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A two-pronged approach: utilising sports governing bodies' statutes and equal treatment legislation to achieve equality of treatment in women's football

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Abstract

Women's football is currently growing at an exponential rate in terms of participation, viewing, engagement and commercialisation. More people than ever before are involved in women's football, whether it be from watching, to buying merchandise or investing. However, in spite of this growth, female athletes are consistently subjected to subpar treatment when compared with that of their male counterparts. This inequality includes adequate pre-tournament and match preparation, access to medical treatment and appropriate research, professional training facilities, broadcasting and refereeing standard and professional coaching staff. Thus, this lack of equality is not confined to one area and includes all aspects of professional sport. In order to achieve parity in terms of treatment, female athletes can employ a two-pronged approach. The first is to utilise the internal statutes of FIFA and the International Olympic Committee which guarantee protection and respect for human rights, as well as protection from discrimination on the basis of gender. By evoking the internal dispute resolution mechanisms of the governing bodies and indeed the Court of Arbitration for Sport, athletes can seek remedy for these inequalities by virtue of the fact FIFA are breaching their own internal statutes. Should this approach not provide appropriate redress, athletes can employ a strictly legal method by relying on domestic equal treatment legislation, whether in the EU or beyond, in order to achieve equal treatment in employment by virtue of a reliance on domestic laws and legal systems.

Keywords Gender equality · Women's football · Equal treatment · Discrimination · Women's sport

1 Introduction

The principle of equal treatment is enshrined within the legislative framework of the European Union (EU) and beyond. Article 157 of the Treaty on the Functioning of the European Union (TFEU) states that the European Parliament and Council shall adopt measures to ensure the application of

the principle of equal treatment.¹ Articles 2 and 3 of the Treaty of the European Union (TEU) also include principles of equality,² whilst Directive 2006/54/EC requires member states to enact specific legislation to ensure equal opportunities and equal treatment of men and women within the scope of employment.³ Further enhancing this principle of equal treatment, is sports' own governing bodies internal statutes

¹ Ibid

² Treaty on the European Union, Article 2 and 3

³ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

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which commit to the protection of human rights and to the protection from discrimination. For example, article 3 and 4 of FIFA's statutes state that human rights will be respected and discrimination on the basis of gender is prohibited,⁴ whilst similar provisions can be found within the Olympic Charter.⁵

However, in spite of this legislation and similar legislation in jurisdictions beyond the EU, the fight for gender equality in sport is still very much a live battle, particularly in terms of equal treatment. Much of the debate around female sport surrounds equal pay, however, sport has two stands of equality which consist of equal pay *and* equal treatment. The right to equal treatment is regarded by this paper as an important and winnable cause. The reason for this is twofold: firstly, there is a continued existence of unequal treatment of female athletes within professional sports, and secondly, as above, this principle is entrenched in various different laws and internal governing body rules, meaning that there are various ways of achieving this. Unequal treatment ultimately stagnates the development and growth of women's sport as a whole. This unequal treatment isn't simply confined to accessing professional environment such as proper medical treatment and training facilities, but also extends to access to elite coaching and performance staff, elite refereeing, playing surfaces and broadcasting quality which enhances and showcases the women's game.

In June of this year, FIFA announced a series of developments for the upcoming women's World Cup, as well as future editions, as a result of collective action by player's union FIFPRO. The agreement also guaranteed equal conditions and service levels, identical to those given at the men's World Cup in Qatar in 2022. In October 2023, FIFPRO have also signed an agreement with UEFA to "collaborate and deliver" a Minimum Standards Framework for Women's National Teams which includes responding to abuse, remuneration, maternity rights and player data.⁶ However; in spite of these agreements, and the 2023 record breaking women's cup,⁷ the success of women's football, and sport generally, is being marred with the continued existence and reinforcement of inequality within the game. Agreements

and collective bargaining with players' unions are no doubt important and beneficial, but as this paper will show, these agreements often regard tournament treatment, rather than professionalism all year round and thus, athletes should utilise existing laws in order to guarantee equal treatment in their respective sports. This approach is two pronged: the first is to utilise sports governing bodies own internal statutes and dispute resolution mechanisms, whilst the second is to utilise the strictly legal, non-sport specific legislation to provide remedy. Before embarking on an analysis of those two available remedies, it is first necessary to examine the inequalities which exist within women's sport.

