



Arbitration CAS 2016/A/4821 Stoke City Football Club v. Pepsi Football Academy, award of 30 March 2017

Panel: Alexander McLin (Switzerland), Sole Arbitrator

Football

Solidarity contribution

Application of solidarity contribution to exchanges of professional football players deprived of monetary consideration

Impossibility of the transfer value of exchanged professional football players to be equal to nil

Identity of the players' respective transfer value in case of a free of charge exchange of two professional football players

Estimation of the value of professional football players' involved in a free permanent exchange

- 1. The payment of a financial compensation between clubs involved in a transfer of a professional football player before the expiry of his contract is not required for article 21 and annexe 5 of the FIFA Regulations on the Status and Transfer of Players (FIFA RSTP) to be applicable. The FIFA RSTP refer to compensation without specifying its nature, and Swiss law supports the notion that an exchange of rights to the players' respective registration by a given club is at its essence two sales contract, where the rights on offer for transfer by one club constitute the consideration for the transfer of rights associated with another player to that same club.**
- 2. It is not because a player is considered worthless to a given team that he will necessarily be worthless as part of another and it is not because a team does not intend to have a transaction to have value that it does not intrinsically have one. Absent the existence of value for the parties to a players' exchange, it is difficult to imagine a *raison d'être* for the transaction. Likewise, the mere existence of the transaction supposes that the involved clubs saw value in the exchange as a way of minimising potential future costs associated with players that otherwise did not produce value, or produced little.**
- 3. A transaction in the market for players, during which the registration rights for a given player change hands, is the moment at which the market attributes a particular value to a particular player. In the case of an exchange where one player's registration rights are exchanged for another's, and no additional compensation is provided by either party to the transaction, this transfer price must necessarily be the same for both players.**
- 4. In the specific context of a permanent exchange of two professional football players without payment of any transfer compensation by either of the two clubs involved in the transaction, the most accurate, simple and adequately meeting the aims of the solidarity contribution method to determine one player's "market value" is the previous transfer compensation paid in the establishment of his long-term contract.**

I. PARTIES

1. The Appellant, Stoke City Football Club (“Appellant” or “Stoke”), is an English football club based in Stoke-on-Trent, Great Britain. It is a member of the English Football Association (the “FA”).
2. The Respondent, Pepsi Football Academy (“Respondent” or “PFA”) is a Nigerian football club based in Lagos, Nigeria. It is an affiliate member of the Nigerian Football Federation (the “NFF”).

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. At issue before CAS is an appeal from a decision of the FIFA Dispute Resolution Chamber (the “DRC”) dated 26 May 2016 and notified, with reasons, on 23 September 2016 (the “DRC Decision”). This decision found that Stoke had to pay PFA the amount of GBP 33,910.80 plus 5% interest *per annum* as from 25 December 2015 until the date of effective payment, as a solidarity contribution as provided for in the FIFA Regulations on the Status and Transfer of Players, 2012 edition (the “FIFA Regulations”).
5. P. is a football player who, according to the player passport issued by the NFF, was registered with PFA from 10 January 1998 until 30 June 1999. According to the FIFA Transfer Matching System (“TMS”), P. was registered with Stoke on 28 January 2014.
6. Prior to joining Stoke, P. played for Welsh club Cardiff City FC (“Cardiff”). P.’s transfer to Stoke from Cardiff in January 2014 was effected by way of an exchange for the player K.
7. According to Stoke, given that no money was exchanged during the players’ transfers between Cardiff and Stoke (and *vice-versa*), no solidarity payment was owed to PFA with respect to P. PFA’s position was that the lack of monetary exchange did not mean that the transaction was devoid of value, and that the correct measure of this value was to be determined by the average transfer compensation associated with the preceding transfers of the two players, namely P. from West Bromwich Albion FC (“West Brom”) to Cardiff for GBP 2,450,000 and K. from Sunderland AFC (“Sunderland”) to Stoke for GBP 6,790,000.
8. The DRC ultimately agreed with PFA’s approach, finding that the applicable value to attribute to P.’s transfer was the average of the preceding transfers, namely GBP 4,620,000. Accordingly, pursuant to Article 1 of Annexe 5 of the FIFA Regulations, the FIFA DRC decided that Stoke

had to pay PFA an amount of GBP 33,910.870 as solidarity contribution, plus 5% interest *p.a.* on said amount as from 25 December 2015.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

