLUTIONS?

INTRODUCTION

As the Black Lives Matter movement continues to grow throughout the globe, football players are doing their part by “taking a knee” prior to kick-off.

This two-part series of articles written by **Yasin Patel (barrister and director of SLAM)** looks at the question of “racism in football”. The first article outlined the arguments as to why discrimination and racism is “alive and kicking” in the game and the many forms in which it is prevalent throughout the whole structure of the game.

The second part of this series of articles suggests why there must be change, how the change may occur and the various methods and initiatives that may be incorporated into the game by the governing body, the clubs, owners and those involved within the game.

WHY CHANGE?

There are many reasons why football should embrace more diversity throughout its structures but the biggest factor is that diversity is a positive, a good thing. Having a national game with a wider pool to choose from means greater choice, talent, potential and opportunities. Opportunities and chances throughout the sport and for everyone, has the potential to get even the very best people in roles regardless of their background. If international stars like Son, Salah, Mane et al can have such a brilliant effect on the football playing field, why are those of diverse backgrounds not allowed the opportunities to prove their potential off the pitch? In addition, look at the international effect of the players: in sponsorship, advertising, support, participation and popularity. These glass ceilings being destroyed means prejudice and discrimination being challenged and false impressions destroyed.

By having role models in the boardroom, in coaching positions, as referees and in senior management areas, the message to other black people is that there are opportunities apart

from on the football pitch to break into the billion-pound football business. If one takes management and coaching as a barometer, only five of the 92 Premier League and English Football League managers or head coaches are from communities that are not white.

If nothing else then surely it is a moral duty upon all of us to make sure that there is a fair playing field and equal opportunities for everyone exist. Do we really need further legislation and the law to put such proposals forward? There are various pieces of legislation that outlaw racism and discrimination but that does not stop them being “live and kicking” in the beautiful game. Why not have mentoring, a form of Rooney Rule and advertising of posts along with fair and just recruitment policies so that potential candidates get an opportunity: if need be, make it an industry wide good practice.

More than anything else, having a system that allows equality, choices and opportunities for all is crucial. Tackling racism and prejudice are essential ingredients of any multicultural society and it is our legal duty to ensure equality. Having diversity at all levels of the game is a beautiful thing.

LAW

Let us start with the legislation. Some argue for more laws. Is it the case that the law is not strong enough and that more legislation is required or that enough thorough investigations and/or enquiries are not followed up? Is any new legislation even necessary?

Whether it be racist chanting in the grounds to discriminatory practices within the workplace, legislation is there to deal with these scenarios. Whether enough legal action is being taken to tackle the various incidents of discrimination both on and off the field is the biggest challenge and hurdle.

In relation to workers and employees, the Equalities Act 2010 came into force in October 2010 with all other forms of unlawful discrimination prior to this date dealt with by the Race Relations Act 1976. The 2010 Act prohibits, (i) direct discrimination; (ii) indirect discrimination; (iii) harassment; and (iv) victimisation. If any acts of discrimination do take

place within the workplace then legal action should be taken. Employers are under a legal duty and as such they should adhere to this requirement.

However, the Equalities Act does nothing to correct the current situation of under representation within the institutions and various positions.

Civil action in the courts and Employment tribunals also lend support to employees if discriminated by their employers and there is also the Equality and Human Rights Commission (EHRC) who can investigate any firm.

Positive action is something that has been discussed to tackle the lack of representation of black and minority ethnic communities. Organisations can take lawful action to tackle discrimination problems where there is serious discrimination. Sections 158 and 159 of the Equalities Act allow for positive action. They allow for an employer to take action and treat more favourably an applicant or employee to compensate for disadvantages that the employer reasonably believes are faced by people who share a particular protected characteristic (e.g. race). A sports organisation must consider whether the steps taken in respect of positive action are appropriate to achieve their aim.

Whilst there is no duty on employers to take positive action, the ECHR Code notes that it is *a matter of good business practice to take positive action measures to help alleviate disadvantage.*

Although positive action is permissible, the law does not allow for positive discrimination: seen as the preferential treatment of a group to correct inequality or disadvantage. The quota system such as that used in South Africa is one example. Another example that has been discussed is the Rooney Rule but it has been argued that the Rooney Rule as practised in the USA would not be permissible in the UK as it would be seen as positive discrimination and therefore illegal. The preferential treatment of members of a minority group over a majority group by a protected characteristic such as race would be done to correct the disadvantage among the minority group. It is the preferential treatment with the backing of the law that makes many uncomfortable despite the obvious fact that discrimination has been so

prevalent in our game and its institutions for a long time

Positive action and in particular, the use of the Equalities Act can be done in a way as to lawfully achieve that which is espoused: an equal playing field and representation.

The legal protections to employees only come into play if people are there in the employed position in the first place. It therefore highlights the fact that people have to be given the opportunity in the positions first. Realistically, no legislation is going to be passed to force clubs and organisations within football to have a quota system throughout their structures.

