

## **IS TAPPING UP PLAYERS CONTRACTED TO OTHER CLUBS ACTUALLY AN ILLEGAL PRACTICE?**

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**Abstract.** This is one of the most touched up on topics in football, and it often involves clubs, players, coaches, and even football agents. Tapping up occurs when a football club attempts to persuade a player who is currently under contract with his current club to switch to them by offering him improved sporting and monetary incentives to do so. When looking at it in a larger sense, approaches in the tapping up process are made by player's representatives pushing for a transfer to another club, coaches or other club players openly proclaiming their adoration for a specific player when speaking to the media. This article aims to address the challenges that clubs and players face while dealing with contractual relations at a club level, same time issues that are directly connected with keeping contractual stability in their businesses in football sector.

**Key words:** FIFA, Disciplinary Commission, Italian football federation, tapping up, FIFA RSTP, English Premier League, Premier League Handbook, player poaching.

Football players are assets of the clubs, while they are under employment contract they generate income to the clubs, whilst having a valid contract with their clubs other clubs are not allowed to directly approach them. This is what FIFA regulations and the rules of various national football bodies state on the subject. The club that owns a player's registration is considered the player's legal owner under current FIFA regulations.

In England, all players who play for clubs in the Football Association Premier League will be registered with that specific club and, while they are still under contract with that club, will only be eligible to transfer to another club subject to the payment of the transfer fee.

Clubs responsibility to refrain themselves from illegal approaches

English Premier League Handbook 2020/21 season establishes when players can be approached and when it's not allowed. Premier League Handbook Section "T" specifies that clubs may contact players at any moment in order to discuss contracts with them, but they must satisfy certain conditions, for example:

- If he is an Out of Contract Player;
- or in the case of a Contract Player, with the prior written consent of the Club (or club) to which he is contracted.

Thus, clubs may speak to players only with the written approval of the clubs that hold the players' registration. Clubs that are found to be conducting meetings with players or communicating with players from other clubs in conditions other than those specified in the Premier League Handbook may face serious ramifications.

Professor Simon Gardiner of Leeds Beckett University believes that if a player who is out of contract has been offered a new contract by his club and has not declined it, the new club must acquire written approval from his club before speaking to him about a potential transfer. Simon Gardiner also mentioned in another article that an approach to that player can only be made after the season has concluded, which is after the third Saturday in May, when a football season is over and only in the event that the player has not received a new offer from his present club, or has refused one such offer.

The involvement of a player's prospective new club is critical to the regulatory structure as a whole. This is demonstrated by the player's joint and several obligation with their new club for any compensation owed to their old club, as well as the system of sports sanctions applicable to any club deemed to have influenced a player to breach their previous contract within the protected time.

When a new club attempts to communicate with a player's current club, the player's bargaining power increases during the negotiation process with his current club. In the event that a new club comes knocking at the door, a player and his agent will be confident in their ability to confidently put their new terms on the table while discussing a new contract offer with the club. However, the club must be satisfied with the player's performance before deciding whether to renew the player's contract or wait for possible suitors to arrive who may be interested in his services.

Article 18 para 3 of the FIFA RSTP specifies when a player is available to sign a new contract with another club. When a player's contract with his previous club expires, he is free to sign a contract with another club. A player under contract, on the other hand, is only allowed to sign with another club if his existing current contract is set to expire within the next six months. In these types of situations, a club that has a player's registration needs respect and necessary protection. It is critical to minimize the disruption that transfer talks may bring since it may negatively influence players' on-field performances while also posing a potential risk to the game's pure essence.

### Players` responsibility

The Premier League states that players must adhere to strict rules outlined in Subject to Rule T.7 of the Premier League Handbook:

“a Contract Player, either by himself or by any Person on his behalf, shall not either directly or indirectly make any such approach as is referred to in Rule T.5 without having obtained the prior written consent of his Club.” In both circumstances, if new clubs or players under contract with their clubs wish to conclude a transfer deal, they must first acquire the approval of the clubs that own the players.

Can it truly be said that it's impossible to avoid players being poached by other teams?