9. The Appellant filed its statement of appeal on 14 October 2016, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2016 edition) (the “Code”), and nominated Mr Michael Gerlinger to be appointed as sole arbitrator. It also requested the CAS to confirm that the underlying DRC Decision was not enforceable while appeal proceedings before CAS were pending.
10. On 17 October 2016, the CAS Court Office notified the parties of applicable procedural matters, including time limits for submissions. *Inter alia*, it provided the Respondent a deadline of five days to respond with respect to the Appellant’s suggestion to submit the matter to a sole arbitrator, and if so whether it agreed with the Appellant’s suggestion of Mr Michael Gerlinger. The CAS Court Office confirmed that according to CAS jurisprudence, a decision of a financial nature issued by a private Swiss association is not enforceable while under appeal.
11. Also on 17 October 2016, the CAS Court Office notified FIFA of the appeal, granting FIFA ten days to file an application in the event it wished to participate as a party to the proceedings under Article R41.3 of the Code.
12. On 19 October 2016, the Respondent replied that its preference was for the matter to be submitted to a panel of three arbitrators, that it objected to the appointment of Mr Gerlinger, and that it nominated Mr Daniele Moro as member of the panel.
13. On 21 October 2016, the CAS Court Office notified the parties that in accordance with Article R50 of the Code, the matter of the number of arbitrators would be decided by the President of the CAS Appeals Arbitration Division, or her Deputy. It also invited the Respondent to notify it as to whether it intended to pay its share of the advance on costs.
14. Also on 21 October 2016, the Appellant requested a four-day extension to file its appeal brief. This request was granted by the CAS Court Office on 24 October 2016 in accordance with Article R32 of the Code.
15. On 25 October 2016, the Respondent indicated that it did not intend to pay its share of the advance on costs and referred to Article R64.2 of the Code, inviting the Appellant to do so. The CAS Court Office acknowledged receipt of the Respondent’s letter to this effect and notified the parties the same day.
16. The Appellant filed its appeal brief on 28 October 2016, in accordance with Article R51 of the Code.
17. On 1 November 2016, the CAS Court Office sent FIFA a copy of the appeal brief, and provided the Respondent with a 20-day deadline to submit an answer.

18. On 4 November 2016, the CAS Court Office notified the parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the present procedure to a Sole Arbitrator in accordance with Article R50 of the Code.
19. On 7 November 2016, the Appellant filed a statement from Mr Ole Gunnar Solskjaer to be added to its appeal brief, stating that it would not object to an extension of time for the Respondent to file its answer if necessary. On 8 November 2016, the CAS Court Office requested that the Appellant send a legible copy of the statement.
20. On 8 November 2016, the CAS Court Office notified FIFA of the receipt of its letter dated the same day, in which it renounced its right to intervene in the proceeding and sent a copy of the DRC Decision. The CAS Court Office also notified the parties of this, and provided them with copies of the FIFA correspondence and of the legible copy of Mr Solskjaer's statement, received in the meantime.
21. On 23 November 2016, the CAS Court Office informed the parties of the Deputy President of the CAS Appeals Arbitration Division's decision to appoint Mr Alexander McLin as Sole Arbitrator.
22. On 25 November 2016, the Respondent indicated its intent to file its answer on 28 November 2016, which it ultimately did in accordance with Article R55 of the Code.
23. On 2 December 2016, the Respondent indicated that its preference was for the Sole Arbitrator to proceed without holding a hearing. The Appellant concurred on 8 December 2016.
24. On 9 December 2016, the Sole Arbitrator requested from FIFA a copy of the case file relating to the DRC Decision. The FIFA file was communicated in two parts, on 21 December 2016 and 4 January 2017.
25. On 6 February 2017, the CAS Court Office informed the parties that the Sole Arbitrator considered himself sufficiently informed to render an award on the basis of the parties' written submissions, without the need to hold a hearing.
26. The same day, the CAS Court Office sent the parties an Order of Procedure with a deadline of 13 February 2017 for signature. The Respondent and Appellant returned their signed copies on 9 and 13 February 2017, respectively. By signing such Order, the parties expressly agreed that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

