

AGREEMENT ON THE HANDLING OF INCIDENTS FALLING UNDER BOTH CRIMINAL AND FOOTBALL REGULATORY JURISDICTION

1. Introduction and scope of agreement

This document sets out an agreement between the Crown Prosecution Service (CPS), the National Police Lead for football on behalf of the National Police Chiefs' Council (NPCC), the Football Association (FA) and the Football Association of Wales (FAW), (see **Annex A**). The agreement concerns 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 a Member or Subordinate (as defined in the Rules of the FAW) in the context which also falls to be regulated by the FA or FAW¹.

The regulatory jurisdiction of The FA and FAW is broad, incorporating breaches of the Laws of the Game 'on field', as well as acts of misconduct by a Participant which, in the view of the relevant body, bring the game into disrepute. The FA or FAW may bring disciplinary action against its Participants for breaches of its respective Rules and Regulations.

The signatories to the agreement have concurrent jurisdiction to investigate and prosecute charges where a breach of football's Rules and Regulations amounts to a criminal offence.

The agreement covers conduct by individual Participants and is primarily aimed at on-field incidents, 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 prosecutors².

2. Purpose of this agreement

The purpose of this agreement is to:

- Clarify the roles and responsibilities of the parties dealing with incidents falling under concurrent jurisdiction.
- Ensure consistent early liaison between the parties where appropriate.
- Establish a streamlined and consistent approach to all cases.

3. Criminal prosecutions and FA / FAW disciplinary proceedings

The CPS can bring a prosecution in a criminal court, following an investigation by the police. In more serious or complex cases, prosecutors decide whether a person should be charged with a criminal offence and, if so, what the charges should be.

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

² CPS Guidance on [Football Related Offences](#); [Homophobic and Transphobic Hate Crime](#); and [Racist and Religious Crime](#) can be found in the [legal guidance](#) section of the [CPS website](#).

Prosecutors make their decisions in accordance with the [Code for Crown Prosecutors](#) and the [DPP's Guidance on Charging](#). The police apply the same principles in deciding whether to start criminal proceedings against a person in those cases for which they are responsible.

The standard of proof in a criminal court is 'beyond reasonable doubt'. Where a defendant is convicted of a criminal offence, a wide range of sentencing options are available to the court.

The FA's or FAW's Rules and Regulations govern football disciplinary action. The FA and FAW both operate investigations units and may initiate disciplinary proceedings by charging a Participant with misconduct where there is an alleged breach of its Rules and Regulations.

The standard of proof in football disciplinary proceedings is the civil standard, namely the 'balance of probabilities'³.

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

It is important to note that there may be circumstances where 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 certain circumstances, be a more effective punishment. Such sanctions 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 fashion⁴.

Where the police receive a complaint or initiate an investigation into an incident involving a Participant, the police must consult the relevant FA⁵. The consultation must be at an early stage of the investigation and seek to establish the action carried out, or intended to be carried out, by the relevant FA. This will assist the police / FA in determining:

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

⁴ The FA Rules do not prescribe a timescale for bringing proceedings, though the FA endeavour to conclude proceedings within the same season as that within which the offence was committed. The FAW's Rules contain no timescales for bringing proceedings against a Member or Subordinate though, in almost every case, the FAW bring proceedings within six months. Where a decision is made to involve the police, most criminal prosecutions have to be brought within six months.

⁵ The FA's contact point is the Head of On-Field Football Regulation.

- Whether the police consider it is appropriate to conduct a criminal investigation, or it is sufficient for the matter to be dealt with by the relevant FA; and
- If there is to be an 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 or suspends 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 investigations or proceedings, there is a real risk of serious prejudice to the criminal investigation which may lead to injustice.

Where the football disciplinary proceedings have been suspended, the relevant FA will review this decision on a regular basis, having regard to the progress of the criminal investigation and / or prosecution.

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.

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

The police and CPS will consider a number of factors when determining whether it is appropriate to commence a criminal investigation or prosecution with regard to an incident involving a Participant including⁶:

- The more serious the incident or allegation, the more likely it is that a criminal investigation is required;
- 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;
- The availability and willingness of potential victims and witnesses to support either or both a criminal or disciplinary prosecution;

⁶ The list of factors is not exhaustive.

- The admissibility of evidence;
- The respective sentencing powers of the criminal court and the football disciplinary tribunal. A criminal investigation may be appropriate in circumstances where a court is likely to impose a custodial sentence or a high level community order on conviction.

In respect of incidents on the field of play which cause injury, prosecutions should be reserved for situations where the conduct is considered sufficiently grave to be properly categorised as criminal⁷.

