

Decision

of the

Deputy Chairman of the FIFA Disciplinary Committee

Mr Alejandro Piera [PAR]

on 7 November 2019,

to discuss the case of:

Southend Futsal Club, England

(Decision 171212 PST)

regarding:

failure to comply with

art. 64 FDC of the FDC (2017 ed.) / art. 15 of the FDC (2019 ed.)

I. inferred from the file¹

1. On 23 March 2017, the Dispute Resolution Chamber decided that the club Baku United FC (London Baku United Futsal Club) (hereinafter also referred to as "*the original Debtor*") had to pay to the player Tiago Carpes de Bail (hereinafter also referred to as "*the Creditor*"), the amount of EUR 21,667 within 30 days as from the date of notification of the decision, plus 5% interest *p.a.* as from 25 April 2016 until the date of effective payment.
2. The findings of the decision of the Dispute Resolution Chamber (hereinafter, "*the DRC decision*") were duly communicated to the parties on 7 April 2017. The grounds of the aforementioned decision were not requested.
3. As the aforementioned amount was not paid to the Creditor, the Secretariat to the FIFA Disciplinary Committee (hereinafter, "*the Secretariat*") opened disciplinary proceedings against the original Debtor on 12 October 2017.
4. On 7 November 2017, a member of the Disciplinary Committee sanctioned the original Debtor for failing to comply with the DRC decision and the terms of that decision were notified to the parties on 9 November 2017.
5. On 11 January 2018, the Creditor informed the Secretariat that the original Debtor changed its name/brand to "London City FC". In particular, the Creditor pointed out that it was under this new name that the original Debtor was competing in the England FA National Super League.
6. On 31 January 2018, the Secretariat contacted The Football Association to obtain clarification on the status of the original Debtor, and in particular on the relationship between the original Debtor and the club London City FC.
7. On 20 February and 14 March 2018, the Secretariat sent reminders to The Football Association with respect to the abovementioned request dated 31 January 2018.
8. On 27 March 2018, The Football Association provided the Secretariat with the following information:
 - It has no record of the original Debtor being affiliated to The Football Association;
 - The club London City Futsal is affiliated with one of its County Football Association's, namely Essex FA;
 - The Football Association is not aware of any relationship between the original Debtor and the club London City Futsal.

¹ Below is a summary of the main relevant facts and allegations based on the documents pertaining to the file. Although the Deputy Chairman of the Disciplinary Committee has considered all the facts, allegations, legal arguments and evidence submitted by the parties, he refers in his decision only to submissions and evidence he considers necessary to explain his reasoning.

9. On 23 May, 7 June and 4 July 2018, the Secretariat informed The Football Association that based on the information available on the internet, the original Debtor reportedly changed its name to London City Futsal Club in 2017. As a result, The Football Association was requested to confirm whether the club London City Futsal Club was previously named Baku United FC (London Baku United Futsal Club) and whether it has taken over the rights and obligation of the original Debtor.
10. On 6 July 2018, The Football Association informed that it had no record of the club London City Futsal Club previously being named Baku United (or London Baku Futsal Club). It further emphasized that it had enquired with its regional FA's regarding the status of the club Baku United FC (London Baku United Futsal Club), but that the relevant regional FA was unable to provide any further information at this stage.
11. On 17 October 2018, the Secretariat acknowledged receipt of the abovementioned correspondence and requested The Football Association:
 - To confirm whether the club London City Futsal Club had taken over the rights and obligations of the original Debtor;
 - To indicate whether the club London City Futsal Club continued the activity formerly developed by the original Debtor with the same image, brand, players, stadium, hymn, managing board and representative colours.
12. On 27 October 2018, The Football Association, in connection with the request for information concerning the original Debtor, recommended contacting the club Southend Futsal Club and provided the Secretariat with the contact details of that club.
13. On 13 November 2018, the Secretariat informed The Football Association that based on the information available on the internet, the original Debtor had reportedly changed its name to Southend Futsal Club for the 2018/2019 season, after having already changed its name to London City Futsal Club in 2017. As a result, The Football Association was requested to provide the following information regarding the status and the creation of the club Southend Futsal Club:
 - To clarify the club Southend Futsal Club's relation with the original Debtor;
 - To inform whether the club Southend Futsal Club was the legal and sporting successor of the original Debtor;
 - To specify whether the club Southend Futsal Club has taken over all the rights and obligations of the original Debtor;
 - To indicate whether the club Southend Futsal Club continued the activity formerly developed by the original Debtor with the same image, brand, players, stadium, hymn, managing board and representative colours.
14. On 12 December 2018 and 7 January 2019, the Secretariat sent reminders to the Football Association regarding the aforementioned request for information sent on 13 November 2018.