27. The Appellant's submissions, in essence, may be summarized as follows:

a) *FIFA erred in concluding that PFA is entitled to any solidarity contribution*

- The Appellant is of the view that PFA is not entitled to payment of a solidarity contribution for the transfer of P. to Stoke under the FIFA Regulations, essentially for the following reasons:
 - (i) a club cannot practically deduct 5% if no compensation is paid because there is nothing to deduct 5% from; (ii) absent any rules or guidance as to the valuation of players, a club cannot calculate, or calculate with any certainty, what the 5% figure should be where no compensation is paid; and (iii) a club is highly unlikely to be able to pay solidarity within the required 30-day time limit given the uncertainty regarding how to calculate the 5% figure. Thus, as it is not practically possible for a new club to calculate and deduct Solidarity from a player exchange it can be concluded that the solidarity provisions are not intended to cover such arrangements.
 - Stoke's interpretation is consistent with the principle of legality that requires rules to be clear and ascertainable. It would be contrary to attach a notional compensation amount to a transfer "*where the clubs concerned had no intention for any value to attach to the player transfers*".
 - The DRC in, *inter alia* DRC Case 19442b, has acted *ultra vires* in effectively amending the Regulations in its application of solidarity to player exchanges, as its interpretation is not reconcilable with the *ratio legis* of the legislator.
 - Even if the intention of the parties were unclear, an objective interpretation would lead to the conclusion that solidarity is not payable.
 - PFA is not entitled to any solidarity because the Player's value was nil, as the transaction constituted merely an "*exchange of liabilities*". It is inappropriate to substitute a theoretical market value for the players as, in essence, it is the subjective value that the clubs assign to the players that determines the transaction amount. Moreover, the fact that no one wanted to sign K. in January 2014 means that his market value was nil. This interpretation is supported by the fact that Stoke did not pay a Premier League transfer levy in respect to the registration of P.

b) *PFA's Solidarity entitlement is less than what FIFA awarded*

- Alternatively, the Appellant contends that if the exchange is found to have monetary value for purposes of determining a solidarity contribution, the "*mixing*" of the players' value is inappropriate. It is rather the value of K. that should be assessed, as he was the compensation for the transfer of P. This is reflected in FIFA DRC jurisprudence reflecting the valuation players in loan agreements, for purposes of solidarity payments.
- In the event the value of K. is not deemed to be nil, it should be understood to be his "*book value*" after amortization of his transfer fee over four years, which amounts to GBP 849,315.07. Alternatively, only the remaining value of his contract amounting to GBP

841,428.57 should be considered, as this represents the remaining cost of his salaries until the end of his contract term.

28. The Appellant's prayers for relief read as follows:

"Stoke therefore requests that the Panel decides in an award:

- I. The Appeal is admissible and well-founded; and*
- II. The Decision is set aside on the grounds that Solidarity is not payable to the Respondent under the FIFA Regulations; or*
- III. Alternatively, the Decision is set aside and replaced on the basis the DRC erred in its calculation of the amount of Solidarity payable to the Respondent; and*
- IV. The Respondent shall pay in full, or in the alternative, a contribution towards, the costs and expenses, including Stoke's legal costs and expenses, pertaining to these appeal proceedings before the CAS; and*
- V. Stoke is not liable to pay the procedural costs awarded against it in the decision".*

B. The Respondent

29. The Respondent's submissions, in essence, may be summarized as follows:

- The Respondent considers that the Appellant has changed its position by submitting additional arguments before CAS that had not been presented before the FIFA DRC. It therefore considers that only those which had been articulated in the first instance (termed the "first group") should be considered by the Sole Arbitrator. It nevertheless provides its argumentation with respect to the "second group" of arguments made before the CAS.
- a) *The "first group" of arguments*
- The arguments that the Respondent considers to be part of the first group are (i) the Appellant's contention that the agreement between Stoke and Cardiff has a different legal nature than one effecting two transfers; (ii) the fact that the agreement does not provide for financial consideration to be paid means that there is no basis upon which a solidarity contribution can be calculated; and (iii) the value of the rights attributable to K. at the moment of the transfer of P. from Cardiff to Stoke was zero.
 - The Respondent argues that it is established and reflected in Article 237 of the Swiss Code of Obligations ("CO") that rules governing sales contracts also apply to exchanges, where one party is the seller of the object that it promises in the exchange, and the other party is the seller of the object that it promises to provide in return. In the current case, Stoke and Cardiff are each sellers of the registration rights to "their" respective players.

