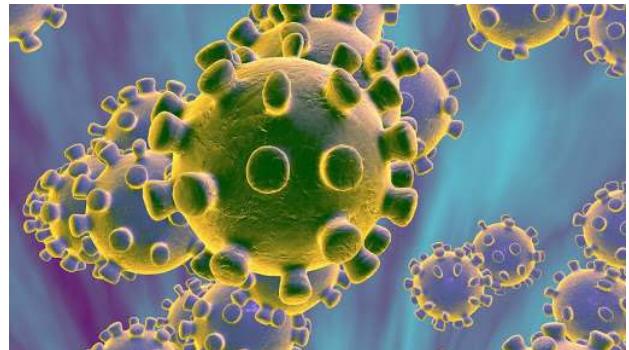


# COVID-19

**Case Study: The Premier League**

## **Let's break it down...**

Whether or not you avidly watch the news, chances are you will have heard the words "Coronavirus" or "Covid-19" the past couple of months. What started out as symptoms similar to that of the flu has reached an unprecedented stage where we are starting to question the legal and socio-economic effects this carries. With the WHO now confirming the virus as a 'pandemic', this has dominated the news and reached headlines worldwide. In the UK, it almost makes you miss seeing regular updates on Brexit (...almost).



As the virus continues to spread at an accelerated pace, this has caused a disruption to several industries across the globe. The sporting world in particular has been impacted heavily. It is also an industry where many are known to gather in large crowds. This includes a high influx of fans who have paid good money to watch their favourite teams go head to head.

In terms of how Covid-19 has affected the realm of sports, this blog will be taking a closer look at the Premier League. The Premier League has made a name for itself on an international scale and has been deemed the home of the "beautiful game". With its popularity, the twenty clubs that fall under the league generate a significant amount of revenue which comes from ticket holders, advertising and so much more. The association itself opens up a myriad of questions during this time. Amidst the uncertainty, the main question is: "where does each stakeholder stand?"

### **Players and clubs**

To prevent the spread of the virus, The Premier League recently held an emergency meeting to discuss options for all teams going forward. Initially, it was announced that all fixtures were postponed until 3 April 2020. This has now been extended to 30 April 2020. The decision was made in light of Mikel Arteta and Callum Hodson-Odoi who had both tested positive for the virus. We have been told this will be under constant review.

Naturally, the response of the league has had the public question what the next steps are. Since the outbreak, there have been a number of differing opinions:

#### **1. *The Premier League will declare the season "null and void"***

Karren Brady, vice-chairman of West Ham, is of the opinion that the season should be scrapped due to the rapid rate of the virus. This has angered many Liverpool fans in particular as they are only two wins away from being crowned champions in 30 years. Other avid football fans are of the same opinion; deeming the option unfair as we are already 75% through the league. Therefore, it is unlikely that the league will follow through with this.

#### **2. *Give Liverpool the title of winners***

As it stands, Liverpool currently place top of the Premier League with 29 points. Plenty of football fans around the world hadn't predicted that they would be at the current position they are at. With this in mind, all matches leading to this have come with more bets, hype and attention. Given the circumstances, would it be worth handing the title over the Liverpool? This ties in slightly with opinion no. 1. The decision would only be based on the existing positions in the table rather than completing the season in full which is not what fans would really want.

#### **3. *Continue the Premier League at a later date***

Retired Liverpool defender, Jamie Carragher, advised that it would be best to resume the Premier League at a later date stating "...you can't start next season until this one finishes". There is an option to continue playing games "behind closed doors" as a means to prevent the spread of the

virus. This is essentially where players play in empty stadiums. Naturally, it will not carry the same excitement as regular games with a full stadium but this is the stance the Premier League are taking at the moment. The vast majority of fans agree with this as they would like to see the season completed from start to finish.

### ***Contractual Obligations***

Whilst these opinions are still up in the air, it will be the responsibility of the clubs to first look at their players' contracts. These are naturally lengthy as they contain an abundance of clauses that cover topics from appearance bonuses to length of play. Player contracts usually run until 30 June. After this date, their contract expires. An important question to ask is if the season is postponed and the remaining fixtures are played at a later date, what options can the clubs consider to legally protect themselves?

Firstly, clubs can check to see if their player contracts include a "force majeure" clause. In layman's terms, force majeure releases both parties from fulfilling a contract due to an unforeseen event or circumstance. In this case, the unforeseen event relates to Covid-19. It is worth noting that force majeure clauses differ among contracts. Some are brief. Some can be quite lengthy. It will be necessary to pay close attention to the wording of the clause to see if and how the coronavirus applies. It may worth checking if the provision includes the words 'disease' or 'pandemic'. Should this be the case, force majeure may apply. For lengthier clauses, there is often a list of force majeure events that will allow for the contract to not be fulfilled i.e. an act of god, a change in law, etc. Again, this will need to analysed properly. Legal teams should also check to see if the list of events is exhaustive or non-exhaustive.

