

IN THE MATTER OF A REGULATORY COMMISSION

Sir Wyn Williams (Chair)
Mr. Louis Weston
Mr. Stuart Ripley

B E T W E E N:-

THE FOOTBALL ASSOCIATION

-and-

KIERAN TRIPPIER

DECISION

1. By letter dated 1 May 2020 (the charge letter) Mr Kieran Trippier (KT) was informed by the Football Association (the FA) that he had been charged with eight (8) offences, contrary to FA Rule E8(1). Thereafter, we were duly constituted as a Regulatory Commission to determine whether all or any of the charges were proved and, if so, what sanction or sanctions should be imposed.
2. On or about 6 November 2020, following a personal hearing by remote means which took place on 14 to 16 October 2020, KT was notified that four charges had been proved. On 18 December 2020 a further hearing took place at which the parties made submissions about sanctions. On that same day the Commission announced the sanctions which it considered appropriate in respect of KT's offending – as to which see paragraph 16 below.
3. By letter dated 18 December 2021 (the decision letter) Mr Paddy McCormack, on behalf of the Commission, notified KT that :-

“Effective Monday, 21 December 2020, you are suspended from all football and football-related activity for ten (10) weeks. The suspension shall run up to and including Sunday, 28 February 2021.”

4. On the same date, Mr McCormack, acting on behalf of the FA, wrote to Mr Carlos Schneider, Head of FIFA Disciplinary Department, inviting FIFA to give world-wide effect to the suspension which we had imposed upon KT as set out above. This request was made on behalf of the FA pursuant to Article 66 of the FIFA Disciplinary Code 2019. On 23 December 2020 both the FA and KT were notified in writing that FIFA had determined that the sanction of suspension which we had imposed should be given world-wide effect from 21 December 2020 (the first FIFA decision).
5. Upon a date which is unknown to us, KT's current club and employers, Atletico Madrid, (AM) applied to FIFA to suspend this decision pending an appeal. On 2 January 2021, the FA was made aware that a single member of the FIFA Appeals Committee had "*provisionally suspended [the sanction] until the FIFA Appeal Committee has taken a decision in these proceedings*" (the interim measures or the second FIFA decision).
6. On 5 January 2021 Regulatory Legal, on behalf of the FA, wrote to the Chair on behalf of this Regulatory Commission inviting us to "*revise the dates*" set out in the decision letter "*so that Mr Trippier's 10-week suspension will take effect from the earlier of (i) Mr Trippier's return to the jurisdiction of the FA or (ii) the lifting of the interim measures granted by FIFA*". In its letter, the FA argued that the Commission had power so to act by virtue of regulation 55 of the FA Disciplinary Regulations.
7. On 6 January 2021, KT's solicitors responded in writing to the FA's application. They argued vigorously that we had no jurisdiction to "*revise*" the terms of the sanction we had imposed and that even if we had such power we should not exercise it as suggested by the FA. On 7 January 2021 we asked Mr McCormack to notify the parties that we had reached the provisional conclusion that we had no jurisdiction to accede to the FA's application but that if the FA wished to pursue its application we would convene an oral hearing by remote means. The FA indicated that it wished to pursue its application and a hearing was convened in accordance with directions which we issued.
8. On 11 January 2021 we heard the oral submissions of the parties in relation to the FA's application. In advance of the hearing both parties filed written submissions and KT filed a witness statement dated 10 January 2021. At the close of submissions we indicated that we would give our decision and the reasons in support in writing.