15. On 29 March 2019, the Creditor informed the Secretariat that the club London City FC became the club Southend Futsal Club, which competes in the English FA Futsal Super League as the club London City FC used to do before changing its name. In addition, the Creditor claimed that the original Debtor became first London City FC, which subsequently changed its name to Southend Futsal Club.
16. In support of its claim, the Creditor provided the following evidence relating to the succession of the club London City FC to the club Southend Futsal Club:
 - Various Facebook posts of the club London City FC stating that it will become Southend Futsal Club in the following season and introducing the new page as well as the new sportswear sponsor;
 - One Twitter post of “the Futsal shop” dated 11 March 2019 informing about the English FA Futsal Super League results and naming the club Southend Futsal Club;
 - One retweet post of “ProFutsal London” on the club Southend Futsal Club account informing about the friendly match between the club ProFutsal London first team and Southend Futsal Club.
17. Finally, the Creditor submitted two Facebook posts from the club London City FC, which, according to the Creditor, prove that the original Debtor became the club London City FC. In particular, on the first one dated 12 May 2018, the original Debtor's shield/logo is displayed and on the second dated 21 May 2018, the new goals for 2020 appear and mention the objective of competing for a title and a place in Europe, as the club London City FC used to do under the name Baku United FC.
18. On 24 April 2019, The Football Association provided the Secretariat with the following clarifications:
 - It confirmed that the club Southend Futsal Club was affiliated to the Football Association via one of its regional association (Essex FA) as and from 2002;
 - It has not record of the club Southend Futsal Club being affiliated under another name as and from 2002 – 2019.
19. On 13 September 2019, the Secretariat initiated disciplinary proceedings against the club London City FC for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. In addition, the club London City FC was invited to provide its position to the Secretariat.
20. On 10 October 2019, the Secretariat informed the parties that the present matter would be submitted to a member of the Disciplinary Committee on 14 October 2019 for consideration and formal decision.
21. On 18 October 2019, the parties were informed that the Deputy Chairman of the Disciplinary Committee decided on 14 October 2019 that the scope of the present disciplinary proceedings had to be extended. As a result, the present proceedings were

extended to the club Southend Futsal Club for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. In addition, the club Southend Futsal Club was informed that the case would be submitted to a member of the Disciplinary Committee on 4 November 2019 and was invited to submit its position with respect to the Creditor's allegations.

22. Following the opening of disciplinary proceedings, the club Southend Futsal Club did not provide any position to the Secretariat.

II. and considered

1. In the case at hand, in view of the arguments raised by the parties, the Deputy Chairman of the Disciplinary Committee (hereinafter, "*the Deputy Chairman*") decides first to assess the law applicable to the matter at hand (A), but also as to whether he is competent to decide on the present matter (B), and should it be the case, as to whether the club Southend Futsal Club (hereinafter, "*the new Club*") could be held liable for a potential failure to respect the DRC decision dated 23 March 2017 (C).