In the absence of force majeure, the doctrine of frustration might step in. Frustration is similar in nature in that a 'frustrating' event (an unforeseen event) occurs making the contract impossible to perform. If this is found to be true, the contract automatically terminates. However, the existence of Covid-19 itself does not necessarily eliminate any liability per se as the threshold for frustration is high. In some contracts, there may even be clauses where there are alternative means of performing duties of a contract in the event of frustration. If this is mentioned, parties may not be able to rely on the doctrine.

If force majeure has been applied previously and was found to be unsuccessful, the same may also be said if frustration is then applied afterwards. Both doctrines are known to be difficult to prove. Should the matter be taken to litigation, courts will analyse this on a case-by-case basis. The judge in case would need to determine the meaning of specific words and address any ambiguity that arises.

What if neither force majeure nor frustration can be proved? Do contracts offer any other alternatives? There will certainly be apprehension with clubs as the date for most contracts to end is 30 June 2020. Once this date comes, players are released from their contractual ties. This means that if the season goes past 30 June, players have the choice to not play matches or attend training sessions. Technically speaking, the player would not be seen as an employee in the contract. In cases like this, clubs may need to check for any unilateral extension clauses. Essentially, if this is apparent, this affords a club the right to extend employment. In the absence of this, the club and players may need to agree a new contract, preferably one that runs beyond 30 June 2020. This could be tricky as some players may not be willing to stay longer at the club or may have other commitments after 30 June. With uncertainty surrounding the virus, it may also be difficult to anticipate how long you would need a player for. Adding a new date can be very risky, especially if you cannot meet it for a second time.

### ***Finance and insurance***

Some of the top players in the game are known for making millions. According to last year's statistics posted by the Global Sports Salary Survey, Premier League players are looking at an annual average salary of £3m.

As the circumstances surrounding the coronavirus are currently a bit blurred, cash flow will prove to be a major issue during this time. When clubs play on Matchdays, the revenue they receive on the day is usually used to help them pay staff wages and analyse financial projections. Understandably, a lot of the lower clubs are heavily reliant on Matchdays. In a recent article

published by the BBC, ex-Premier League boss Brian Laws has suggested that top players donate a month's wage to protect the financial status of the lower clubs.

It is also likely in the next few weeks, if not months, insurance companies will be inundated from sports clubs querying whether they will be covered for any losses. Insurance policies usually include matters such as event cancellation, disruption to a business and may be able to help with any revenue decline along the way. As some policies can be complex, they may not cover pandemics but Covid-19 could be covered under umbrella terms such as a "notifiable disease" or "legally notifiable disease". It would be down to the wording of the policy and how it would be interpreted. Should it fall under these phrases, it could help mitigate circumstances. However, as it is a new disease, there is a likelihood that it may not be covered.



On another financial note, this of course affects football fans. As Liverpool have not won the Premier League in 30 years, many die hard fans have purchased tickets to watch this live. Event organisers may have to consider creating a refund policy for ticket holders should there be a complete cancellation. However, this will need to be checked in conjunction with a clubs' terms and conditions when it comes to ticket holders. In a number of T&Cs, it is mentioned that should a match be

cancelled or rescheduled, the club in question will have no liability to season ticket holders. If this is the case, clubs should be cautious. A season ticket holder may be able to rely on the Consumer Rights Act 2015. This protects consumers from unfair standard terms in a contract. Cases like this may require looking at the relationship between ticket holders and clubs in previous circumstances where events have been cancelled.

Furthermore, clubs will need to come up with other measures such as additional financial assistance or advanced payments. It will also be worth looking through the Premier League handbook for this season 2019/20.

### **Broadcasting**

The Premier League would not be where it is today without the power of television and streaming. TV giants, Sky and BT, share the broadcasting rights to the Premier League. This is where the majority of revenue comes from. According to The Guardian, in order to show the Premier League games between the years of 2019 and 2022, this has cost broadcasters over £4.5bn.

Last month, BT Sport and Sky Sports collaborated to provide a package where viewers can watch both the Premier League and Champions League. Now that the Premier League has suspended games until April and the Champions League is in limbo, what does this mean going forward? Viewers who have bought this package are not necessarily in the dark as they still have access to other sport such as rugby, wrestling and golf. However, football in particular is what make many viewers sign up to these subscriptions. Without football, the number of viewers is likely to decrease. Pubs have also been banned from screening matches so that fans do not congregate in small spaces. Should they break these rules, they may lose their licence.

If the Premier League is unable to complete this season by the agreed date, they will also be in breach of their broadcasting contracts. It is envisaged that this will invite claims by Sky and BT. As mentioned before in terms of contractual obligations, clubs will need to look through their contracts carefully. There is also a question of whether subscribers will receive a refund. At this point in time, Sky and BT have not mentioned anything about refunding or reducing subscriptions. Rob Webster, managing director Sky Sports, stated that they recognise the situation is fast paced and are working to deliver for all customers. BT also responded in a similar nature stating that they are working with leagues to continue to broadcast live sport, including any rescheduled games.

## **Sponsorships and advertising**

Advertising and sponsors play a huge part in any sport. Regarding the Premier League, it could affect perimeter advertising. For readers who are unaware of what this is, it is essentially the adverts that are shown on the boards that surround the perimeter of the pitch and in certain areas of the stadium near where fans sit. This has proved most effective for viewers at home to know who is sponsoring the game. No matter where the camera pans to during a game, you will most likely see one or two sponsors in the shot. If the game isn't being broadcasted, we miss out on seeing this.