International experience with player transfers illustrates that they are inevitable, but may be avoided if needed.

### Tapping up football players

Externally, it seems like the process of a player signing with a club is quite uncomplicated. However, this is often not the case. However, in reality, transfers include a great deal of meetings, negotiations, delays, interruptions and behind-the-scenes activities, which is a standard practice in the footballing industry.

This is one of the most touched up on topics in football, and it often involves clubs, players, coaches, and even football agents. What is tapping up? Tapping up occurs when a football club attempts to persuade a player who is currently under contract with his current club to switch to them by offering him improved sporting and monetary incentives to do so. When looking at it in a larger sense, approaches in the tapping up process are made by player's representatives pushing for a transfer to another club, coaches or other club players openly proclaiming their adoration for a specific player when speaking to the media. In 2005 English Premier League witnessed one of the benchmark cases in the football transfer world, when then the head coach of Chelsea Jose Mourinho and Chelsea chief executive Peter Kenyon met with Arsenal left back Ashley Cole at the Royal Park Hotel at Lancaster Gate, London. Ashley Cole was found to have violated a Premier League rule known as K5 at the time. This rule was intended to prevent Ashley Cole from approaching clubs with the intent of negotiating a transfer without first obtaining the consent of Arsenal Football Club, which was never granted. Chelsea were told to have broken rule K3 that prohibited them from approaching Cole while he was still under contract. He still had two years left to run his contract. Furthermore, Mr Mourinho was found guilty of violating regulation Q, which regulated managers' conduct in football-related affairs back in 2005.

On March 23, all individuals participated in the tapping up were charged, and on June 2, the governing body – Premier League imposed the appropriate penalties. Cole was fined 100,000 £, which was lowered to 75,000 £ on appeal, while Mourinho's first penalty of 200,000 £ was reduced to the same amount. Chelsea were fined 300,000 £ and given a suspended three-point deduction for the season running, while Barnett, Cole's agent was fined 100,000 £ and had his licence revoked for 18 months – nine of which were suspended. Given the severity of the violations committed by those involved in the Ashley Cole tapping up saga, it is reasonable to believe that those amounts reflected hefty fines levied on them.

Aside from on-field performance, football players may be observed performing behind the scenes or going public via media interviews in order to lure players to their respective clubs. Players and coaches are not scared off by the possibility of being fined for tapping up because of the large salaries they receive from their clubs.

In 2011, former Arsenal manager Arsene Wenger reacted angrily to Xavi's "disrespectful" comments about Cesc Fabregas and blamed him for an attempt to tap up Fabregas. At the time, Barcelona midfielder Xavi openly discussed the possibility of Fabregas joining his boyhood club, the Barcelona. Xavi was cited as stating on the Barcelona club's official website:

"I spoke to Cesc in Ibiza and he said he was suffering because he wanted to come. It's more like, he did everything he could to come and wants to leave Arsenal - although he made it clear that now everything depends on the selling club." It further added fuel to the fire when Spain national stars Gerard Pique and Carles Puyol forced Fabregas into wearing the Barcelona shirt during the country's post World Cup 2010 winning celebrations in Madrid.

It may seem that approaching players by other teams, managers, and players is a common occurrence, but it has a detrimental impact on the competitive balance of the clubs throughout the course of any tournament. As clubs that put a lot effort using their resources to nurture young talent in their youth systems. Moreover, losing them to rival clubs or even foreign clubs would drastically weaken them, and clubs often want to prevent their players from joining their direct competitors.

Stoke City football club chairman Peter Coates believes that poaching of a player is part of the game, which is unavoidable occurrence in football. However, if these types of situations are not reported, they might lead to contractual instability between players and their clubs.

One of the most prevalent forms of tapping up is agents attempting to reach new clients through social media, often via direct messaging to players. When they feel the lack of possibilities to speak to players directly face to face, they will opt to contact them via social media accounts. Getting in touch with an individual player via social media is much easier than it used to be, and those who do so believe that they will not face any consequences from the relevant football association because they are confident the players will keep their private chats on social media messengers confidential. Concerns are growing that certain football agencies are using their well-known, established clients to reach out to new prospects at their current clubs.

