

**PROTOCOL ON THE APPROPRIATE HANDLING OF INCIDENTS FALLING UNDER
BOTH CRIMINAL AND FOOTBALL REGULATORY JURISDICTION**

between

The Crown Prosecution Service

and

The Association of Chief Police Officers

and

The Football Association

and

The Football Association of Wales

1. Introduction and scope of this protocol

The Crown Prosecution Service (CPS) is the principal prosecuting authority dealing with criminal prosecutions in England and Wales.

The Association of Chief Police Officers (ACPO) issues guidance to police forces in England and Wales, and the Chief Constables who are members of ACPO are responsible for the investigation of alleged criminal activity in their individual force Area.

The Football Association (The FA) is the regulatory and disciplinary body for association football in England.

The Football Association of Wales (FAW) is the regulatory and disciplinary body for association football in Wales. By a Memorandum of Understanding between The FA and the FAW, The FA has regulatory jurisdiction over Participants of Welsh clubs playing in the Premier League and Football League.

This document sets out a memorandum of understanding between the above signatories as to the principles governing the issue of concurrent jurisdiction where a criminal offence is alleged to have been committed by a Participant (as defined in the Rules of The FA) or Subordinate (as defined in the Rules of the FAW)¹ in a context which also falls to be regulated by The FA or FAW.

The regulatory jurisdiction of The FA and FAW is broad, incorporating not only breaches of the Laws of the Game 'on-field' but also acts of misconduct by a Participant which – in the view of the relevant body - bring the game into disrepute.

Accordingly, The FA or FAW may bring disciplinary action against its Participants – which term includes players, clubs, club officials or employees, agents, match officials or any other

¹ For the purposes of this Protocol, the term 'Participant' should be read to include both FA Participants and FAW Subordinates

person participating in regulated football activity - for breaches of its respective Rules and Regulations.

On limited occasions, a breach of football's Rules or Regulations may also amount to a criminal offence. On those occasions, the signatories to this protocol have concurrent jurisdiction to investigate and prosecute charges.

This protocol covers conduct by individual Participants. It is primarily aimed at on-field incidents where investigations can be expected to take place quickly, but the principles may also be applied more widely.

Incidents involving spectators or supporters are subject to different considerations, and regard will be had to the relevant CPS Guidance to Prosecutors.²

The principles contained in this protocol have been approved by The FA and FAW, following consultation with their stakeholders.

2. Purpose of this protocol

The purpose of this protocol is to:

- Clarify the roles and responsibilities of the relevant parties in respect of dealing with incidents falling under concurrent jurisdiction.
- Set out the factors to be applied by the police/CPS when considering whether to investigate and/or prosecute an alleged offence.
- Encourage and ensure consistent early liaison between the parties where appropriate.
- Expedite the resolution of all cases, whether they have a regulatory or criminal justice system outcome or both.
- Establish a streamlined and consistent approach to all cases.
- Clarify how information will be shared between the parties.

3. Criminal prosecutions and FA/FAW disciplinary proceedings

The CPS can bring a prosecution in a criminal court, following a criminal investigation by the police, where it is satisfied that there is a realistic prospect of conviction and the public interest requires a prosecution. The standard of proof in a criminal court is beyond reasonable doubt, or that the tribunal is sure of guilt. Where a defendant is convicted of a criminal offence, the court has a number of sentencing options, which include imposing a term of imprisonment, a fine, or a community order.

Football disciplinary action is governed by The FA's or FAW's Rules and Regulations. Each football body has its own investigation unit which conducts investigations on its behalf. The FA or FAW may initiate disciplinary proceedings by charging a Participant with misconduct,

² CPS Guidance on Football Related Offences; Homophobic and Transphobic Hate Crime; and Racist and Religious Crime can be found at <http://www.cps.gov.uk/legal>.

where there is an alleged breach of its Rules or Regulations. The applicable standard of proof in football disciplinary proceedings is the civil standard, namely the balance of probabilities³.

Where a charge is proved or admitted, the judicial bodies of the relevant FA may impose a number of sanctions, which include a fine, a suspension from all or any specified football activity, a stadium ban, a compensation order or any other order appropriate to the misconduct in question.

It should be noted that in some cases the financial penalty likely to be imposed by the relevant FA may be greater than the maximum financial penalty available to the court. In addition, some FA sanctions not available to the courts, such as suspension from playing or a points deduction for the player's club, may in some circumstances be a more effective punishment, and may also act as a strong deterrent against misbehaviour.

4. Concurrent investigations – early consultation

Where the relevant FA is notified of an incident involving one of its Participants which may amount to a breach of its Rules or Regulations, it will commence an investigation immediately with a view to bringing disciplinary proceedings in a timely fashion. In light of the mutual dependency of Participants within the game, it is essential that sporting justice and the imposition of any sporting sanction takes place as soon as possible.

Where the police receive a complaint or initiate an investigation into an incident involving a Participant, it is desirable that early consultation takes place between the police and the relevant FA. This consultation should establish what action each of the relevant parties has already taken or is intending to take in respect of any investigation. This should assist the respective parties in determining (i) whether the police consider it is necessary to conduct a criminal investigation or whether it is sufficient for the matter to be dealt with by the relevant FA; and (ii) if there is to be a criminal investigation, whether and to what extent the relevant FA should suspend its own investigation or proceedings.