A) Applicable law

2. First of all, the Deputy Chairman would like to analyze which version of the FIFA Disciplinary Code (FDC) applies.
3. In this sense, the Deputy Chairman underlines that the 2019 edition of the FDC (hereinafter, "*the 2019 FDC*") entered into force on 15 July 2019 (art. 72 par. 1 of the 2019 FDC) and applies to all disciplinary offenses committed following said date (art. 4 par. 1 of the 2019 FDC).
4. With regard to the matter at hand, the Deputy Chairman highlights that the disciplinary offense, *i.e.* the potential failure to comply with the relevant decision of the Dispute Resolution Chamber, was committed before the 2019 FDC entered into force. As a result, he deems that the merits of the present case fall under the 2017 edition of the FDC (hereinafter, "*the 2017 FDC*").
5. Notwithstanding the above, the Deputy Chairman holds that the procedural aspects of the present matter should be governed by the 2019 FDC.

B) Jurisdiction of the FIFA Disciplinary Committee to decide on the present matter

6. In view of the particular circumstances of the case, the Deputy Chairman will now analyse as to whether he is competent to assess if the new Club is the successor of the original Debtor.
7. For the sake of good order, it is worth emphasising that, in line with art. 54 par. 1 lit. h) of the 2019 FDC, cases involving matters under art. 15 of the 2019 FDC (former

art. 64 of the 2017 FDC) may be decided by one member of the Disciplinary Committee alone, *i.e.* the Deputy Chairman in the case at hand.

8. In this context, the Deputy Chairman first emphasises that based on the information provided by The Football Association on 27 March 2018, it is uncontested that the original Debtor subject of the DRC decision is no longer affiliated to The Football Association.
9. In these circumstances, the Deputy Chairman wishes to recall that, according to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also referred to as "*the Committee*") may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.
10. Clubs are affiliated to regional and/or national football associations and these national football associations are members of FIFA. Consequently, football clubs are considered as "indirect members" of FIFA and therefore, are subject to and bound by the FIFA Statutes and all other FIFA rules and regulations as well as by all relevant decisions passed by the FIFA bodies.
11. The aforementioned principle is embedded in art. 14 par. 1 lit. d) of the FIFA Statutes which requires the member associations "*to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies*" as well as in art. 60 par. 2 of the FIFA Statutes that states that the member associations, amongst others, "*shall take every precaution necessary to ensure their own members, players and officials comply with these decisions*". The foregoing is only possible to the extent that the so-called "members" are still affiliated to the member associations of FIFA.
12. Since The Football Association has informed that the original Debtor was no longer one of its affiliated club, the original Debtor has lost its indirect membership to FIFA and the Disciplinary Committee can therefore no longer impose sanctions on it. However, the Deputy Chairman notes that the Creditor subsequently requested the enforcement of the DRC decision, first against the club London City FC and ultimately against the club Southend Futsal Club, which, in his view, should be considered as the successor and/or the same entity as the disaffiliated club, Baku United FC (London Baku United Futsal Club).
13. In this context, and in line with the jurisprudence of the Court of Arbitration for Sport², the Deputy Chairman considers that he is not prevented from reviewing and/or making a legal assessment and deciding if the new Club, the club Southend Futsal Club, is the same as – and/or the successor of – the Original Debtor especially considering that the former is still duly affiliated to the Football Association, and as such, under the jurisdiction of the Committee.
14. As a result, the Deputy Chairman deems that he is competent to assess the present matter and therefore to pass a formal decision of a substantive nature on the Creditor's

² CAS 2018/A/5647 Civard Sprockel v. FIFA & PFC CSKA Sofia, par. 135.

request concerning the liability of the club Southend Futsal Club towards the debts of the original Debtor in the frame of art. 64 of the 2017 FDC.