This means in effect two transfer contracts, each of which has its own consequences when it comes to the calculation of solidarity contributions.

- There is no requirement as to the form of compensation in the FIFA Regulations or elsewhere, and it need not be solely monetary in nature. The transfer of registration rights to another player is valid compensation, as reflected in FIFA DRC jurisprudence.
- The assertions that K. had neither subjective value to Stoke nor objective value on the market (given that no clubs were interested in accepting him under a “free” transfer) are not valid for the following reasons. The subjective worth of K. on the Stoke team, ostensibly due to his inability to play on the team as a result of choices made by the management, thereby not allowing him the opportunity to realize his “full potential” is unrelated to his transfer value. Moreover, the Appellant does not provide evidence that offers for the “free” transfer of K. were turned down, and the statement of Mr Solskjaer indicates that there was a difference in the value of the players’ contracts which needed to be addressed for the exchange to be agreed, thereby indicating an inherent value in the rights association with K. This is corroborated by media reports that indicated offers that had been made for prices in the GBP 1,000,000 range, reportedly refused by Stoke as insufficient.

b) The “second group” of arguments

- Given that monetary consideration was not formally a part of the exchange agreement, one must rationally assume that the value of both players was the same at the time of the exchange.
- The Appellant’s position with respect to the gradual amortization of a player’s value over the term of a contract are problematic because (i) reliable comparisons cannot be drawn between values in a loan scenario which are typically lower due to the nature of the shorter term and the obligation for a player to return to his club of origin at the end of the loan period, and (ii) the value of a transfer right does not decrease steadily over the course of a contract term but rather decreases immediately to zero at the end of the term, due to the ability it grants to the club who owns the registration rights to preclude other clubs from registering the player, until the very end of the contract term. In addition, a player’s professional qualities (and the economic value thereof) do not decrease as a contract expires.
- No criteria were suggested that would allow a determination as to the extent to which a player’s advancing age can or should impact transfer value. A transfer of K. in 2015 to AFC Bournemouth on a loan basis reflects a transfer fee that, if extrapolated over five years, yields a value comparable to his transfer value from Sunderland when he was younger. Age should therefore not be taken into account as a factor in determining value, as it is highly subjective.

- There is no connection between a player's salary and the amount of the transfer fee, and this is supported by DRC jurisprudence. Moreover, seeing as no evidence of K.'s salary was provided, this cannot be considered as a factor.
- The fact that the players had economic value was additionally demonstrated by the positive results they each achieved for their respective clubs after the transfer was effected.
- The methodology used by FIFA to calculate the amount attributable to the transfers was based on past FIFA jurisprudence and was therefore to be expected by the Appellant. Moreover, this approach was used by the Respondent when it initially contacted the Appellant seeking payment of the solidarity contribution. The latter did not contest it at the time and would therefore appear to have agreed to it.
- While FIFA's methodology was correct, the Respondent did not previously have the correct amount corresponding to the transfer of K. to Stoke from Sunderland. In light of this, the amount of the solidarity contribution should be adjusted by the CAS, while the FIFA DRC methodology should be applied.
- The Appellant's other suggested methodologies for determining the amount attributable to the transfer are inappropriate for the above reasons. The only alternative calculation that could apply is one based on K.'s professional qualities. While the value of both players should be used in order to correctly calculate the ultimate amount, the latter should take into consideration the following factors: (i) it cannot be lower than GBP 1,000,000, the amount that Everton purportedly offered for K. in January 2014, and which was refused by Stoke; (2) GBP 3,000,000 would be more realistic as it represents the amount that Stoke purportedly offered Everton for the transfer of K.; (3) GBP 8,000,000 is the amount known to have been the actual cost of the transfer of K. from Sunderland to Stoke; (4) GBP 8,340,000 is the amount arrived at when K.'s loan fee from Cardiff to Bournemouth FC is taken proportionally over a five-year "standard" labour contract; and (5) GBP 8,170,000 represents an average of the last two amounts, noteworthy as a measure of transfer value both before and after K.'s move from Stoke to Cardiff.

