

Legally, it's a thin line between..... Football and Politics

As part of the universal condemnation of the outrageous killing by police in Minneapolis of George Floyd, there have been wide-ranging displays of protest and solidarity from within top-flight football where so many players are of African-Caribbean origin. Numerous players (white & black) have used their individual social media platforms to send powerful anti-racism messages and clubs have posted photos of their squads 'taking a knee' in solidarity. These displays are 'off-field' and have been met with acclamation. However, it's not so straightforward when displays of solidarity take place 'on-field'. 25 Bedford Row's **Simon Pentol QC** examines the changing attitude of the football authorities to expressions of political support that might otherwise contravene the Laws of the Game [LOTG].

Contextually:

Sport and politics are both highly emotive.

The default position of most sports' governing bodies internationally and domestically is that sport and politics should remain distinct. Yet it is perhaps disingenuous to suppose that they are or can forever be kept apart.

From the Berlin Olympics in 1936 Nazi Germany, the "Black Glove" Olympics in Mexico 1968, the massacre of Israeli athletes at the Munich Olympics in 1972, thru the Olympic boycotts in 1980 & 1984, the decades-long embargo of South Africa during some of the apartheid regime and the pitch battle (quite literally) at the infamous Dinamo Zagreb v Red Star Belgrade football match in 1990 (to name but a few) - sport and politics have been inherently intertwined – sometimes for good, sometimes for ill.

Of significance presently is the 2016 protest of Colin Kaepernick (the San Francisco 49ers quarterback) by famously 'taking a knee' during the playing of the U.S. national anthem in demonstration against racial injustice, police brutality and oppression of African-Americans. The NFL ostracized Kaepernick and he never played again after January 2017. Which makes it all the more ironic that his particular style of protest has now been adopted across the Western World as an expression of opposition to the killing by police of George Floyd, a call for justice, a sign of solidarity with victims of racism and a salute to the '#Black Lives Matter' campaign as demonstrations in major European & American cities have intensified.

Football and Political Protest – the Current Legal Climate

Football remains the world's most pre-eminent spectator sport, both in-stadium and broadcast. It is the first sport to restart in any meaningful sense (albeit behind closed-doors) as global Lockdown restrictions are eased.

International Football Governance On-Field - the Prohibition of any "political statements or images".

The rules of world football that cover all aspects of on-field governance are founded upon the internationally applied Laws of the Game [LOTG] that are drawn up by the International Football Association Board [IFAB] which comprises eight representatives: four from FIFA and the remaining four from England, Scotland, Northern Ireland & Wales.

FIFA, UEFA and all domestic governing bodies (FAs) must apply the LOTG within their respective jurisdictions and competitions.

Among other things, these rules cover on-field player behavior and playing kit / equipment signage. In this respect, the rules clearly prohibit "any **political**, religious or personal slogans, statements or images" 'on-field'.

In the course of a match a player commits a violation (punishable by the referee with a yellow card) should he completely remove his shirt in the act of celebrating a goal. Should a player reveal an undergarment displaying a political message visible with or without the complete removal of his shirt or otherwise display a political message on his undergarment

or any other playing equipment he will be liable to separate sanction in contravention of the LOTG.

And this brings us to expressions of solidarity by players in response to the current political climate.

The Position of FIFA

FIFA is the international governing body of football. Publicly it has long-championed anti-racism and inclusivity.

Much maligned, it showed unusual prescience and good sense by announcing on 01 June 2020 that it recognized the “depth of sentiment” over the killing of George Floyd and that accordingly, “The application of the laws of the game . . . is left for the competitions’ organizers, which should use common sense and have in consideration, the context surrounding the events”.

The Position in Germany and the DFB

Top-flight football in Germany [the Bundesliga] has been the first to restart. On ‘match-day two’ (weekend of 30-31 May): Achraf Hakimi (Morocco) and Jadon Sancho (England) both of Borussia Dortmund, displayed the message “Justice for George Floyd” on their under-shirts after scoring; Marcus Thuram (France) of Borussia Mönchengladbach, ‘took a knee’ during a goal celebration; and Weston McKennie (USA) of FC Schalke 04, had written “Justice for George Floyd” on his armband.