C) The liability and responsibility of the club Southend Futsal Club

15. After having established that he is competent to assess the present matter, the Deputy Chairman moves on to analyse whether the new Club, Southend Futsal Club, has a connection with the original Debtor and therefore, can be held liable for the debts of the latter.
16. In this sense, the Deputy Chairman finds it worthwhile to recall the existing CAS jurisprudence on this particular topic.
17. To that end, the Deputy Chairman first refers to decisions that had dealt with the question of the succession of a sporting club in front of CAS³ and in front of FIFA's decision-making bodies⁴. In particular, it has been established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it, meaning that the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected. On the other side, it has been determined that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management completely different from themselves⁵.
18. In these circumstances, CAS already considered that a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound by obligations of its predecessor, *i.e.* the "old" club, b) the "new" club took over the licence or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another⁶. By the same token a "sporting succession" is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the "new" club accepted certain liabilities of the "old" club, 3) after the acquisition of the assets of the "old" club, the "new" club remained in the same city and 4) the "new" club took over the licence or federative rights from the "old" club⁷.
19. Further, the issue of the succession of two sporting clubs might be different than if one were to apply civil law regarding the succession of two separate legal entities. In particular, the Deputy Chairman recalls that according to CAS, a club is a sporting entity identifiable by itself that generally transcends the legal entities which operate it⁸.

³ CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778.

⁴ FIFA DRC 12150569.

⁵ CAS 2013/A/3425.

⁶ CAS 2007/A/1322 FC Politehnica Timisoara SA v. FIFA & RFF & Politehnica Stintia 1921 Timisoara Invest SA.

⁷ CAS 2011/A/2646 Club Rangers de Talca v. FIFA.

⁸ CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

Consequently, elements to consider are amongst others the name, the logo and colours, the registration address and/or the managing board of the club.

20. For the sake of completeness, the Deputy Chairman wishes to point out that this established jurisprudence from CAS has now been reflected in the 2019 FDC, under art. 15 par. 4 which states that *"The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned"*.
21. With the above in mind, the Deputy Chairman subsequently analyses the documentation at his disposal in light of the criteria set by the relevant jurisprudence of CAS (now reflected in art. 15 par. 4 of the 2019 FDC) and applied by the Committee in such situations.
22. In this sense, the Deputy Chairman observes that the name used by the new Club as well as the logo/crest are different from those used by the original Debtor. The Deputy Chairman further remarks that the Creditor relied solely on Facebook and Twitter postings to support its allegation. In particular, the Deputy Chairman notes that the Creditor did not substantiate its allegation with other elements that it believed would be similar for the new Club and the original Debtor, such as the colours, the stadium, the players, the fans and/or the year of foundation. Finally, the Deputy Chairman notices that The Football Association clearly indicated in its correspondence dated 24 April 2019 that the new Club is affiliated as from 2002 under the name Southend Futsal Club and that it had no record of the new Club being affiliated under another name as and from 2002 – 2019.
23. In light of all the above, the Deputy Chairman recalls that, in line with the jurisprudence of CAS and art. 15 par. 4 of the 2019 FDC, the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium, etc., regardless of the legal entity operating it. As a result, the Deputy Chairman considers that, based on the information and documentation at his disposal, it cannot be established to his comfortable satisfaction that the new Club, Southend Futsal Club, is the legal and/or sporting successor of the original Debtor, Baku United FC (London Baku United Futsal Club).
24. Against this background, following the jurisprudence of the FIFA Disciplinary Committee, the Deputy Chairman concludes that since the new Club cannot be regarded as the sporting successor of the original Debtor, all charges against the new Club must be dismissed, as the new Club cannot be considered as a non-compliant party within the meaning of art. 64 of the 2017 FDC, and therefore cannot be subject to the obligations laid down in this article.

III. has therefore decided

1. All charges against the club Southend Futsal Club are dismissed.
2. The disciplinary proceedings initiated against the club Southend Futsal Club are hereby declared closed.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Alejandro Piera
Deputy Chairman of the FIFA Disciplinary Committee

LEGAL ACTION

According to article 49 together with article 57 par. 1e) of the FDC and article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

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