9. We should make it clear from the outset that, as far as we are aware, the proceedings before FIFA have been brought by AM acting alone; the proceedings have not been served upon the FA or KT and neither KT nor the FA is, currently, party to the proceedings. That said, by letter dated 7 January 2021 the FA invited FIFA to make the FA party to the proceedings before FIFA. As of 11 January 2021 FIFA had provided no response to that request and, so far as we are aware, there has still been no response.
10. We should also record that both the FA and KT notified us at the hearing on 11 January 2021 that they had not lodged an appeal against our substantive decisions relating to the charges; nor had they lodged any appeal against the sanctions we imposed upon KT. The time for lodging any appeal against our decisions has now expired. Accordingly, save for the resolution of the application now before us the proceedings brought by the FA against KT are at an end. We have no reason to doubt KT's statement at paragraph 3 of his most recent witness statement that all he wishes to do is to comply with the sanctions we imposed upon him and "move on".
11. As we have said (paragraph 6 above), the FA argue that we have power to "revise" the terms of the suspension we have imposed upon KT by virtue of Regulation 55 of the FA's Disciplinary Regulations. This regulation is one of four (54 to 57) within a section of the Regulations which is headed "**Compliance with Penalties and Orders**". They read as follows:-

"54 Unless the Regulatory Commission determines otherwise, a penalty or order shall come into effect immediately at the date of the notification of the decision.

55 A Regulatory Commission may issue such further order, requirement or instruction as it considers appropriate for the purpose of giving effect to its decision.

56 Where a Regulatory Commission is satisfied that a Participant Charged has failed to observe or comply with a penalty or order imposed by the Regulatory Commission, it shall have the power to order that the Participant Charged be suspended immediately from all or any football activity for such period and on such conditions as it considers appropriate.

57 In respect of any appeal made by a Participant Charged against a decision of a Regulatory Commission, the Regulatory Commission shall have the power, upon application and its absolute discretion, to stay the effect of, or compliance by the Participant Charged with, a penalty or order of a Regulatory Commission."

12. The section relating to compliance with orders is preceded by sections headed “*Penalties and Orders*” (regulations 40 to 49) and “*Costs Orders*” (regulations 50 to 53) which, as the headings suggest, contain detailed provisions relating to the nature of the sanctions which a Regulatory Commission may impose together with provisions governing orders for and appeals relating to costs.
13. It is also worth mentioning Regulations 60 and 61. Regulation 60 is a mandatory provision whereby a Regulatory Commission is bound to send to a “*Participant Charged*” a written statement of its decision which must also contain particulars of specified matters. Regulation 61 provides that the “*written decision*” “shall be the “*conclusive record of the Regulatory Commission’s decision*”.
14. We turn, in brief, to the principles of construction which should govern our approach to the interpretation of Regulation 55. They are, in our view, uncontroversial. First, the words of the rule are to be given their ordinary and natural meaning albeit that such a meaning is to be informed by what the words would mean to a reasonable person having all the relevant background information about the context in which the words are used. Second, the words of Regulation 55 must be read in the light of the Regulations as a whole; all the Regulations read together must be considered when the meaning to be attributed to an individual regulation is being considered.
15. In our view, the power conferred upon a Commission by Regulation 55 is a power to issue a *further order* the purpose of which is to give effect to a decision which has already been made by that Commission. It follows, therefore, that any subsequent order must be ancillary to the decision already made and, further, that the subsequent order can be issued only for the purpose of giving effect to that earlier decision. The first critical issue for us, therefore, in considering the FA’s application, is to determine the scope of the decision we undoubtedly made on 18 December 2020.
16. As we have said the decision to suspend KT was announced orally at the hearing on 18 December 2020. There is no doubt that the chair announced that KT would be suspended for a period of 10 weeks. What is not so clear is whether the specific commencement date for the suspension of 21 December 2020 was also announced. There is no doubt that a commencement date which was later than 18 December 2020 was considered and was

the subject of brief submissions and we have no doubt that we made clear that the commencement date would be later than 18 December.

