

FIFA's Suárez sanction: analysis

On 26 June 2014, FIFA's Disciplinary Committee banned Luis Suárez from (among other things) participating in *'any kind of football activity'* for a four month period, after he bit another player during the 2014 FIFA World Cup. The sanction attracted attention not just because of its severity, but also because of its uniqueness, providing a very rare example of a suspension for an on-field offence in football extending beyond simply the competition in which the offence was committed, raising questions as to when it is appropriate to impose such a sanction. Jamie Herbert and Edwina Haddon, of Bird & Bird LLP, examine the case.

Faced with an extraordinary situation, the FIFA Disciplinary Committee took extraordinary action, but in doing so, it inadvertently highlighted the trouble with handing down bans that are imprecise as to their scope.

As Luis Suárez's bite on the shoulder of Italian defender, Giorgio Chiellini (his third such transgression in a rather colourful career), was replayed over and over again on television channels around the world, FIFA's media head, Delia Fischer, announced to the assembled press in Brazil on 26 June 2014 that the Disciplinary Committee had resolved to ban Suárez for nine World Cup matches and to fine him CHF100,000 (€82,900), but also to ban him *'from taking part in any kind of football-related activity (administrative, sports or other) for a period of four months.'* The immediate reaction of the assembled media was one of confusion and the line of questioning primarily focused on what exactly Suárez was prohibited from doing for four months. Was he banned from playing in friendly matches or matches outside FIFA-sanctioned competitions? Was he banned from training? Would he be prohibited from completing his predicted transfer to FC Barcelona and/or from completing the necessary medical for the transfer to go ahead?

Article 22

The cause of the confusion appeared to be two-fold. First, the provision relied upon by the Disciplinary Committee, Article 22 of the FIFA Disciplinary Code¹, is particularly vague, simply stating that *'[a] person may be banned from taking part in any football-related activity (administrative, sports or any other).'* This apparently gives a Disciplinary Committee, convened under the FIFA Disciplinary Code, a very wide discretion to determine the scope of the sanction imposed. However, the Disciplinary Committee in Suárez's case elected not to prescribe the limits of the ban itself (at least publicly), simply repeating the relevant provision in its announcement of the ban, leaving the media (and presumably Suárez himself) unclear as to what he was permitted to do and what he was not during his four month suspension.

1 www.fifa.com/mm/document/affederation/administration/50/02/75/discoinhalte.pdf

Even when Suárez and his national association launched an appeal against the sanction before the FIFA Appeal Committee, the opportunity to properly clarify the terms of the four month ban, at least in the eyes of the public, was passed up. FIFA issued a very short statement, simply noting that '*[t]he FIFA Appeal Committee has decided to reject the appeals lodged by both the Uruguayan player Luis Suárez and the Uruguayan FA.*' However, in the interim, Claudio Sulser, Chairman of the FIFA Disciplinary Committee, helpfully paved the way for the player's transfer to FC Barcelona, when he publicly commented that: '*[t]he player cannot have any activity related to football, but a medical examination for a transfer yes – the sanction is not linked to transfer rights.*'

Interestingly, there are a number of parallels between Suárez's case and the sanction imposed upon Harlequins Director of Rugby, Dean Richards, by an Appeal Committee convened under the disciplinary rules of European Rugby Cup Limited, for his involvement in the 'Bloodgate' scandal. Like Suárez, the conduct alleged against Richards was highly unusual, but undoubtedly very serious. And, like Suárez, the terms of the suspension imposed upon Richards by the Appeal Committee – a ban of three years from any involvement in ERC competitions, along with a request to other rugby union governing bodies that they '*give effect to this suspension in their tournaments*' - was arguably imprecise in its scope. In that case, the then Disciplinary Officer of Richards's home union, the Rugby Football Union, sought to take steps to establish with the International Rugby Board and others exactly what Richards was and was not permitted to do during his ban.

Universality

Perhaps the next cause of the confusion was the fact that sanctions for on-field offences in football (as opposed to doping infractions or acts of corruption) that stray beyond a simple ban from participating in the relevant competition in which the offence occurred, are rare in the extreme. There is provision within the FIFA Disciplinary Code (at Article 136(1)) for the extension of bans to be given worldwide effect, but only in specific, limited circumstances:

'If the infringement is serious, in particular but not limited to doping (cf. art. 63), unlawfully influencing match results (cf. art. 69), misconduct against match officials (cf. art. 49), forgery and falsification (cf. art. 61) or violation of the rules governing age limits (cf. art. 68 a), the associations, confederations and other organising sports bodies shall request FIFA to extend the sanctions they have imposed so as to have worldwide effect.'

The 'default' position in respect of on-field offences is that they will be competition- or jurisdiction-specific. For example, suspensions arising from English football competitions automatically apply to FA-sanctioned competitions only, and so do not apply to those falling under UEFA or FIFA jurisdiction. Similarly, sanctions imposed by FIFA or UEFA do not extend so far as to prohibit the player concerned from playing for his club in

domestic competition.

In this regard, football adopts a markedly different approach to rugby union, in which the principle of 'universality' - not just for doping and corruption, but also for on-field offences - is ingrained in the disciplinary system by the sport's international federation, the IRB, as IRB Regulation 17.1.1² states:

'All Matches are equal. A Player suspended from playing the Game shall be suspended from participating in any Match at any level during the period of his suspension.'

In contrast to football, if a rugby union player receives a red card for an on-field offence committed in an Aviva Premiership match and is consequently banned for four weeks, in those four weeks, he will not just be prohibited from playing in his club's domestic matches, but also any matches it plays in European competition during that period and any international matches too. In practice, the IRB achieves this aim of 'universality' by directing each national governing body, union and tournament organiser to:

- impose disciplinary rules under which all sanctions purport to extend worldwide; and
- recognise and enforce playing suspensions imposed by other national governing bodies, unions and tournament organisers.

Accordingly, given the departure from tradition by the FIFA Disciplinary Committee, it is perhaps not surprising that its decision was met with such confusion.

CAS

Of course, Suárez, his new club, FC Barcelona and his national FA took the matter to Court of Arbitration for Sport (CAS), appealing against the sanctions imposed on him by the FIFA Disciplinary Committee. The full reasoned decision of the CAS Panel is still yet to be published, but the short press release issued by the Panel on 14 August 2014 reveals not only that the Panel amended the *'4-month suspension ... [to] apply to official matches only and no longer to other football-related activities (such as training, promotional activities and administrative matters),'* but also that its decision to amend this aspect of the sanction was based on its view that *'the stadium ban and the ban from 'any football-related activity' were excessive given that such measures are not appropriate to sanction the offence committed by the player and would still have an impact on his activity after the end of the suspension.'*

2.

www.irb.com/mm/document/lawsregs/regulations/04/23/19/120531gfirbhandbook2012freg17eng.pdf

The apparent finding that the application of Article 22 of the FIFA Disciplinary Code was 'excessive' is especially interesting, particularly in a case as serious as this. It appears to confirm that Article 22 should only be invoked (and a ban from '*any kind of football-related activity*' should only be imposed) - in the case of on-field offences - in truly exceptional cases. That – and the attendant media confusion that followed Ms Fischer's announcement on 26 June 2014 – may mean that, no matter how bright the spotlight on a future act of indiscipline becomes, the FIFA Disciplinary Committee will be slow to rely on Article 22.