

## **Have sports stars been caught out by Corona**

It is not just in the worlds of finance and commerce where the effects of the global Corona Virus pandemic are currently being felt. The sporting world is also suffering at the hands of this novel virus. And many clubs are doing anything to make savings. But will that be enough? As has been publicised this weekend, Wigan Athletic Football Club have called in the administrators as a result of their financial woes. Seven years after winning the FA Cup, their fall from those dizzy heights has reached a new low.

In professional clubs up and down the country, many employees have been furloughed: Yasin Patel, (a Barrister and also a Director at SLAM (Sports, Law and Media) and Andrew Farrugia (a Consultant Solicitor at SLAM) ask whether in this current climate, sports clubs are entitled to reduce their players' wages and what the players' options are in such novel and unprecedented times.

### **The club's position**

Given that a club – be it in cricket or football – is very much like an entertainment company with their sporting talent as employees, most clubs in the current climate are arguing that due to the drop in their revenue, they are unable to pay their players their full wages. Given that it is only recently that football games have started being televised and that the world has virtually ground to a halt as a result of Covid-19, the revenue streams that clubs generate through the holding of live sporting fixtures have declined. In normal circumstances, clubs would enjoy three main revenue streams – broadcasting revenue from the showing of live games, commercial revenue from their sponsorship and advertising deals and from the match day itself where revenue would be raised through ticket sales and hospitality amongst other things. These contracts apply for the whole of the football season and generate cash flow for the clubs throughout the season to assist in paying the player wage bill every month.

The relevant governing bodies in both Cricket and Football are aware of the challenges and both have put in place support packages in the form of various loans and funds for clubs that are currently struggling as a result of the pandemic. Clubs are able to benefit from these support mechanisms and get access to emergency loans and funding. In some cases, this will be too little too late.

### **The legal position**

In contrast to some European clubs who are relying on the concept of Force Majeure to justify player wage cuts in an employment context, clubs in England and Wales are not able to rely upon such a concept as the player club relationship is an employment relationship. Force Majeure does not apply to employment contracts in England and Wales. It does apply to such contracts as commercial and construction contracts, where there is a specific Force Majeure clause contained in the contract. It is very rare for such a term or similar clause to be incorporated into an employment contract in England and Wales between a player and their club no matter what sport they are playing. Force Majeure is a concept which states that a party to a contract is not able to carry out the obligations in the contract (such as full payment of wages) due to a reason that is beyond all control of the parties (such as a lack of fixtures

due to a global pandemic). In the context of European football, this legal concept has been successfully used in Spain to justify a reduction in player's wages due to the Covid-19 pandemic as the concept is both recognised in Spanish law and is applicable to employment contracts in Spain.

The standard playing contract for a football or cricket player in England and Wales does not contain a Force Majeure clause. Therefore, as a player's playing contract is an employment contract with the club, such a contract can only be changed by mutual agreement – the player has to agree to any changes that the club wants to make.

### **What should a player do?**

Professional advice should always be the first port of call for a player's advisers. The nuclear option of seeking to terminate the contract is never the answer in the event that a pay reduction is suggested by the club. The key is negotiation and opening a communication channel with the club where in the event that a player's wages are to be reduced, the club provides written safeguards in return to the player. These safeguards and protections are in the form of the player requesting that for example, the reduction is only for a specific agreed period of time or that they will agree to a temporary reduction with the balance to be paid at a later stage. This could be either when things improve and the Club's cash flow returns to normal or by the end of the player's current contract. The specific agreement must be clear in terms that detail the period of this amendment.

The player must also seek other written guarantees to protect themselves. This could also be in the form of an agreed amendment to the contract's injury provisions. The contract's injury provisions is the only place in the player's contract where the player has agreed to a reduction in their wage. This applies in some contracts when a player has been injured for a certain amount of time and their wage is reduced whilst they receive treatment and rehabilitation for their injury.

Allied to this, the player must ensure that they are available to play in any location as per the terms of their contract and must keep to the required fitness levels in their contract so as not to be in breach of other terms of the contract which could further justify the club in reducing their wage.

Players can also seek written guarantees from the club as to a fixed payment for any postponed or rescheduled games in the event that they are reaching the end of their contract and the remaining games of the season are to take place after the end of the contract. In the football context, most players' contracts run until 30 June of each year. Alternatively, a short-term fixed contract can be agreed.

### **Conclusion**

Our advice is that communication should be started as early as possible with the club and that professional advisers are used to negotiate an arrangement such as a temporary deferment in wages with the club with this to then be paid at a later stage when the sporting world returns to normal again. Clauses may have to be incorporated in case clubs fall into administration or close down: both the club and player should have clarity in case of such

inevitably with this international pandemic. Ultimately the clubs, players, owners, agents and sponsors need clarity and legally binding contracts are key.