17. The hearing on 18 December 2020 was not recorded and transcribed (in consequence of a direction made by the Chair). Accordingly, we do not have an accurate transcript of what was said when the Chair announced the sanctions which were to be imposed upon KT and what was said about the date when the suspension imposed upon him was to commence. Further, we do not have an accurate transcript of the reasons provided by the Chair, if any, as to why the suspension should not take effect immediately i.e. as from the afternoon of 18 December 2020. Ms Gallafent QC and Ms Rooney for the FA submit that the date 21 December 2020 was chosen quite deliberately on the premise that by that date FIFA would have directed that the suspension should have world-wide effect. Ms Mulcahy QC and Ms Potts do not agree that this was the primary reason why the suspension was to commence later than 18 December 2020. We were told by Ms Mulcahy QC that KT had already been included in a match day squad by AM for a game which was due to take place the following day and she submitted to us that it would be unfair both to KT and AM to disrupt those arrangements at such short notice.
18. Whatever may have been said we are satisfied that our primary reason for choosing the date 21 December 2020 as the starting date for the suspension was our belief that KT was due to be involved in a match on Saturday 19 December and that it would be unfair both to KT and AM to prevent that happening at such short notice. That said, we acknowledge that we knew that Mr. McCormack intended to make a request to FIFA that the suspension should be given effect world-wide during the course of the afternoon of 18 December and that we presumed that FIFA would deal with the request expeditiously. Further, we accept that our expectation was that FIFA would grant the request.
19. All that said, the decision letter issued during the afternoon of 18 December 2020 records, unequivocally, that KT's suspension was to begin on 21 December 2020. The decision letter is a conclusive record of our decision as to the sanctions we imposed upon KT – see Regulation 61. In our view the commencement date for the suspension is just as much a part of our decision as is the period of 10 weeks suspension which we imposed upon KT. We do not consider that the word *decision* in Regulation 55 extends to the reasons why a particular sanction was chosen or phrased or a commencement date for that

sanction was chosen. Rather the word *decision* is apt to describe an outcome i.e. suspension from a commencement date for a specified period. In our view such an interpretation of the word is completely consistent with the provisions as to written decisions which are to be found in Rules 60 and 61.

20. We pause at this point in the analysis to observe that the decision letter is silent as to the geographical and/or jurisdictional limit of the suspension imposed upon KT. However, it is common ground that the decision letter must be read as suspending KT from *all football and football related activities* which are carried on within the jurisdictional limits of the FA. In simple (and not necessarily exhaustive) terms the effect of our decision is to suspend KT from football and football-related activity in England and/or for or on behalf of a club which is subject to the jurisdiction of the FA wherever that activity takes place and/or for or on behalf of the England national team wherever that activity takes place. Our decision does not suspend KT from *football and football-related activity* for a club outside the jurisdiction of the FA; nor could it do so. That is why, of course, the FA sought a direction from FIFA that the suspension which we imposed upon KT should be given world-wide effect notwithstanding that as at 18 December 2020 KT was playing his football in Spain for a club which was not subject to the jurisdiction of the FA.
21. In the light of the foregoing we must ask ourselves the following question. Is the order which the FA seeks an order the purpose of which is to give effect to the order which we made as recorded in the decision letter? In our view, the answer to that question is no. Our decision as recorded is that KT was to be suspended for a period of 10 weeks from 21 December 2020 from participating in football and football-related activity as described in paragraph 20 above. No further order is required to give effect to that decision. The order which the FA seeks would not facilitate the carrying into effect of our decision.
22. As we have said, we acknowledge that at the time we made our decision on 18 December 2020 it was our expectation that FIFA would accede to a request by the FA that the suspension which we imposed upon KT should be given world-wide effect. We also presumed that a decision from FIFA to that effect would be issued expeditiously. In fact that is what happened and FIFA extended the effect of our decision. What we did not expect (or foresee) was that, thereafter, AM would make an application to FIFA for

interim measures without any reference to KT or the FA and that such an application would succeed. In our view, however, that subsequent intervening event does not entitle us to revise the terms of our decision. As we have sought to explain, our decision is currently having its intended effect without the need for a further order albeit that our expectation that FIFA would extend its effect in accordance with its Rules has at the moment been thwarted.