There is also a term known as “poaching”, which is characteristically similar to the term “tapping up,” but it differs in that it has a slight distinction when compared to tapping up. Serhat Yilmaz asserts that there are two types of inducement that exist in football which involves football agents. One is tapping up, while the other is poaching. Inducement intended to breach a football player's employment contract without the formal approval of a club holding his registration is referred to as “tapping up,” whereas inducement to breach an agency contract a player entered into with his agent is known as “poaching”.

In a latest pending case, which is being investigated by the Italian Football Federation - FIGC, Dejan Kulusevski's former agent claimed that Leonardo Bonucci persuaded his Juventus teammate Dejan Kulusevski to forsake him in favor of another agent. Stefano Sem was quoted as saying during an interview with the RAI 3 program Report: “Kulusevski told me that’s what happened, it was also confirmed by his family. This is Alessandro Lucci’s modus operandi.” Bonucci’s agent Alessandro Lucci used his client Bonucci to poach Kulusevski and he decided to sign a representation contract with Lucci’s agency. The FIGC had previously conducted an inquiry on the allegations, which are presently being evaluated by the Disciplinary Commission.

Football agents may sue for loss of opportunity damages if they can demonstrate that their client was poached by another agency. As a matter of contract law, it is well established that a claimant who suffers a loss of opportunity because of the breach of contract of a defendant will be able to recover damages.

According to the recent decision of the Court of Appeal of Manchester, in *McGill v. The Sports & Entertainment Media Group & 8 Others* [2016] ECWA Civ 1063, a football agent may be able to retrieve damages for the loss of a chance from a competitor agent and football club who has induced a player to breach an oral agency contract. Gavin McCann, a former Aston Villa F.C. player, signed a verbal agreement with football agent Anthony McGill to represent him in discussions

with Aston Villa for a better deal or to reach an agreement with Bolton Wanderers F.C. before the end of August 2007. Mr. McGill alleged that both the Bolton Wanderers and the S.E.M. agency induced his client to breach their contract with him and complete McCann's transfer on the same terms as he negotiated with the club, leaving Mr. McGill with empty handed and failing to collect the agent commission he was due under the terms he agreed orally with Mr. McCann. The High Court held that Bolton and S.E.M. persuaded McCann to breach his contract with McGill, but McGill was unable to collect the commission sought because he had not established on the balance of probability that McCann would have entered into a formal agreement with him. However, the Court of Appeal found in favour of Mr McGill, determining that if the transfer had gone through, player Mr McCann would have signed a formal agency contract with Mr McGill.

Are there any legal consequences for the participants of those so called “tapping up” and “poaching”? FIFA and other national football associations have dealt with these issues for years and decided to enact a new provision that imposes a sports sanction for any club or its members, coaches, players, or even agents involved in this tapping up or poaching activity. Paragraph 5 of Article 17 FIFA RSTP includes “that any person subject to the FIFA Statutes and regulations who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned”. Whoever conducts in such a manner as to cause a breach of contract indicates that clubs interested in a player's services will do all possible to convince him to terminate his contract and join them during the next transfer window.

It is widely recognised that football players are assets of the clubs, while they are under employment contract they generate income to the clubs, whilst having a valid contract with their clubs other clubs are not allowed to directly approach them. The club that owns a player's registration is considered the player's legal owner under current FIFA regulations. Thus, clubs may speak to players only with the written approval of the clubs that hold the players' registration. Clubs that are found to be holding meetings with players of other clubs or communicating with players contracted to other clubs under conditions other than those specified in FIFA and national association regulations may face heavy consequences.

According to paragraph 4 of Article 17 of FIFA RSTP sporting sanctions as well as the financial sanctions can be imposed on a club found to be in breach of contract or found to be inducing a breach of contract during the protected period. Unless proven otherwise, it will be believed that any club that signs a

professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be prohibited from signing any new players, either nationally or internationally, for two entire and consecutive registration windows.

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