Where the relevant FA receives a request from the police to suspend its investigation or proceedings, it will bear in mind that the fair enforcement of the criminal law is of paramount importance and consider:

- the period of suspension requested;
- the impact upon its own investigation or proceedings of such suspension;
- the impact upon its regulatory responsibilities of such suspension; and
- whether, if it were not to suspend its investigation or proceedings, there is a real risk of serious prejudice to the criminal investigation which may lead to injustice.

Any decision to suspend the football disciplinary proceedings will be reviewed on a regular basis in light of progress in the criminal investigation and/or proceedings.

³ Save in respect of Anti-Doping Rule Violations where the applicable standard of proof is that of 'comfortable satisfaction'.

5. Decision as to whether to carry out a criminal investigation or prosecution.

The overriding principle is the requirement of fair and efficient justice, which is carried out expeditiously, proportionately and in a transparent manner. In this context, justice is to be given a wide meaning, covering both criminal prosecutions and disciplinary proceedings. If at the conclusion of either criminal or disciplinary proceedings the confidence of the public is maintained, then it is likely that the overriding principle will have been appropriately applied.

Where possible, it is generally desirable for The FA and FAW (as applicable) to deal exclusively with all football regulatory matters and to sanction their Participants appropriately for breaches of their Rules and Regulations. However, there will be instances where the breach is so serious that it will also be appropriate for a criminal investigation and prosecution to take place. Each case needs to be considered on its own facts.

Amongst the factors which will be applied by the police and CPS when considering whether it is appropriate to commence a criminal investigation or prosecution into an incident involving a Participant are the following:

- a) The more serious the incident or allegation, the more likely it is that a criminal investigation is required.
- b) If an alleged offence is aggravated by factors that would potentially make it a “hate crime”, it is more likely that a criminal investigation will be required.
- c) The availability and willingness of potential victims and witnesses to support either or both a criminal or disciplinary prosecution.
- d) The admissibility of evidence.
- e) The respective sentencing powers of the criminal court and the football disciplinary tribunal. Where a court is likely to impose a custodial sentence or a high level community order on conviction, a criminal investigation is likely to be appropriate.

In respect of incidents on the field of play which cause injury, prosecutions should be reserved for situations where the conduct is sufficiently grave to be properly categorised as criminal.⁴

Illustrative examples:

A. An alleged incident which takes place in or around the action in the game (an “on the ball” incident) is more likely to be dealt with adequately by the FA. However, where it is apparent that a player involved in an “on the ball” incident clearly intended to harm or injure another player, and serious harm or injury is caused, a criminal investigation may be required.

B. An alleged incident which does not take place in or around the action in the game (an “off the ball” incident), especially where it takes place some distance from the action,

⁴ Further guidance in this respect can be found in the case of R v Barnes [2004] EWCA 3246 and the Law Commission’s consultation paper No. 134: “Consent and offences against the person.”

whether there is a clear intention to harm or injure or whether the result of a reckless action, and serious harm or injury is caused, may require a criminal investigation.

6. Disclosure and Information Sharing

There will be occasions where the police and the relevant FA have evidence in the form of documentation or other material which will inform the other in their respective investigations and proceedings. The parties will endeavor to assist one another by sharing and providing information wherever possible.

Where the police conduct an investigation, it will gather evidence for use in prospective prosecutions. Where a decision has been taken not to proceed with a prosecution or where a prosecution has come to an end, the evidence gathered will be of assistance in informing any football disciplinary action. Accordingly, the police should seek the consent of any witnesses to disclose statements or any other evidential material in their possession to the relevant FA. Such consent should be requested at the beginning of the process, rather than at the end (i.e. at the time a statement is taken). Similarly, where a Participant is interviewed in respect of an alleged offence, the police should seek his or her consent to disclose the record of the interview to the relevant FA.

Similarly, where the relevant FA has commenced an investigation, evidence gathered by its investigators may be of assistance to the police in its enquiry. The relevant FA will endeavor to seek the consent of its Participants to disclose material to the police. In some circumstances, it may be necessary for the police to obtain a production order in order to enable the relevant FA to disclose documentation or other evidence in its keeping.

7. The UK Football Policing Unit

The UK Football Policing Unit (UKFPU) is not an investigative body, but provides support, guidance and advice to police forces on football matters. Their staff has a wealth of experience of criminal investigations and prosecutions and may be a useful source of advice and precedents for police forces.

8. CPS Advice and Decisions to Charge

Where early consultation takes place between The FA or FAW and the police, the CPS may provide advice to the police in relation to any alleged criminal offences.

In more serious cases, following an investigation, the police will refer the case to the CPS, and prosecutors will decide whether the person should be charged with a criminal offence. When reviewing a case and deciding whether to charge, prosecutors will apply the same test as they use for every case, the Full Code Test, which is set out in the Code for Crown Prosecutors: prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge, and that a prosecution is required in the public interest.

In addition, prosecutors will apply any relevant prosecution policy or guidance, such as guidance on prosecuting football related offences, and take account of any relevant FA sanction which may be, or has already been, imposed.

CPS charging decisions will ordinarily be taken by its bespoke charging unit, CPS Direct. However, where it is considered appropriate, a charging decision may be taken by, or with the assistance of, one of the Area specialist football prosecutors.

9. Review of protocol

The signatories will aim to review the protocol not later than 12 months from the date upon which it is signed.

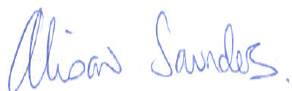
Date of agreement: 23 December 2013

10. Signatories



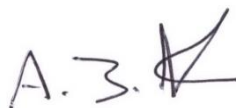
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