2 (Un) Equal Treatment in Sport

2.1 Pre-tournament preparation

As noted above, before the Women's 2023 World Cup, FIFPRO reached an agreement with FIFA which guaranteed parity in terms of equal treatment with what the men's teams received in the 2022 World Cup. This was a positive step forward in achieving equality for that tournament, yet it must be acknowledged that that agreement may be limited to this end. This agreement guaranteed parity at the tournament, but this did little for teams who did not have access to a professional environment in the lead-up to the event, and generally, when representing their national teams. Until that changes, those nations who are adequately supported by their national federations will continue to be at an advantage, whilst those who are not will always be attempting to overcome these challenges in order to allow them simply to compete.

In the lead up to the World Cup, there are numerous examples of nations, including high-profile ones, who failed to provide adequate facilities and preparation camps for their teams; for example, in February, the Canadian Women's team issued a statement on Twitter stating they were refusing to train, only to return to training days later under the threat of legal action.⁸ Their strike was prompted by poor support in the lead up to the 2023 She Believes Cup and the World Cup. The Women's team were fighting back against what they perceived to be poor governance, financial mismanagement and a lack of transparency.⁹ They were also campaigning against gender inequality, given the significant funding discrepancies between the men's and women's national programmes.¹⁰ This was said to have affected their ability to properly prepare for the World Cup and also meant they had

⁴ FIFA Statutes, Article 3 and 4. <https://digitalhub.fifa.com/m/5eb2b45e547ff39f/original/ndfxogwkoukoe4dm3uk0-pdf.pdf>. Accessed 14th October 2023

⁵ The Olympic Charter, Principle 6. https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf?_ga=2.267826381.2110837780.1697300724-1042261140.1697300724. Accessed 14th October 2023

⁶ UEFA (2023) <https://www.uefa.com/insideuefa/news/0286-191e568aa17c-1dd4d23c75ae-1000--uefa-introduces-minimum-standards-framework-for-women-s-nati/>. Accessed 11th October 2023

⁷ For example, see 'FIFA Women's World Cup 2023™ breaks new records,' <https://www.fifa.com/tournaments/womens/womensworldcup/australia-new-zealand2023/media-releases/fifa-womens-world-cup-2023-tm-breaks-new-records>. Accessed 11th October 2023

⁸ The Athletic (2023) <https://theathletic.com/4186572/2023/02/12/canada-soccer-strike-shebelieves-cup/>. Accessed 13th October 2023

⁹ Ibid

¹⁰ Ibid

to bring fewer players and staff to the She Believes Cup.¹¹ In similar circumstances, the Jamaican national team spoke of their disappointment at what they regarded as the “sub-par” support they were given in the lead up to the World Cup.¹² They stated that,

“on multiple occasions, we have sat down with the federation to respectfully address concerns resulting from subpar planning, transportation, accommodations, training conditions, compensation, communication, nutrition, and accessibility to proper resources. We have also showed up repeatedly without receiving contractually agreed upon compensation.”¹³

They also noted that they missed friendlies due to poor organisation and called for immediate change.¹⁴

In similar disappointing circumstances, the parents of Jamaican athletes had to set up a crowdfunding page to support the team to compete in the World Cup, whilst players Khadija Shaw and Cheyna Matthews took to social media to express their “utmost disappointment with the Jamaica Football Federation” over “subpar planning, transportation, accommodations, training conditions, compensation, communication, nutrition and resources.”¹⁵ In South Africa, the team withdrew from their final warm up match in protest over pay, preparation and protest.¹⁶ These are just some examples of the inequalities faced in relation to pre-tournament preparation, and this continued inequality can be further exemplified by the standards of coaching within the female game.