30. The Respondent's requests for relief read as follows:

"we request CAS as follows:

1. *To uphold DRC decision.*
2. *Alternatively, if CAS decides that the amount of solidarity contribution is to be recalculated, calculate such contribution on the basis of the transfer fee amount of 5 225 000 GBP.*
3. *To reimburse the Respondent for the expenses borne in connection with this appeal process at the Appellant's expense.*

4. *To recover arbitration costs connected with these appeal proceedings solely from the Appellant”.*

V. JURISDICTION

31. Articles 57 and 58 of FIFA Statutes, April 2016 edition, confer jurisdiction upon the CAS to hear this dispute. This is not disputed by the Parties, which have confirmed their agreement by signing the Order of Procedure. CAS therefore has jurisdiction.
32. Further to Article R57 of the Code, the Panel has power to review *de novo* the facts and the law, and may issue a new decision replacing, in whole or in part, the Appealed Decision.

VI. ADMISSIBILITY

33. Article R49 of the Code, under which the question of admissibility should be examined, reads, *inter alia*, as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

34. The reasoned DRC Decision was notified to the parties on 23 September 2016. The statement of appeal was filed on 14 October 2016, within the time limit prescribed by the FIFA Statutes and the Code.
35. The appeal is therefore admissible.

VII. THE RESPONDENT’S COUNTERCLAIM

36. The Sole Arbitrator notes that point 2 of the Respondent’s requests for relief constitutes a counterclaim. Counterclaims are not allowed under the applicable provisions of the Code. In order to have the DRC Decision amended, the Respondent would have needed to file an appeal in this respect. Point 2 of the Respondent’s requests for relief is therefore deemed inadmissible.

VIII. APPLICABLE LAW

37. Article 187 para. 1 of the Swiss Private International Law Act provides as follows:

“The arbitral tribunal shall decide on the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection”.

38. Article R58 of the Code provides more specifically as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

39. Article 57 para. 2 of the FIFA Statutes (2016) states:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

40. Therefore, the relevant FIFA regulations apply, and Swiss law subsidiarily.

IX. MERITS

41. In hearing the case *de novo* further to Article R57 of the Code, the Sole Arbitrator considers all of the arguments raised by the parties before the CAS, while also taking note of which ones were raised, or not raised, before the DRC.

A. Application of the solidarity mechanism in the absence of monetary consideration

42. The Appellant’s contention that the solidarity mechanism is not meant to apply to exchanges of players in which the consideration is not monetary in nature is problematic from the outset. As the Respondent correctly notes, the Regulations refer to compensation without specifying its nature, and Swiss law supports the notion that an exchange of goods (or, in the present case, rights to the players’ respective registration by a given club) is at its essence two sales contracts, where the rights on offer for transfer by one club constitute the consideration for the transfer of rights associated with another player to that same club. This is supported by consistent FIFA jurisprudence.

43. The Appellant asserts that no compensation can be paid (or indeed calculated) if a monetary amount associated with the transfer cannot readily be ascertained. This is essentially an argument of convenience. Holding that the value of a given set of rights is difficult to estimate is different entirely from concluding that the rights are entirely worthless; the latter does not follow from the former. The Regulations’ lack of a particular form requirement certainly does not rise to the level of vagueness necessary to invalidate them.

44. The argument that the FIFA DRC acted *ultra vires* in ruling that the solidarity mechanism was applicable to exchanges of players is unconvincing. Its logic is flawed in that it would have the Sole Arbitrator conclude that the lack of any “clarifications” made to the Regulations to this effect in six or more rounds of amendments ostensibly made since DRC Case 1944b (which found that the solidarity provisions were indeed applicable to player exchanges) is indicative of the fact that this decision was contrary to FIFA’s *ratio legis*. Common sense would dictate an altogether different conclusion: if the DRC was interpreting the Regulations according to the rule-maker’s intent, the latter likely did not see the need to alter the rules. Such a determination

rather would have us understand FIFA's intent to make the solidarity mechanism apply in such cases.

