



Sports in the news - what do the employment lawyers think?

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Welcome to the first article in our new series of articles: "Sports in the news - what do the employment lawyers think?". Many of us here at GQ|Littler are big sport fans. We thought we might share our collective thoughts from time to time on recent sporting news stories and give you our perspective, through an employment law lens. We appreciate it's a little niche - and no, nobody asked us for it - but we hope you find it interesting, nonetheless.

Two footballers under police investigation - when is it right to suspend?

This summer, we have seen headlines in the news about two footballers who are currently under police investigation. Both of these

footballers ply their trades for clubs in the Premier League in England. Both are facing serious criminal allegations – one player has been charged with four counts of rape and one count of sexual assault, the other has been arrested while police investigations are ongoing in relation to alleged child sex offences. Despite the surface-level similarities, each club has taken a very different approach towards their player.

The first of these players was arrested back in November 2020 but was allowed to continue playing football for approximately nine months while he was under police investigation (playing 18 matches and contributing to his team's successes over the season). He was eventually suspended by his club in August 2021, after he had been formally charged by the police. His club knew about the police investigation during this period but decided against suspension and allowed him to keep on playing.

The second player was suspended by his club in July this year, almost immediately after he had been arrested in connection with an ongoing police investigation into child sex offences. The player in question had not been charged at this point in time.

We are not interested in looking at the specifics of the allegations or the factual background (and have omitted the names of each footballer for this reason, and especially as one cannot be named for legal reasons). As employment lawyers, what we do find interesting is that this is a scenario from the world of sport that many employers regularly face: is it right to suspend or not?

Suspension – how does it work?

An employer may decide it is appropriate to suspend an employee if they suspect that the employee has committed serious misconduct of one form or another but has not yet been able to conduct a full investigation into the facts. In some cases, it may be appropriate to suspend the employee because the employee poses a threat to the business (e.g. where the employee is suspected of misusing the business' confidential information) or to others (e.g. where allegations of sexual harassment, or some other criminal offence, have been made). In other cases, there may be concerns that the employee's continued presence at work could compromise the employer's investigation (e.g. because the employee could seek to destroy evidence).

It is important for employers to remember – and explain to any employee it seeks to suspend – that suspension is not in and of itself a disciplinary action. Suspension is a neutral act and should not in any way be seen as being a pre-determination of any future disciplinary hearing.

Employment lawyers and HR professionals will know that employers need to take the [Acas Code of Practice on disciplinary and grievance procedures](#) into account whenever disciplinary action against an employee is being considered (or risk any dismissal being considered unfair by a tribunal and being liable to pay an uplift in compensation). What fewer people may know is that the Acas Code specifically deals with suspension and how it should be managed – see paragraph 8.

To stay the right side of the law, employers would be wise to take the following common principles into account whenever they are considering suspending an employee as a precursor to potential disciplinary action:

- Does the employment contract contain a right to suspend? If it doesn't, be cautious and speak to a lawyer – suspending could amount to a breach of contract, depending on the circumstances;
- Do you have reasonable grounds for suspending the employee, or is there an alternative to suspension? Being too quick to suspend without acting reasonably or considering alternatives could amount to a breach of the implied term of trust and confidence;
- Whenever you do decide to suspend an employee, ensure that employee is suspended for as short a period as possible. Keep the decision to suspend under regular review;
- Continue to pay the employee their normal pay and benefits during any period of suspension – docking pay or withholding benefits could result in legal claims, even if the decision to suspend is reasonable; and
- Where multiple employees are involved, ensure that your decision-making in relation to suspension is consistent – deciding to suspend one employee but not another, without good reason, could be considered discriminatory depending on the circumstances).

Is it the same when criminal proceedings are ongoing?

The first thing to remember is that an employee being investigated by the police, arrested, charged or convicted does not automatically give their employer the right to suspend or take disciplinary action against that employee. As is set out in the Acas Code (see paragraph 31), employers should first consider what effect this may have on the employee's suitability for the job and their relationship with their employer, colleagues and customers.

In many cases, and very often where the criminal allegations are especially serious, it will be absolutely appropriate to consider

suspending and/or disciplining the employee. Even so, disciplinary action should not be taken until the employer has conducted its own investigation and given proper consideration to the facts. Employers are free to rely on any information supplied by the police as part of its investigation and disciplinary process. In circumstances where a police investigation is ongoing and there is little evidence about the facts, it may be prudent to place the disciplinary proceedings on hold and wait until further information is available or until the outcome of the criminal proceedings before taking further action. This is where suspension, as a neutral act, can be particularly useful.

That said, employers are not obliged to wait until criminal proceedings have reached their conclusion before making a decision about whether to suspend or commence disciplinary proceedings. There may be some situations where an employer's disciplinary action could give rise to a real danger of there being a miscarriage of justice in the criminal proceedings (in which case a longer period of suspension may be appropriate), though these situations should be rare in practice.

The main takeaway for employers (inside and outside the world of sport): suspension can be a useful tool for employers where evidence about an employer's alleged misconduct is limited or where an employee is subject to criminal proceedings. However, it should be used sparingly and carefully.

As for the contrasting approaches of the two Premier League clubs in recent months – it's difficult to know why suspension was only considered appropriate in one of these cases without an insider's perspective, but if nothing else it shows that suspension is not an inevitability for employers, even in serious circumstances. Employers can and do weigh up factors such as their legal obligations, the safety of employees and the public, public relations, and the bottom line before making a decision...