

IN THE MATTER OF A REFERENCE UNDER THE DP WORLD TOUR MEMBERS' GENERAL REGULATIONS HANDBOOK 2022 BEFORE A PANEL APPOINTED UNDER REGULATION F3(d)

Before: His Honour Phillip Sycamore CBE

B E T W E E N:

**(1) IAN JAMES POULTER
(2) ADRIAN OTAEGUI JAUREGUI
(3) JUSTIN HARDING**

Appellants

– and –

PGA EUROPEAN TOUR

Respondent

DECISION OF THE APPEAL PANEL ON THE STAY APPLICATION

Appearances: James Segan QC, David Lowe and Tom Mountford instructed by Gibson Dunn & Crutcher LLP on behalf of Messrs Poulter, Otaegui and Harding

Adam Lewis QC, Ravi Mehta and Emmeline Plews instructed by Farrer & Co LLP on behalf of the PGA European Tour

1. This is an application for a stay of sanctions arising from disciplinary appeals brought by Ian James Poulter, Adrian Otaegui Jauregui and Justin Harding against the decision on the 24th of June 2022 by PGA European Tour under the rules in the DP World Tour Members General Regulations Handbook ("The Regulations") to suspend each of the Appellants from participation in three golf tournaments known as the Genesis Scottish

Open (due to commence on Thursday of this week, 7th July and to run to 10th July), the Barbasol Championship (also 7th to 10th July) and the Barracuda Championship (14th to 17th July). The decision arose from the participation of the Appellants, all of whom are self-employed professional golfers, in golf events run by LIV Golf Investments, known as the LIV Tour, which offers significant financial incentives for participation.

Although the decision is in relation to each Appellant, in reality in the case of Mr Poulter and Mr Harding the suspension effectively only affects their participation in the Scottish Open, which I have observed is due to commence on Thursday of this week. Adrian Otaegui Jauregui is also affected by the ban from the Barracuda Championship to be held the following week (at the same time as the British Open, in respect of which Mr Poulter and Mr Harding have already qualified).

2. I have been appointed by Sport Resolutions to chair the Appeal Panel pursuant to the Regulations, which provide at page 85 that:

“In exceptional circumstances, the PGA European Tour may, in its sole discretion, before an appeal has been finally determined by an Appeal Panel, request that Sport Resolutions (UK) appoint an Appeal Panel (from the panel members referred to at paragraph 3(a), above, or other impartial persons, as appropriate) and/or administer the appeal otherwise in accordance with the provisions of Regulation F.”

The Appellants had originally intended to make an application in the High Court for interim relief in relation to the suspensions, but in the event the parties agreed that: (1) as Chair, I could deal with the matter sitting alone; and (2) that as Chair I could, and should, deal with the application for a stay. I was referred to an email – an inter partes email dated the 1st of July 2022 – to this effect. This is an email from the Respondent’s solicitors to the Appellants’ solicitors:

“ ...I can confirm that my client (a) accepts and will not dispute that the Appeal Panel Chair has power in his or her discretion to impose a stay of the sanction pending determination of the underlying appeals, and (b) agrees to confer such power on the Appeal Panel Chair to the extent that might be required...”

3. The same email also contained confirmation from the Respondent's solicitors that the Respondent would cooperate in any arrangements that may be necessary to ensure that the Appellants can play in the Scottish Open. That part of the email reads as follows:

“...On the basis that this is intended to refer to the provision of access to the usual practice facilities and the player lounge on-site, and otherwise to recognise your clients' accreditation and to allow them to play, I can confirm that my client does not have an issue with this and intends to cooperate. Of course that would not extend to arrangements for which players are usually personally responsible, such as courtesy cars, accommodation and any other travel. I also note for completeness that this is also subject to any appeal against the Appeal Chair's decision...”

It was made clear during the course of submissions that this did not amount to a concession that the Respondent agreed to the stay or indeed the participation of the Appellants in the Scottish Open.

4. The skeleton arguments covered a considerable amount of ground, including issues relating to restraint of trade and the availability of remedies in damages. I have found it helpful to concentrate – as is appropriate at this stage of the proceedings – on issues relating to the approach to the Regulations and to the question of procedural fairness. I will not embark on an exercise which might in any way impact on the issues to be determined at the substantive hearing in due course.
5. It is important first to recognise that the substantive appeal will be by way of a de novo hearing (I will explain why that is in a moment) which will be determined by a full panel of three members. In determining this application, I have in mind what will be the best outcome to enable the Panel to carry out that function effectively.
6. Essentially the Appellants said that it would be manifestly unfair for them to have served the suspensions before the appeal takes place and they point out that, in the event of a finding on the appeal which is adverse to them, it will still be open to the Appeal Panel to impose future suspensions should that be considered appropriate. They say that the balance of justice lies in their favour.
7. The Respondent takes the opposite position and maintains that the impact of a stay would be adverse not only for the Tour but for third parties, including competitors, commercial

partners and others. Both parties recognise that in many sports it is quite usual for a suspension to be served before an appeal is heard, but the Appellants sought to distinguish the particular features of this case.