45. Even applying the objective standard that the Appellant suggests should be used, it is by no means obvious that a "*reasonable man*" would consider the solidarity provisions of the Regulations to be inapplicable in the absence of monetary consideration.

B. The value of the players when exchanged

a. Was the value zero?

46. According to the Appellant, no solidarity contribution can be calculated in favour of the Respondent given the fact that the players each had no value at the time of the exchange. This is primarily predicated on the situation of each of the players with their respective clubs pre-transfer, namely that neither was being played and therefore represented only a liability to their employer, in the form of the salaries that needed to be paid out until the end of their contractual terms. In addition, when considered from an accounting perspective, the value of a player's contract is gradually amortised over time, decreasing to zero towards the end of the contract term. The subjective value of the players by each of their clubs being nil, the resulting solidarity contribution can only likewise be considered as zero. To the extent that an objective market value can be attributed to P., this must also be zero by virtue of the fact that efforts to place K. with other clubs as a free transfer were unsuccessful, and K.'s value must be considered as the basis for calculation of the solidarity contribution attributable to the transfer of P.
47. The evidence does indicate that both players were not being played by their respective teams before they were exchanged. This supports the notion that each of them, in the context in which they found themselves and resulting from various circumstances (including the team managers' strategies), had little value to their clubs as players on the squad. It is therefore natural that efforts should be made to try to place them elsewhere, with the potential to (i) lessen or eliminate costs associated with remaining salary obligations on the remainder of the contract term, and (2) unlock, if possible, value *via* the transfer by allowing the football players to do what they do best on the pitch, rather than warming the bench.
48. While the Appellant contends that because the players were essentially worthless to their teams at the time of the exchange, the latter simply represented a swap of liabilities between the clubs, with no attribution of value to the players. There are a few problems with this assessment. First, it is not because a player is worthless to a given team that he will necessarily be worthless as part of another. Indeed, team dynamics, individual attributes and positions on the squad (among other considerations) will determine whether a given player will have the right environment and support to achieve results and thereby deliver value to the club. Second, due to this fact, it is not because a team does not intend to have a transaction to have value that it does not intrinsically. Indeed, absent the existence of value for the parties to the exchange, it is difficult to imagine a *raison d'être* for the transaction. Finally, even if the exchange were but a swap of liabilities, the mere existence of the transaction supposes that the parties saw value in the

exchange as a way of minimising potential future costs associated with players that otherwise did not produce value, or produced little.

49. In addition to these economic considerations, there are elements in the file that indicate that the parties understood that the players had underlying value at the time of the transaction. This is reflected in the Transfer Agreement's Article 2, which ensures that unless the trade occurs, no transfer of rights will occur without a fee. It also flows from Stoke CEO Tony Scholes' statement that attests to the need to compensate P. "*to cancel his contract*", thereby reducing the liability that Stoke would have to assume as a result of the exchange. Moreover and as the Respondent points out, each of the two players went on to achieve results for their new teams, thereby undeniably delivering value.
50. In light of these elements, it is not possible to conclude that the rights associated with the players at the time of the exchange were devoid of value.

b. Was the value of the players equal?

51. A large portion of the Appellant's argumentation centres on the inappropriateness of equating the value of the two players at the time of the exchange. Indeed, Stoke contends that if the value associated with P. is to be determined, the rightful consideration is the value associated with K., and that they cannot be deemed to have equal value. The Respondent rather holds that for an exchange of players to be effected in which no additional payment is made, the players necessarily have to be of equal value.
52. The Appellant bases its position in large part on two DRC cases resulting from an exchange, in which the value for each of the players also needed to be determined for the purpose of establishing the amount of the solidarity contribution. It is noteworthy that in these cases, the context was that of a loan rather than a long-term contract. In each case, the value of a given player was determined by a formula which took into account the value of the player being exchanged for him at a value corresponding to the amount of his original transfer to the loaning club, on a *pro rata* basis for the length of the loan, and further discounted by 40 per cent (the discount attributable to the DRC's evaluation of the relative lesser value associated with a loan rather than a long-term contract).
53. In applying its methodology, the FIFA DRC takes the approach that it needs to determine a "market value" at the time of the loan, and concludes that the best measure of this market value is the previous transfer compensation paid in the establishment of the long-term contract of the loaning club (referring to the player that was exchanged as "compensation"). It is therefore possible to attribute a different value to each of the two players, whose "base" value is assumed to correspond to the transfer compensation previously associated with their long-term transfer.
54. The Respondent's position is that in the present case, the transfers of P. and K. are inseparable, and that on the basis that no additional compensation constituted part of the exchange between the clubs, there was an equilibrium price of the deal which had necessarily to be the same for both players.