Therefore, the need to use current legislation and legal protections but in particular, positive action in order to bring about change cannot be underestimated and must be more widely utilised.

PROSECUTION

It is ironic that although there are many pieces of legislation to support the prosecution of racism or racist acts, the numbers of prosecutions are low. This is not because of the lack of racist acts: it is just that many within football feel uncomfortable with the idea of prosecuting such discriminatory behaviour. Because by doing so, you are flagging up the fact that there is a racism problem.

However, to allow the problem to carry on and the continuing lack of action on tackling the problem could result with this kind of problem evolving and developing even more. The result of such publicity, a negative and detrimental effect on the reputation of the game, clubs, supporters of the game as well as the potential larger problem of breach of relevant regulatory rules. As a result, further penalisation through fines, bans and more adverse publicity.

It is submitted that a lack of action at club level is connected to the position at national and international level. On the pitch, FIFA acted against Russia and they were fined for racist chanting by their fans in a warm up match against France. Racist chanting has been well documented in their national game and club level and the lack of punishment against the

teams and perpetrators has been criticised. FIFA acted in this case as sponsors are alive to these issues and did not wish to be associated with the ugly scenes before them. Such a large problem on the pitch has not been faced by the FA for a number of years. However, those running the game have ignored the most obvious acts and examples of discrimination off the field.

Where at club, national or international level are there any legal actions taken regarding the allegations of racism, discrimination and the glass ceilings facing Black and minority ethnic people off the football pitch? In the recruitment, employment, representation and more? There is none and that is because it is a fact that all wish to keep quiet about this institutional problem: this disease. Further, to prove racism in policies, recruitment and even employment, those who are familiar with the legislation highlight that it is an incredibly difficult thing to prove. And yet the problem is obvious to anyone who looks at the position in football more closely. It is for that reason that the solution lies with all the authorities committing to change and for action to be taken against those who continue to block and interrupt any change. The change must start from the very top.

REPRESENTATION

The Football Association (“FA”) runs the game in this country. Not only should its policies and rules have underlying principles of equality, but their employment, committees and make-up should support this ideology in reality: the representation should mirror the position in society. The FA must be more diverse in its make-up and recruitment policies. And they should sound out to all the teams, their owners and committees that they expect similar results from them.

Those in decision making positions at the top of the game should be from the Black and Minority Ethnic communities. There should be more coaches from the black and minority ethnic communities. If need be, extra courses positively organised to try and get a greater number of black coaches qualified should be delivered. Similar programmes should be done in terms of educating and getting qualified more referees and officials. On disciplinary panels and bodies, there should be greater diversity and equal opportunity practices so that black

and minority ethnic personnel are in such positions of authority and justice. And on every Governing Body Board there should be representation.

The FA, Premier League and English Football League should set targets as to what form of representation they want from the Black and Minority Ethnic community and timeframes by when they intend to have them. In most areas of life there are deadline dates and task measurements in order to see if that which is being sought is being achieved. It is very important that such milestones are set here. And no-one is asking for tokenistic positions. It is to be a fair and just process so that the best candidates get the position. However, at least allow the black and minority ethnic personnel the opportunity to get to those positions.

EMPLOYMENT

The fact that the diversity figures are so low in all but on the playing fields underlines one obvious problem: that recruitment and employment of those communities that are under-represented are either failing or non-existent. The failure can be easily overcome. Many of the structures that are required for what follows are available as templates from the public and private sector. They can be incorporated without any financial cost. The fundamental requirement across the whole board is an Equal Opportunities Policy which is exactly that: one that allows everyone an opportunity to apply for positions and be judged for suitability on an equal footing. An accountable and transparent policy.

Limitations of financial resources cannot be an excuse for the implementation of the recommendations. All jobs have to be advertised across a number of suitable platforms so that the employment opportunities are advertised widely. The age-old tradition of advertising to “family and friends” alone cannot continue. Job requirements and specifications as well as duties should be made clear and detailed so that the correct candidates apply for the post and any positions filled can be measured against those requirements. Statistics on the areas and places of advertising, the number of applications, the interviews, details of applicants should be gathered and be available so that true recruitment procedures are followed.

All interviews should have notes and minutes of how decisions have been taken: and a person's suitability in their application should be considered and measured against the job specifications and duties.

And for the jobs/posts and positions themselves, these must be fairly remunerated. Legal and suitable contracts should be provided: not zero-hours contracts but ones that provide for protection in the case of employer/board wrong-doing.

One knows that a number of clubs and those within the football industry employ people with diverse backgrounds: but how many are working in senior positions and sectors such as human resources, accounts, business development, head chef, marketing and development etc. as opposed to the stewarding, waitressing, ticket barriers and food outlets? People have to be in the positions at all levels and the governing body, those running football, the Premier League and associations who have a key role in the running of the game in this country must take a lead.