As a consequence and before FIFA’s announcement, the German FA [DFB] stated that it was considering whether to take any action against the players for their *prima facie* contravention of the inveterate principle that ‘on-field’, the game should remain free of political statements or messages of any kind.

Following FIFA’s announcement, the DFB decided to take no action and by way of corollary, announced that no action will be taken against any other players “should they make demonstrations against racism and the death of (George) Floyd in upcoming matches” on the basis that these were deliberate actions of anti-racism in accordance with the principles the DFB seek to uphold.

The Premier League [PL]

The Premier League is the most watched televisual domestic competition internationally. It will be back on our screens in less than 10 days. The FA governs all ‘on-field’ violations in the PL and EFL.

In the build-up to the PL restart, many of its players (white & black) have used their individual social media platforms to send powerful anti-racism messages and clubs have posted photos of their squads ‘taking a knee’ in response to the killing of George Floyd.

When the PL does restart it is inevitable that some players will replicate the actions of some their counterparts in the Bundesliga.

The Position in England and the FA

The FA too has publicly condemned discrimination and has long aligned itself with many anti-racism initiatives.

On 02 June 2020, it endorsed FIFA’s new stance that “common sense would be applied” when assessing the context of the inevitable ‘on-field’ messages of solidarity by players and displayed on their equipment.

The FA announced: “Where any behaviours or gestures on the pitch that may constitute a breach of the laws of the game have to be assessed, they would be reviewed on a *case by case basis with a common sense approach and understanding of their context* . . . The power of football can break down barriers across communities and we remain deeply committed to removing all forms of discrimination from across the game we all love”.

Distilling the Current Position

It’s difficult to take issue with the current approach but when we drill down into the wording of the relevant LOTG, the mischief sought to be curtailed and its historic application by football’s governing bodies, we discover that the lines are often blurred and

the present stance might be better construed as being of ‘fact & degree’ and pragmatism in the face of widespread public outrage to deep rooted sentiments catalyzed by the killing of George Floyd.

The LOTG (2020-21)

The LOTG are constantly updated to give effect to the prevailing sensibilities of the age and the vicissitudes of life.

Law 4 governs players’ equipment:

Per Law 4 rule 5: Equipment must not have any **political**, religious or personal slogans, statements or images. Players must not reveal undergarments that show **political**, religious or personal slogans, statements or images, or advertising other than the manufacturer’s logo.

Any violation is within the province of the competition’s organizer, national FA or FIFA.

Appended are the following Guidelines:

- I. Among items usually permitted are: *slogans/emblems promoting the game of football, respect and integrity* that should be confined to the shirt-front and/or armband;
- II. When interpreting whether a slogan, statement or image is permissible, note should be taken of Law 12 (Misconduct) that outlaws among other things: using offensive, insulting or abusive language or gestures;
- III. Whilst ‘religious’ and ‘personal’ are relatively easily defined, ‘political’ is far less clear but slogans and gestures related to the following are not permitted: any person living or dead; any political party/organization/group; any organization that is defamatory; any organization whose aims are likely to offend a notable number of people; or any specific political act/event; and
- IV. When commemorating a significant national or international event, the sensibilities of the opposing team/supporters and the general public should be carefully considered.

No definition of ‘political’ is given. Usually therefore the dictionary definition is to be applied and it is wide – and certainly wide enough to encompass a commemoration of George Floyd and/or an endorsement of the ‘#Black Lives Matter’ campaign however laudable.

Acquiescence by the football authorities to messages or gestures in solidarity with these causes can be justified both by the application of the exceptions in Guidelines items I, II & IV together with the preferred “common sense approach” to be administered on a case-by-case basis in the current climate.

The same rationale allows for the NHS logo is to be displayed on all PL shirts at the restart. As ever, the position is finely balanced but might alter were public sentiments to change or be adversely affected should demonstrations in the UK or USA turn (more) violent and the all-important sponsors have a change of heart.