The league has been known to house some of the biggest sponsors in the world; notably that of Emirates, Coca-Cola and Nike.

Sponsors can be broken down into various branches such as main sponsors, kit suppliers and sleeve sponsors. To give us an idea of numbers, let's look at the sponsorship statistics of Liverpool.

<b>Main Sponsor:</b>	Standard Chartered (2018-2023)	= £160 million
<b>Kit Supplier:</b>	New Balance (2012-2020)	= £300 million
<b>Sleeve Sponsor:</b>	Western Union (2017-2022)	= £25 million

Whilst Standard Chartered and Western Union still have momentum in their respective contracts, Liverpool recently signed a sponsorship deal with Nike who will supply kit for the 2020-21 season. This is due to commence on 1 June 2020. Whilst that is a few months away, we are still uncertain whether we will be in the clear with Covid-19 by this time. Nike may decide to defer sponsorship to the following year but this will depend on communication between the two companies.

## **Service companies**

Let us not forget the remaining parties that make the day worth going out for. Whilst fans might only have their eyes on the game, no event would be complete without that of catering, security, merchandising, medical staff and much more.

For the majority of these companies, contracts are usually agreed and signed in advance. This is customary with catering staff so they have time to prepare for the number of fans they will be catering to. As with players, companies that manage catering, security, merchandising and cleaning services place their faith on Matchdays to gain income. Should the season not go ahead, this can cause a financial strain. This is already a cause for concern as there have been reports that many staff are still not paid a decent wage. Currently, only five out of the twenty clubs pay their staff enough to stay afloat. This is, of course, a separate issue that the Premier League will need to revisit.



As there is a high possibility of these companies being of no service due to a cancellation of the season, could clubs potentially terminate their supplier contracts? Possibly. Clubs will need to analyse their contracts closely to see if there is a way they can terminate in an honest manner. It would be worth checking the notice period in a contract and any provisions it comes with. More often than not, this will include a time frame that allows a club to remedy the breach before a right to terminate. If the clubs can identify this and take steps to remedy the breach in good time, this could absolve them of liability. Alternatively, if there is an express termination clause this could help too. Usually this will set out a parties' rights and remedies should they decide to terminate their contract. This may prevent clubs from receiving a lot of claims from service companies. Clubs will need to tread carefully though. If they terminate without reading thoroughly, they run the risk of still being in breach.

## **Final thoughts**

We are now swimming in uncharted waters. Whilst the virus is not something clubs can control, they do have control over the contracts they have signed and how they communicate further. As a first step, it may be wise for clubs and their respective legal teams to look through contracts and policies to see if they can minimise any risk that comes with non-performance and non-compliance. As Covid-19 continues to seep through so many aspects of the Premier League, no contract will go unscathed. For this reason, it is likely that damages for breach of contract will have to be paid by the clubs. Broadcasters, in particular, may be receiving a huge amount of damages.

It would also be worth waiting on any official announcements by the government. Once this has been done, clubs can then tailor a course of action to ensure that all relevant bodies are taking proper precautions. The precautions that have been taken so far act as more of a safety net rather than a long-term solution. On the one hand, it is a good thing that sporting companies and associations have not rushed in any drastic decisions. On the other, time is running out and they will need to make wise decisions soon so as not to leave their fans in the dark.

We hope to know more as soon as the 30th April comes around.

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For more information on coronavirus and the impact it has on the Premier League, check out the following links:

- <https://www.skysports.com/football/news/11095/11957178/coronavirus-premier-league-and-efl-postponed-until-april-3>
- <https://news.sky.com/story/coronavirus-outbreak-how-could-the-premier-league-resume-11957744>
- <https://www.bbc.co.uk/sport/football/51876162>
- <https://www.givemesport.com/1554733-sky-sports-and-bt-sport-are-not-offering-customers-refunds-despite-football-suspension>
- <https://www.theguardian.com/football/2020/mar/13/bt-sport-not-offering-refunds-to-customers-despite-football-suspension>
- <https://www.premierleague.com/news/970151>
- <http://www.globalsportssalaries.com/>
- <https://www.premierleague.com/publications>
- <https://www.theguardian.com/football/2020/mar/16/premier-league-club-by-club-how-are-they-dealing-with-coronavirus>
- <https://www.insurancebusinessmag.com/uk/news/breaking-news/policy-wording-critical-as-businesses-eye-coronavirus-claims-215025.aspx>
- <https://www.sportspromedia.com/analysis/premier-league-2019-20-guide-club-sponsor-tv-rights-deals>
- <https://www.bbc.co.uk/news/uk-49288182>
- <https://www.linklaters.com/en/insights/blogs/sportinglinks/2020/march/english-premier-league-suspended-due-to-covid19-what-next-for-contractual-obligations#.XnOEd5cY9uo.linkedin>
- <https://www.lawinsport.com/topics/item/unilateral-extension-options-in-football-contracts-are-they-valid-and-enforceable>