8. I will turn now to the relevant Regulations which have been referred to during the course of submissions today.

The relevant part of the section (F. Code of Behaviour and Disciplinary Procedure) begins at the paragraph numbered 3 – Serious Breach Procedure (page 82) – which sets out the approach to be adopted when such a breach is being dealt with.

First of all, it deals with a composition of a disciplinary panel to determine such a matter and it sets out the requirement for three members (a legally qualified person, an ex-member of the DP World Tour and an experienced sports administrator and provides that the legally qualified person shall chair the panel).

It continues:

‘ ... No person who was involved in the events relating to, or the investigation of, the alleged breach or who has a clear vested interest in the outcome of the disciplinary hearing, or who has made strong statements either way on a directly relevant matter, should sit on the Disciplinary Panel...’ It then sets out the procedure which the panel is to adopt.

It next deals with appeals, to which I will return. I now move forward to sub-paragraph (f) which is headed ‘Discretion of the Chief Executive’ which provides:

‘If the Disciplinary Officer has decided, pursuant to paragraph 3 above, that a Serious Breach of the Code may have occurred and the matter has been referred to the Chief Executive for consideration, then the Chief Executive may elect to himself to determine whether or not a Serious Breach of the Code was committed by the Member, and (if it is determined that a Serious Breach of the Code was committed by the Member), what the appropriate sanction or sanction(s) should be. The Chief Executive will make the above election (i.e. whether or not to himself determine whether or not a Serious Breach was committed and, if so, what the sanction should be) in his absolute discretion.’

It then goes on to set out what the Chief Executive is required to take into account and provides a process for an appeal and the provisions for appeal from that decision. The appeal is required to be held de novo.

9. Paragraph (d) (page 85) deals with appeals against decisions of the Disciplinary Panel and includes the provision for appointment of a Panel by Sport Resolutions (UK) Ltd. It also specifies that where the appeal is heard de novo the same process as before the Disciplinary Panel will be followed.

I pause to observe that it is provided that the starting point in respect of the process pending an appeal is that whilst provision is made for fines, compensation or costs orders to be stayed pending determination of the appeal other sanctions, including suspension, are not stayed.

10. I was invited by counsel for the Respondent to conclude that there is no serious issue to be tried. That cannot be a correct approach at this stage. By definition, as I have just explained, a de novo hearing following the same process as before the Disciplinary Panel is required. I have already indicated that I do not intend to do anything in dealing with this application which might impact on the Panel's appellate function in due course.

11. The position is this. The de novo appeal will be the first opportunity for the Appellants to go through a formal hearing process as opposed to being sanctioned as a consequence of a decision made by the Chief Executive under paragraph 3(f), without there having been any hearing or the normal elements of a process which could be described as judicial or quasi-judicial. There was no process by which the Chief Executive came at all close to replicating the guidelines for a disciplinary hearing. It was unfortunate that he was on record as having made strong adverse public statements on LIV, and clearly as Chief Executive he had a vested interest in promoting the interests of the Respondent over the interests of LIV.

12. I conclude that the position in relation to this application is that it is very different as to how it would have been had there been a hearing by an impartial disciplinary panel which had reached a similar conclusion. Counsel for the Respondent made it clear that he was not suggesting that the Executive is independent and went so far as to say that The Chief Executive is necessarily partial. There, I feel, lies the difficulty and the justification for the

Appellants' application. It is noteworthy that the Regulations specifically provide that in relation to appointment to a Disciplinary Panel no person who was involved in the events relating to, or the investigation of, the alleged breach or who has a clear vested interest in the outcome of the disciplinary hearing, or who has made strong statements either way on a directly relevant matter, should sit on the Disciplinary Panel. By analogy the same principles should apply to the Chief Executive.

13. Although it is recognised that the Tour is not the regulator in this sport, and that the rules and regulations are created by the members (which include the Appellants), and that the Appellants appear to have made a deliberate decision to participate notwithstanding that a release had not been granted, it is the case that there is yet to be a determination by a hearing de novo in which the Appellants will be able for the first time to participate in a meaningful way.

14. In those circumstances, I am satisfied that the balance of convenience and justice lies with granting the stay so that the question of sanction, if there is a finding by the appeal panel which is adverse to the Appellants, can be considered after that process has taken place (mirroring the process for the Disciplinary Panel).

I therefore direct that, in respect of each of the named Appellants, the suspensions imposed are stayed pending the hearing of the substantive appeal.



His Honour Phillip Sycamore CBE

05 July 2022