Unbiased recruitment is something that may be one way of ensuring that a fair and just process is followed.

EDUCATION

This is the area that the greatest amount of work is required. Education through articles, examples, punishment, performance, empowerment and more.

Let's look at the example of football clubs: all of the following are just some things that can be done immediately and permanently. By doing them, one is re-iterating the message of anti-racism in every element of the club:

- i) Anti-racism signage all around the grounds
- ii) Anti-racism messages in the match day programme
- iii) Equality and diversity messages on all social media platforms
- iv) Anti-racism pledge that all fans automatically sign up to on entering the ground

- v) Adverts on advertising boards at pitch-sides
- vi) Anti-racism charter signed up to by the players, club employees and staff
- vii) Statistical data collection of ethnicity of: a) staff b) supporters entering the ground
c) memberships d) applications for posts e) stewarding f) number of racist incidents and complaints
- viii) Education and courses for those who need it
- ix) Websites highlighting the importance of equality and diversity
- x) Interviews, articles and facts about players, their communities, backgrounds, religions and more: children are sponges and they will seek to learn more about their role models and heroes
- xi) Close communication between local authority education departments and the form of promotion, language and messages that clubs can use.

Further afield, much more work needs to be done. The power of footballers, the messages they communicate and convey and the change they can bring about has been seen through examples in footballing history but we only need look at recent examples of individuals such as Marcus Rashford MBE, Lionel Messi and plenty of other footballers promoting important messages. We should have one or more of the nation's leading footballers to lead on the message of equality and diversity and thereby changing the direction of education and form of role model. And the players should be both black and white. The message has to come from white role models as well. This should be a 5-year programme with a strategy of how this is communicated and presented.

Those at the top of the game need to be educated: as to the power they yield and the potential for good change that they can bring about. People can change the language they use and the way they communicate to suit an audience, but unless their attitudes and intentions are not changed to bring about the positive change in direction that the game needs, this will not be achieved. Those at the top of the game do not have to agree to bring about change: they need to do more. They should implement the proposals and show through their actions the very changes that they seek to bring about.

JUDGE

So how should one judge whether any of the initiatives, programmes or proposals are going to work or are working? The starting point must be statistics. What is the current position of representation and diversity in all areas of the game: the various boards, clubs, employees and personnel. This data is the foundation upon which one must build. The exercise is one of good practice as it allows all of the bodies to analyse its own organisational make-up and personnel. One can measure change and development against this initial data. Independent panels should annually review what headway organisations have made in achieving change and these findings should be available and in the public domain.

If one is to make change as of immediate effect, suitably qualified persons from Black and Minority Ethnic Communities should be co-opted into governing body boards even on temporary posts until more permanent positions become available. As a bare minimum, the Rooney Rule should be implemented immediately across the whole of the game in order to show that all in the football industry are supporting and behind implementing change for the good.

FOOTBALL LEAGUE DIVERSITY CODE

Recently, the FA announced the devising of a diversity code that would require football clubs to meet a recruitment diversity target of 15% in new executive jobs and 25% in coaching roles. The clubs agreed that:

- 15% of new executive appointments will be from a BAME background, with 30% female.
- 25% of new coaching appointments will be BAME and 10% of senior coaching appointments.
- 50% of new coaching appointments at women's football clubs will be female, with 15% BAME.
- Shortlists for interview will have at least one male and one female BAME candidate, provided applicants meeting the job specifications apply.

Clubs will have to publish their diversity data each year and, should they not meet the requirements, give reasons why.

The initiative is to be applauded and one waits to see what the outcome is in a year's time. Interestingly, there are some factors which may raise a few eyebrows: firstly, nowhere does there seem to be any penalties for clubs that do not meet requirements. Secondly, that the above code is for "new" appointments. One wonders how many "new executive appointments or "new coaching appointments" occur on a regular basis. It may be some time before one see's any real change in the diversity of staff so long as they meet the job specifications. The devil is in the detail and one hopes that an industry that has not embraced diversity in its practices in the past will actually try to incorporate change as opposed to this being an impressive code on paper as opposed to in practice.

CONCLUSION

Football is a game, a business, the heartbeat in many people's lives and an industry that reaches many from all sectors of life. It is a game played by millions in this country and one that employs millions. It generates billions of pounds and takes up a great deal of many people's lives. With such a far reach, it should not only be seen to be a game that is fair on the pitch but also off it. For a very long time, the game has been unfair to black and minority ethnic communities. We are living in times where the message "black lives matter" is so resonant. The message has to come to life through immediate actions.

About the Author

Yasin is a Director of SLAM and a Barrister with extensive experience and knowledge in Sports Law. His background includes being head of an organisation that won national and international awards in promoting cultural diversity and anti-racism. With almost 2 decades of experience in this field, Yasin is one of the leading sports lawyers with practical experience of delivering projects and results. He can be contacted on y.patel@churchcourtchambers.co.uk or yasin.slam.global@gmail.com.