2.2 Elite and appropriate coaching

This lack of a professional environment also extends to coaching methods and the management of women’s national teams, which has led many teams and athletes to speak out. Perhaps most fittingly, but also most disappointingly, exemplifying this is the Spanish Football Federation in both the lead up to the World Cup and their actions afterwards. In the build up to the World Cup, the team’s complaints centred around issues with both the Royal Spanish Football Federation (RFEF) and their coach Jorge Vilda. With regard to RFEF, the team asked for improvement in how they were

treated, including friendlies against higher ranked nations, improved travel, and more staff to help with fitness, injury and prevention.¹⁷ In relation to Vilda, it was reported that 15 players felt their relationship with him had broken down. There were grievances about his management style, his qualifications, training sessions and tactics.¹⁸ In what should have been one of the greatest periods of their lives following winning the World Cup, the Spanish players’ achievements were overshadowed when Spanish Football president Luis Rubiales kissed Jenni Hermoso on the lips after the final whistle without her consent. It was televised to millions, and Hermoso recalled feeling disrespected as a “player and a person.”¹⁹ In December 2023, the investigation into his behaviour also revealed he had reportedly forcefully kissed England defender Lucy Bronze and inappropriately ‘cupped and stroked’ her teammate Laura Coombs’ face following an injury.²⁰ The reaction and public outcry was further enhanced by Rubiales’ initial refusal to step down from his post and by his numerous supporters within Spanish football, including Vilda.²¹ This led to 15 players refusing to report to their first training camp after the World Cup until there were wide-ranging reforms and a change in leadership.²² Seventy-one players signed a letter in which they refused to play as long as Rubiales was in post.²³ It is hard to imagine such a situation arising in relation to a male player, and this sort of situation only emphasises the inferiority of women in sport and strengthens the argument as to why equality in terms of treatment is so imperative.

2.3 Injury prevention and access to proper medical treatment

The fight for equal treatment also extends to injury prevention and proper access to medical treatment. It is well-known that there is much media attention as to the prevalence of ACL injuries in female athletes. It is notable that a number

¹¹ Ibid

¹² The Guardian, ‘Jamaica accuse their FA of letting team down before Women’s World Cup,’ <https://www.theguardian.com/football/2023/jun/16/jamaica-accuse-federation-letting-team-down-womens-world-cup>. Accessed 13th October 2023

¹³ Ibid

¹⁴ Ibid

¹⁵ Human Rights Watch (2023) <https://www.hrw.org/news/2023/07/25/womens-world-cup-shows-equality-still-has-long-way-go>. Accessed 18th December 2023

¹⁶ Ibid

¹⁷ ESPN, ‘Infighting of Women’s World Cup faves Spain, France, Canada reveals big issues in the sport,’ https://www.espn.co.uk/football/story/_/id/37636706/pre-world-cup-canada-france-spain-chaos-womens-soccer-issues-2023. Accessed 13th October 2023

¹⁸ Ibid

¹⁹ BBC News (2023) <https://www.bbc.co.uk/news/world-europe-67063403>. Accessed 13th October 2023

²⁰ The Guardian (2023) <https://www.theguardian.com/football/2023/dec/06/luis-rubiales-forcefully-kissed-lucy-bronze-after-world-cup-final-claims-fa-chair>. Accessed 18th December 2023

²¹ Ibid

²² Sky News, ‘Spain’s women footballers say boycott remains despite call-up after World Cup kiss scandal.’ <https://news.sky.com/story/womens-world-cup-jenni-hermoso-left-out-of-spain-squad-to-protect-her-after-kiss-scandal-12964479>. Accessed 13th October 2023

²³ The Guardian (2023) <https://www.theguardian.com/football/2023/aug/26/spain-football-federation-threatens-to-sue-protesting-female-players>. Accessed 13th October 2023

of high-profile athletes were missing from the World Cup due to injury. These included England Captain Leah Williamson, Vivienne Miedema of the Netherlands and Catarina Macario of the US, amongst a host of others. This only reinforced the lack of knowledge and research into the injuries of the female athlete, given that current research is primarily based on that of men and their anatomy. Arsenal's Beth Mead, who also missed the World Cup due to an ACL injury, spoke out about how the recurrence of these injuries was happening too often and that if it was happening this regularly in the men's game, something would be done about it.²⁴ FIFPRO's Dr Alex Culvin stated that we have to question,

“What qualifications do support staff at women's clubs have? What access to facilities do players have? How is important data around player health communicated from club to national team? And are these practices consistent and informed?”²⁵

