

The Framework for player contracts

by John Stamper - j.stamper@tamimi.com -

May 2014

Sport is no longer merely a leisure pastime. The recognition of elite athletes as economic commodities has led to a worldwide multi-billion dollar industry.

The Background to the Professional Contract

Sport is no longer merely a leisure pastime. The recognition of elite athletes as economic commodities has led to a worldwide multi-billion dollar industry. Athletes/Players have become recognised household names with economic value and influence.

Inevitably that development requires an appropriate legal framework for regulation and stakeholder rights protection. Substantial high-profile investment in sport within the UAE, Qatar and more widely within the GCC is attracting similarly high-profile players and events to the region and has increased the exposure of home-grown talent. As such, there is an appreciation across the region of the need to regularise sporting contracts.

The Legal Relationship

Contract of Service or Contract for Services?

We use the term “athlete” or “player” generically to cover all professional sportspeople. Contracts usually enter the public consciousness upon an athlete changing clubs or when there is a dispute (e.g. in respect of remuneration or termination). Player contracts are a unique manifestation of the employment relationship. The somewhat hybrid nature of the contract (combining “service” obligations from player to club and often other stakeholders with substantial commercial returns) differentiates it from the conventional employment relationship.

Generally, there is no question that a player for a sports club will be engaged as an employee of the club (i.e. under a “contract of service”). There are numerous tests as to “status”.

A multiple test looking at the overall picture of the relationship may be adopted, where theoretically no single factor is determinative. However, Common Law jurisdictions have tended towards “control” being the most persuasive of the various factors as a single indicator of an employment relationship.

For example, a professional footballer or rugby player is acting under the control and direction of the club and remunerated accordingly. Whilst the player may indeed use his own skills and personal attributes to perform the role on the field of play, it does not thereby give him the freedom to act as he pleases.

It is essential that the club has control over the athlete’s activities in order to properly realise the benefit of its investment. The athlete is a “commercial commodity” to be carefully protected.

The player’s individual abilities and talents inevitably require “personal service” as opposed to a “contract for services” (i.e. the latter being the categorization of a self-employed relationship). It would be strange indeed if an athlete could send a replacement in his place!

In individual sports, the distinction may be less clear according to the nature of the activity in which

the athlete is engaged. As such, their commercial relationships will generally be with other stakeholders, principally sponsors. Whilst the athlete may be required to provide certain services on behalf of a sponsor (appearances, endorsements, equipment/merchandise), the “control” which arises in that regard is limited to the delivery of certain commercial obligations.

Contractual Terms

Express Terms

The employing club must protect its investment by regularizing the terms of the relationship in a written contract. Whilst there are some terms which will be implied into every employment contract (sporting “employment” contracts are no different), express written terms are crucial.

Key factors for such an employer are:

- Proper commercial exploitation/protection of their investment in view of the essential public character of the sporting performance (i.e. the athlete’s economic “value” to the club);
- Protection of stakeholder goodwill in the game (sponsors, supporters etc.)

The Influence of the Governing Body

Players’ rights are not simply governed by the terms of the contract with the Club, but may also be subject to wider considerations of the governing body.

The regulations of the Governing Body will be incorporated (expressly or implicitly) into the club-player contract. Many governing bodies have their own standard approved form of contract which club and athlete are required to use with only some terms being open to negotiation.

The Governing Body’s disciplinary regulations may impose severe sanctions for club and player (including a fine, suspension, points deduction and even relegation) where a non-approved contract has been agreed between the parties. Club, player and respective agents need to be aware of this when negotiating the terms of the contract.

Example: An English Premier League (EPL) football player’s contract will expressly refer to the Football Association (FA) Rules, Professional Footballers Association (PFA) Rules, Code of Practice and Club Rules. This expressly identifies the parties’ obligations not only within the club framework but also in the wider context of the sport itself.

Professional Football Governing Bodies often place restrictions upon when transfer negotiations can be commenced. The principle of “freedom to contract” is subject to regulation by the Governing Body to preserve the stability of the sport and avoid an uncontrolled transfer market.

Defined Terms

In addition to its main express terms, the Contract is likely to first identify a number of defined terms as an aid to interpretation. These may include definitions to clarify those with authority to deal with matters relating to the player (including disciplinary and similar action).

A contract will likely define (to an extent) conduct which may be sufficiently serious to justify the summary release of the player (e.g. theft/fraud, use/possession/supply of a prohibited substance, conduct which has the effect of or is likely to bring the employing club into disrepute). It would be usual for such conduct to be described as “non-exhaustive”. Contrast this with provisions in (for example) the UAE Labour Law which give an “exhaustive” list of circumstances which might warrant summary termination of the relationship.

TV and other media exposure of the sport are such that the player’s activities need to be carefully

regulated. Media should be defined as accurately as possible, to expressly identify the nature and type of interviews which a player may give.

Contracts typically address the athlete's inability to perform his duties through injury or illness. This may differentiate between injuries arising (directly or indirectly) in the course of performance of the player's contractual obligations and those where the incapacity is unconnected with the player's employment.

This contract will typically identify all versions of the employing club's official clothing, to ensure brand protection and compliance with the club's obligations to third parties (e.g. sponsors).

Duties and Obligations of the Player

Many of the duties owed by the player are obvious and would be implicit in any professional athlete's contract.

For example, it is implicit in professional sporting contracts that the athlete will not take performance-enhancing drugs. That said, there is merit in referring to this expressly to ensure the identification of potential disciplinary sanctions.

Example: The Chelsea player, Adrian Mutu, was banned for illegal substance use in 2004 and was released by the club. Chelsea sought compensation from Mutu on the basis that he had essentially breached his contract with the club "without just cause". After much litigation, Mutu was ordered to pay substantial compensation to Chelsea amounting to over 17m Euro plus legal costs.

Express Duties & Obligations of the player may be both positive and negative.

Positive obligations would include a requirement that the athlete will attend training and matches in which the Club is engaged and participate in those for which he is selected. Similarly, an athlete will be required (and reasonably expected) to play to the best of his skill and ability whilst maintaining a prescribed level of fitness.

Examples of negative obligations (i.e. the player "shall not"...) would include a requirement that the athlete does not engage in activities which might impair or endanger fitness, or be involved in any activity which will cause to render void or voidable any policy of insurance for the benefit of the club in relation to his physical well-being.

The player may be required to enter into other detailed commercial undertakings with the Club. These will typically concern areas such as public relations and marketing and Intellectual Property Rights (focused on maximising the commercial benefit of the player's image) (See also Law Update Issue 267, March 2014)

A common thread emerges from the terms in a professional player contract which is distinct from the majority of other employment contracts; namely, the protection of the commercial value of the player. The Player Contract is almost a hybrid commercial and employment arrangement.

In a separate article, we will consider the obligations of the Club/Employer towards the player/athlete and the resolution of disputes.

A Senior Associate in the Employment Department, John routinely works with the Sports Law practice group and his experience includes acting for English Premier League football clubs and a football charitable foundation during various restructuring processes. He has also represented rugby players and clubs in disputes and disciplinary hearings before governing bodies. John is a Registered Lawyer under the UK Football Association Player Agents Regulations.