55. Under a scenario where the “base value” associated with the rights attributable to a given player is typically established when a new long-term contract is signed, and the “loan value” is established as a function of the initial base value, it is possible that in a loan exchange scenario, the values attributed to each of the players differs (as a direct result of the difference in their base value). This is more difficult to conceive in the context of a long-term transfer, as, in keeping with the methodology that appears to be applied consistently by the DRC (see *C. infra*), it is at these moments that a new base value for a given player is established.
56. A transaction in the market for players, during which the registration rights for a given player change hands, is the moment at which the market attributes a particular value to a particular player. In the case of an exchange where one player’s registration rights are exchanged for another’s, and no additional compensation is provided by either party to the transaction, this transfer price must necessarily be the same for both players.

C. Valuation methodology

57. Having established that the players had value at the time of the exchange, and that this value necessarily had to be the same for each, the Sole Arbitrator arrives at the issue of which valuation methodology is appropriate. The Appellant considers that the approach applied by the FIFA DRC to be crude, arbitrary and illogical. It maintains that the only value that should be taken into account is that attributable to K., and proposes essentially two alternative possibilities for to ascribe a value to him: (i) his “book value”, after amortization of his previous transfer compensation value, or (ii) the remaining value of his contract, namely the remaining salaries that were owed to him by Stoke at the time of the exchange. The Respondent maintains that these approaches are inadequate because they do not account for the professional qualities of a player (which do not necessarily degrade over time), and that the price paid for the registration rights associated with a player are disconnected from the cost of a player’s salary.
58. Valuation of assets in general is a complex exercise based on many factors, and is the subject of much academic consideration (and, unfortunately, much litigation). The valuation of rights associated with football players in particular is no less difficult. It is fraught with consideration of multiple variables, which could potentially include *inter alia* the nature and size of the market, player’s qualities and preferences, the buying and selling club’s intended aims, relative bargaining positions, and the like. It is therefore understandable that any given methodology is likely to overvalue or undervalue a given player in the eyes of (and depending on the specific interests of) a potential buyer or seller of associated rights.
59. The underlying intent of the solidarity mechanism being to compensate clubs for the investment in young talent necessary to further the development of football, the methodology applied ideally needs to have certain attributes. It should be simple enough to be applicable in the event of transfers and not lead to unnecessary disputes, leading readily to a final determination of the amount to be used as the basis for calculation of the solidarity contribution. Ideally the methodology would be codified, or at least officially established in some form, so as to provide

some predictability for clubs who bear the burden of paying the fees resulting from Article 21 and Article 1 Annex 5 of the FIFA Regulations.