To this effect, there are three recent case studies that are as illuminating as they are demonstrative of the complexities involved in on-field expressions of a political viewpoint however well intentioned.

The Historical Perspective

I. FIFA and the Poppy

In November 2016 England played Scotland at Wembley on a date close to Remembrance Sunday. The players wore black armbands displaying the symbol of the poppy – widely recognized as a symbol of recognition for the fallen in WW1 & WW2. FIFA issued a disciplinary notice against all four home nations for breach of Law 4 of the LOTG (as it then was). The FAs of the four home nations challenged the notices.

Despite FIFA holding that displaying the poppy was indeed “political” absent any definition or publishing its reasons and issuing £35,000 fines against the respective FAs, an ultimate appeal to the CAS was not pursued following FIFA issuing a circular the following year relaxing the rule on wearing symbols such as the poppy to the effect that: *when commemorating a*

significant national or international event, the sensibilities of the opposing team [including their supporters] and the general public should be carefully considered". The latest version of the LOTG has been updated accordingly.

2. The FA and Pep Guardiola's "Catalan Ribbon"

At various matches between 2017 and 2018, Manchester City's famed manager Pep Guardiola sported a yellow ribbon in support of those pro-Catalan leaders who were imprisoned in Spain after holding a referendum for Catalan independence.

The FA commenced disciplinary proceedings against him for breach of its Kit & Advertising Regulations that prohibit the display of among other things, "any political message". Guardiola argued that it was not "political" but rather, a sign of solidarity with those who were imprisoned. A long-running saga ensued at the culmination of which, the FA Regulatory Commission rejected Guardiola's argument, held that the symbol was "political" and fined him £30,000 (later reduced to £20,000,) notwithstanding the apparent contradiction with its own defence in the 'Poppy case'.

The cases are distinguishable however by virtue of the symbol likely causing offence to the majority of Spaniards who oppose Catalan independence and ironically, the publicity occasioned by the action taken by the FA probably generated far more awareness of the Catalan struggle than if they had simply turned a blind eye.

Interestingly, the regulations that were breached only apply to 'match clothing' and accordingly there was no violation when Guardiola sported the ribbon before or after the games or at press conferences.

3. LGBTQ "Rainbow Laces"

In a number of recent international matches, the FAs of the USA and Ireland have required its players to wear an LGBTQ rainbow on their jerseys. The FA have required England players to wear rainbow laces on their boots and other nations have required their players to display the rainbow on captains' armbands or otherwise have it displayed on corner flags. From a secular and inclusive perspective this is an entirely laudable initiative rightly aimed at combating homophobia in society in general and in football in particular.

The rainbow has now become a universally recognized political symbol of LGBTQ rights but its display on kit and/or equipment during matches is *prima facie* in contravention of Law 4 of the LOTG.

Given that the Guidelines require consideration both of the potential "to offend a notable number of people" and "the sensibilities of the opposing team/supporters and the general public", how is this reconciled with the deeply-held views of those players, spectators and members of the general public whose religious beliefs comprise traditionally oriented forms of Christianity and Islam?

"For the Game. For the World" – FIFA's official slogan

Expressions of anti-racism and opposition in response to the shameless killing by police of George Floyd will resonate with all right-thinking members of society.

On-field displays of solidarity are for the game and for the world but in LOTG terms they will likely be considered "political".

There is clearly a line between that which is deemed politically acceptable and that which is deemed politically unacceptable.

"Justice for George Floyd" slogans displayed on kit and/or 'taking a knee' when celebrating a goal have been rightly ratified by the football authorities as being on the right side of the line. But the line is blurred and these issues are replete with difficulty, and contradiction.

Any participant minded to employ a more provocative means of on-field expression in solidarity of this cause or to pursue any other should be cautious and consult (a lawyer!) before entering the field of play.

The default position of most sporting bodies however “woke” and/or responsive they might be to the prevailing attitudes of society, seeks to separate sport from politics however artificial it may be.

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