23. Ms Gallafent QC argues strenuously that unless we revise the commencement date of the suspension as suggested by the FA there is a real possibility that KT will serve a suspension which is far less in terms of its length than we considered to be just and proportionate given his misconduct. We acknowledge that this possibility exists in the prevailing circumstances. That, of course, is an unwelcome outcome. However, as unwelcome as that eventuality may be, that is not a proper basis for an interpretation of Regulation 55 which is not justified by its wording. Ms Gallafent QC did not go so far as to suggest that it was. However, she did press us to the view that the words of Regulation 55 were sufficiently wide so as to permit the revision she suggests. All we can say is that as a matter of interpretation we disagree. We have reached the conclusion that despite the written and oral arguments deployed on behalf of the FA by Ms Gallafent QC and Ms Rooney we should uphold our provisional view that we have no power to make the revisions to our decision of 18 December 2020 which the FA suggest is open to us.
24. We turn briefly to consider whether we would have acceded to the FA's application had we been persuaded that we had power, pursuant to Regulation 55, to revise our decision of 18 December 2020.
25. We readily acknowledge the possibility that KT may not be prevented from playing football or undertaking football-related period for a complete period of 10 weeks in the absence of a revision of our decision. That may lead to injustice in that KT's suspension may turn out, in practice, not to be commensurate with his offending. However, it is also the case that a revision of our decision which has the effect of delaying the date when the suspension commences has the very real potential for causing injustice. KT's most recent witness statement provides evidence which shows that the suspension we imposed is having a significant punitive effect upon KT notwithstanding that he is not being prevented from playing for AM while the interim measures subsist. There is no reason to

suppose that he is wrong when he asserts that the suspension is impeding his prospects of being transferred to an English club during the current transfer window very substantially. We are alive to the possibility that this state of affairs may change towards the end date of the window when there will be a much shorter period of the suspension left to serve but, nonetheless, we accept that the suspension is probably having a deleterious effect upon KT's transfer prospects. That is damaging to him and his family in the way that he describes.

26. More significantly, the effect of the revisions which the FA seek is to postpone the commencement of KT's suspension to an unknown date which may be no more than some days away but which may, alternatively, be significantly into the future. This has the potential to cause significant stress and anxiety to KT. He was entitled to think until 2 January 2021 that these long drawn-out proceedings had been finalised and that as from the end of February 2021 he could begin a new chapter. Further, given the uncertainty over any revised commencement date for the suspension if we accede to the FA's application, we have no means of knowing what the true impact of the suspension will be not just as to its length (most of the 10 week period remains to be served) but also in relation to all the other potential consequences which might reasonably flow from it. That is not a satisfactory state of affairs. It is important to stress that KT is entirely blameless in relation to the position in which he now finds himself. Accordingly, we have reached the conclusion that even if it was open to us to revise the commencement date of the suspension, as suggested by the FA, in the exercise of our discretion we should decline to do so.
27. In our view, there is much to be said for the submission made on behalf of KT that the most appropriate way forward is for the proceedings which have been initiated before FIFA to be resolved as quickly as possible. Of course, it is not for us to comment in any detail upon the merits of those proceedings, However, we cannot help but observe that it is open to the FA to engage with those proceedings vigorously (as it has sought to do in its letter of 7 January 2021) and with increasing vigour and persistence should FIFA be slow to respond to that letter. There is a very real benefit to football world-wide in resolving as quickly possible whether it is open to clubs to intervene as AM has done in this case in the absence of its player's consent and, indeed, against his wishes when such

intervention might be viewed as frustrating the outcome of national disciplinary processes and the ability of FIFA to give effect to those outcomes world-wide.

28. In all the circumstances we refuse the application made to us by the FA in its letter of 5 January 2021.
29. We asked for submissions on costs at the close of the hearing on 11 January 2021. The FA accept that if the decision on the application is that which we have reached then the FA should bear the costs of the Commission on this application. We so direct.

Wyn Williams

Louis Weston

Stuart Ripley

13 January 2021