60. All valuation methods are ultimately based on certain assumptions, which can be debated as to the appropriateness of their applicability. For instance, the DRC's practice of applying a 40 per cent deduction to the prorated transfer compensation in the determination of loan-related value may appear appropriate to some and not others, depending on their situation, or on the particular circumstances of a given transfer.
61. The DRC's methodology is indeed relatively simple. It is, however, appropriate to question whether it is the most adequate way to meet the goal of the policy reflected in the FIFA Regulations. Was there, for instance, additional information available that could have led to a more precise value? The fact that neither party provided expert testimony as to the valuation methodology appears to indicate that the methodology cannot be too complex or costly to implement, as this would become disproportionate to the sums involved in the redistribution of solidarity payments. The system calls for the best possible balance of accuracy (as to value) and simplicity (as to administration).
62. Additional information has become available since the player exchange at issue. It is known, for example, that both players went on to take on active role in their new teams, scoring goals in various matches along the way. The amount associated with K.'s subsequent loan to AFC Bournemouth is now also available. The Respondent suggests that the latter amount, prorated to correspond to the length of a five-year contract, should be the basis (or part of the average forming the basis) for the calculation of the solidarity contribution owed to it.
63. It must be recalled that at the time the exchange of players took place, only certain information was known. Indeed, it is only from the parties' submissions that the exact amount associated with K.'s original transfer fee from Sunderland to Stoke is known precisely. Using the loan fee associated with K.'s transfer to AFC Bournemouth is not appropriate at the stage of the instant proceedings, as it introduces a later data point for the value of K. which was not known at the time of the exchange, and would therefore need to be introduced *ex post* to be accounted for in the valuation of P.'s transfer. Such an approach would necessitate the factoring in of a future value element for one of the two players, something that clearly could not be applied universally and systematically. Indeed, it would have the effect of delaying the payment of solidarity contributions until such time as a subsequent transfer occurred, in order to attribute a value to the previous one. This is clearly not practicable.
64. The value of K.'s loan to AFC Bournemouth is nevertheless a useful indicator that the value of K. appears to have been maintained over time despite considerations such as age, as advanced by the Appellant. This thereby supports the DRC valuation methodology given that the loan fee paid for the transfer of K. from Cardiff to Bournemouth appears to generally correlate, when prorated over five years, with the previous transfer fee from Sunderland to Stoke (GBP 8,340,000 as submitted by the Respondent, and GBP 8,000,000 as submitted by the Appellant, respectively). The fact that the DRC used a value of GBP 6,790,000 for the transfer of K. from Sunderland to Stoke in determining the average applicable to both players, while it should be

corrected, is of little importance to the methodology. The conclusion is that the market value of the player concerned, before and after the exchange, appears to have remained relatively constant, or, at the very least, in the same range.

65. In addition to confirming the adequacy of the FIFA methodology, the availability of information concerning the loan fee value of K. after the exchange effectively counters the Appellant's contentions that his value at the time of the transfer was no more than either his "book value" after depreciation of his previous transfer fee, or the remaining salaries owed to him. While the market circumstances at a given point in time may mean that the opportunities for a transaction are limited and therefore allowed only for an exchange of players in the present case, it does not necessarily follow that a player's value is negligible or nil – indeed, it would be difficult to understand how a player could be traded for substantial and comparable monetary amounts before and after the exchange, yet be considered to be worth very little precisely at the moment of the exchange.
66. In light of these considerations, the FIFA DRC valuation methodology, while appearing potentially simple, appears to adequately meet the aims of the solidarity provisions of the FIFA Regulations. A greater degree of predictability as to the determination of the appropriate value to attribute to a player exchange for purposes of calculation of the solidarity contribution could potentially be achieved by codification of the FIFA DRC's practice in this area, if only in Commentary to the FIFA Regulations.
67. Finally, the Sole Arbitrator notes that the Respondent appears to have approached the Appellant in good faith with a proposal based on what the former anticipated would be the approach of the FIFA DRC in determining the solidarity contribution owed to it. The absence of response led the Respondent to seek payment before the DRC, on the basis of assumed amounts that could have been corrected by the Appellant, but were not until the latter brought appeal proceedings before the CAS.
68. It would therefore be appropriate to apply the FIFA DRC methodology using the accurate transfer fee amount for K.'s move from Sunderland to Stoke. As a result, the average of the two applicable transfer fees would amount to GBP 5,225,000, or $(\text{GBP } 8,000,000 + 2,450,000) / 2$. Applying the scale of Article 1 Annex 5 of the FIFA Regulations would yield a solidarity contribution amount of GBP 38,351. However, as stated above, in view of the fact that the Respondent did not file a proper appeal against the DRC Decision, the Sole Arbitrator cannot go *ultra petita* and review the amount granted in the DRC Decision. The latter can therefore only be confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Stoke City Football Club on 14 October 2016 is dismissed.
2. The decision of the FIFA Dispute Resolution Chamber dated 26 May 2016 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.