

Adam Johnson - The Fallout

Rob Lewis and Tom Rudkin | April 2016

Following Adam Johnson's conviction for sexual activity with a child and his subsequent six year sentence (both of which are now the subject of an appeal), it has been well documented that his former employer, Sunderland Football Club, found themselves under intense media scrutiny resulting in the [resignation of their chief executive Margaret Byrne in March](#). Organisations are frequently judged both internally and externally by their response to disciplinary issues involving their employees and, with the benefit of hindsight, the court of public opinion has judged that Sunderland handled this badly. In this article we consider the options that were available to Sunderland in dealing with the accusations against Johnson, the factors they could have taken into account and consider how they might have handled this matter differently.

It is hardly surprising that Sunderland have been subjected to criticism following Johnson's conviction. The former England winger played 28 times for the club between his arrest on 2 March 2015 and the termination of his contract on 11 February 2016 after he pleaded guilty to one count of sexual activity with a minor and one count of grooming, prior to his conviction on a further count.

Johnson was initially suspended by the club immediately following his arrest but that suspension was lifted two weeks later. The scrutiny into Sunderland's decision making has concentrated on their decision to lift this suspension. The club explained in a statement on 2 March 2016 that this decision was taken "*after a meeting between the club and the Professional Footballers' Association, and after the club took independent legal advice*" and following a "*safeguarding assessment and liaising with relevant agencies*".

What did the club know?

Inevitably, questions have been asked as to why the club allowed Johnson to continue playing while facing these charges. Most damaging to the club's reputation is that they had been informed of Johnson's activities before he pleaded guilty last month. The club have acknowledged that in May 2015, Byrne was aware that Johnson had told the police that he had kissed the girl in question and exchanged messages with her. Perhaps even more detrimentally, Durham Police claimed that on the day of Johnson's arrest in March 2015 Sunderland were advised that he had admitted messaging and kissing the girl.

Plainly, and especially given the current intense media focus on sexual abuse involving children, this was a case which Sunderland needed to get absolutely right. However, by the club's own admission in a [statement published on 8 March 2016](#) announcing Ms Byrne's resignation, they did not do so. The club's statement described the decision not to suspend Johnson for a second time as "*wrong*" and that decisions were taken by Ms Byrne "*in error*".

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In a remarkably unqualified [mea culpa published on the same day](#), Ms Byrne did not explain what was said to her by Durham Police at the time of Johnson's arrest but acknowledged that she was aware from at least 4 May 2015 that Johnson had kissed his victim and communicated with her.

Whilst Sunderland and Ms Byrne have accepted that, based on what they knew, their decision to allow Johnson to play from at least May 2015 was the wrong one; they have denied an allegation that they knew Johnson was intending to change his plea just before the trial so that he could continue playing football in the interim period. They have also denied that there were any tactical discussions around Johnson entering an initial not guilty plea to enable the player to continue to play. Sunderland have been quite clear that if they had known Johnson intended to plead guilty, then his employment would have been terminated immediately. There is no reason to doubt any of this.

Why didn't they sack him straight away?

Assuming that Sunderland didn't know that Johnson was intending to plead guilty, what should they have done a year ago? First, let's start with what they probably got right. Although we do not know precisely what was said, the club was probably correct to decide not to carry out an internal investigation into the allegations against Johnson ahead of the criminal trial. In cases such as this, the police will usually request an employer not to undertake its own investigation until after the trial for fear of prejudicing the criminal proceedings.

Therefore, had Sunderland wanted to dismiss Johnson outright before the trial, it's likely that they would have had to do so without carrying out a thorough internal investigation. The dismissal may have left them open both to an unfair dismissal claim (although the compensation limit of £78,335 barely exceeds Johnson's weekly wage) and also to a more lucrative breach of contract claim.

It is therefore perhaps understandable that they did not terminate Johnson's employment until he pleaded guilty at the start of the trial and it became clear that he would be convicted of a criminal offence.

The suspension dilemma

However, the more difficult question is why the club decided to suspend Johnson and then lifted that suspension after he was granted bail. Curiously, the club's statement at the time said that "*the player is entitled to re-commence his duties with the club while the legal process continues*". From a legal perspective (and not having seen Johnson's contract), it is hard to see how Johnson was "*entitled*" to re-commence his duties. It was probably open to Sunderland to inform Johnson that he would remain suspended until the outcome of the trial, after which the club would make a decision about his future. It is noticeable that in the most recent statements released by Sunderland and Byrne, neither has mentioned Johnson's apparent entitlement to return to work.

When the club became aware that Johnson had, at the very least, kissed and texted his victim (whether that was in March or May 2015), careful consideration should have been given as to whether Johnson would be allowed to continue performing his duties

In doing so, they should have balanced a variety of factors before making a decision.

On the one hand, unless Sunderland had a contractual right to suspend without pay, they would have had to continue paying Johnson his full wages all the way through to the trial (believed to be approximately £60,000 per week). From a purely commercial perspective, you can therefore understand the reluctance to lose one of your best players and still pay them approximately £3 million in wages (although we should be clear that neither Sunderland nor Ms Byrne have stated that such commercial considerations were in their thinking when they allowed Johnson to return and continue playing for the club). They also did not know at the time that Johnson would plead guilty or be found guilty on the remaining count and were perhaps wary that leaving him suspended for months would have inevitably led many in the public to conclude that the club had assumed his guilt. On the other hand, from a strictly legal perspective, suspension is not itself a disciplinary sanction and should not be taken to assume that a judgment has been formed.

Balanced against this was the significant reputational risk to the club if the player was subsequently found guilty as well as the moral difficulty of allowing a player to represent the club on the pitch when one of the club's fans had accused him of sexual offences.

We will perhaps never know exactly what was considered by the club and, in particular, Ms Byrne, although her statement provides interesting reading in this regard. The only factor she mentions in explaining her decision not to suspend Johnson was that such a decision "*may [have been] misinterpreted as a judgment on the club's part as to his [Johnson's] guilt*". She does not mention considering the impact that Johnson's continued presence in the team might have on his (at the time alleged) victim nor does she mention the potential reputational consequences for the club if Johnson was subsequently found guilty.

Comment

Sunderland found themselves in an extremely difficult position with the Adam Johnson case. It is hard to put forward a defence to their actions when they themselves have thrown their hands up and declared that they got it wrong. While the Johnson case has played out in the glare of the media, the situation that Sunderland faced – dealing with an employee who has been accused of a serious criminal offence – is one that can come up for any employer and the correct responses are always easier to see with hindsight. If anything, the Johnson case has highlighted the importance of holistic decision making, taking account of both the rights of the employee but also their victim and the reputation of the employer.

A final consideration: in the fast-flowing world of professional football where allegiances switch quickly and condemnation comes and goes, it is hard to escape the reality that Sunderland's failings will soon be forgotten. The long-term reputational damage that might have paralysed other organisations in these circumstances is unlikely to be a factor this time next year, whichever division the club is playing in.

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