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 the 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, 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

The parties to this agreement will assist one another by sharing and providing information wherever possible⁸.

Where a decision has been taken not to proceed with a criminal prosecution or where a prosecution has come to an end, the evidence gathered will be of assistance in informing any football disciplinary action. The police should, when taking witness statements, seek the consent of any witnesses to disclose their statements or any other evidential material in their possession to the relevant FA. Where a Participant is interviewed in respect of an alleged offence, the police should seek his / her consent to disclose the record of the interview to the relevant FA.

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 should seek the consent of its Participants to disclose material to the police.

The police may, where appropriate, obtain a production order to enable the relevant FA to disclose documentation or other evidence in its keeping.

⁷ Further guidance in this respect can be found in the case of *R v Barnes* [2004] EWCA 3246.

⁸ The FA and FAW will use existing mechanisms to capture information about (i) how many on- and off-field investigations are opened and how many of those are closed without action, warned without formal disciplinary action or charged; and (ii) how many of those cases the relevant FA refers to the police.

7. The UK Football Policing Unit

Police forces carrying out investigations about football matters may seek support, guidance and advice from the UK Football Policing Unit (UKFPU)⁹. The UKFPU is not an investigative body. UKFPU staff have a wealth of experience of criminal investigations and prosecutions and provide a useful source of advice and precedents for police forces.

8. CPS advice and decisions to charge

The police may seek advice from the CPS with regard to any alleged criminal offences.

The police will, following investigation, refer a case to the CPS. A CPS prosecutor will review the case in accordance with the Code for Crown Prosecutors and will consider whether there is enough evidence to provide a realistic prospect of a conviction and if it is in the public interest for the CPS to prosecute. Prosecutors will also apply any relevant prosecution policy or guidance, such as guidance on prosecuting football related offences, and take account of any relevant FA / FAW sanction which may be imposed or has already been imposed.

CPS charging decisions will ordinarily be taken by CPS Direct, which provides charging decisions to all police forces across England and Wales. A charging decision may, however, be taken by, or with the assistance of, a CPS specialist football prosecutor.

9. Review of agreement

The parties agree this document will be reviewed every two years.

Date of agreement: 2 October 2015

10. Signatories



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The Football
Association



Alison Saunders

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ACC Mark Roberts

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⁹ UKFPU contact details: email footballdesk@fpu.pnn.police.uk; telephone 0207 785 7177

Glossary

Participant

An Affiliated Association, Competition, Club, Club Official, Intermediary, Player, Official, Match Official, Management Committee Member, Member or Employee of an Affiliated Club and all such persons who are from time to time participating in any activity sanctioned either directly or indirectly by The Association.

Member

A Councillor, Area Association, Directly Affiliated League or Qualifying Club that has been admitted into membership of the Association by the Council.

Subordinate

Subordinate shall mean:

- Any director, member, representative, official, employee, referee or other playing official or Player of a Qualifying Club, Area Association or Directly Affiliated League;
- Every spectator at a game of Association Football in which a team of a Qualifying Club plays, or in which a representative team of an Area Association or Directly Affiliated League plays, and any person purporting to be a supporter or follower or such member provided that the provisions of Rules 7.5, 28, 38.13, 38.1.4, 38.1.6, 38.1.8, 38.1.10, 38.1.11, 38.1.12, 38.1.16, 66.7, 76, 77 and 115.1 shall not apply to such spectators, supporters or followers;
- All other organisations clubs, bodies, entities or persons who are members of, or affiliated to, over whom a Qualifying Club, Area Association or Directly Affiliated League exercises, or purports to exercise, control.

Signatories to the agreement

Crown Prosecution Service

The Crown Prosecution Service (CPS) is the principal prosecuting authority dealing with criminal prosecutions in England and Wales. The Director of Public Prosecutions is the head of the CPS and operates independently, under the superintendence of the Attorney General. The CPS works closely with the police and other investigators to advise on lines of inquiry and decide on appropriate charges or other outcomes, in accordance with the Code for Crown Prosecutors. CPS prosecutors prepare cases for court and present cases in both the magistrates' courts and the higher courts.

National Police Chiefs' Council

The National Police Chiefs' Council (NPCC) helps police cut crime and keep the public safe by joining up the operational response to the most serious and strategic threats. The NPCC brings together 43 operationally independent and locally accountable chief constables and their chief officer teams to coordinate national operational policing. The NPCC works closely with the College of Policing, to develop national approaches on issues such as finance, technology and human resources.

Football Association

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

Football Association of Wales

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.