She also went on to state that,

“the value that we're placing on support staff, facilities and all conditions, is disjointed. That in turn means that quality control becomes a real issue. If players are being pre-habbed, are they being led and researched by experts who work in elite high performance and specialise in women's physiological health? Often that isn't the case in women's football.”²⁶

In a survey conducted by FIFPRO as to their experiences in the build up to the World Cup, it was revealed that: 70% of athletes were not provided with a pre-tournament electrocardiogram (ECG) and 54% were not provided with a pre-competition medical assessment (PCMR). This is in spite of the fact that FIFA introduced mandatory ECGs scans and have required pre-tournament medicals since 2006 (for both men and women).²⁷ Another 66% of those surveyed said recovery facilities were not of an elite standard or did not exist, 70% said that gym facilities were not of an elite standard and 59% percent flew economy class, including for flights over long

distances.²⁸ Furthermore, a new report, again conducted by FIFPRO, has shown that increased workload, travel and insufficient rest in women's football is making athletes more susceptible to a range of injuries, including ACL injuries.²⁹ The report showed,

“elite women's players who sustained ACL injuries made more appearances, had more instances of less than five days between matches, and had less rest time in the 28 days prior to the injury compared to non-injured players. The professional women's footballers who sustained ACL injuries also travelled further, for longer and crossed more time zones than non-injured players.”³⁰

Thus, in spite of the success of the tournament, the FIFPRO agreement and the progress being made, it is clear that football still has a way to go in terms of equal treatment in relation to both medical treatment, scheduling and research.

2.4 Marketing and broadcasting

Further emphasising the need for equality is the late broadcasting deal struck by FIFA in the build up to the World Cup. A deal was not signed until six weeks before the tournament. The consequence of this was that broadcasters had little time to not only advertise the event, but sign quality broadcasters to do the game justice. This was due to FIFA's decision to separate the women's and men's broadcasting contracts, meaning there were a number of low bids—further demoralising the women's game.³¹ It has also been commented that the marketing strategy is insufficient,

“The marketing of the tournament has been underwhelming and over-reliant on conventional “inspiration” themes aimed at young girls—strategies that have little proven impact on participation and are often seen as patronising. The global branding and promotion of the women's game is typically fixated on two ideas. First, that only young girls are interested. Second, women footballers should be presented as role

²⁴ FIFPRO (2023a) <https://fifpro.org/en/supporting-players/health-and-performance/injury-prevention-disability-long-term-effect-de-training/dr-alex-culvin-are-we-asking-the-right-questions-on-acl-injuries/#:~:text=A%20multi%2Dstakeholder%20approach%20acknowledges,what%20good%20practice%20they%20encountered.> Accessed 13th October 2023

²⁵ FIFPRO (2023c) <https://fifpro.org/en/supporting-players/health-and-performance/injury-prevention-disability-long-term-effect-de-training/dr-alex-culvin-are-we-asking-the-right-questions-on-acl-injuries/#:~:text=A%20multi%2Dstakeholder%20approach%20acknowledges,what%20good%20practice%20they%20encountered.> Accessed 13th October

²⁶ Ibid

²⁷ FIFA, Sudden Cardiac Arrest. <https://www.fifa.com/en/about-fifa/medical/education-awareness/sudden-cardiac-arrest.> Accessed 18th December 2023

²⁸ FIFPRO (2023d) <https://fifpro.org/en/who-we-are/what-we-do/foundations-of-work/new-fifpro-report-warns-of-uneven-women-s-world-cup-qualifying-across-confederations/#:~:text=70%25%20were%20not%20provided%20with,not%20of%20an%20elite%20standard.> Accessed 13th October 2023

²⁹ FIFPRO (2023e) <https://www.fifpro.org/en/supporting-players/health-and-performance/player-workload/new-fifpro-report-shows-increased-workload-travel-and-insufficient-rest-in-women-s-football-is-making-players-more-susceptible-to-injuries-including-acl-injuries.> Accessed 18th December 2023

³⁰ Ibid

³¹ The Conversation (2023) <https://theconversation.com/womens-world-cup-five-issues-holding-back-the-female-game-209358.> Accessed 13th October 2023

models for young girls. This strategy is not accurate, as it obscures the existing adult audience for women's football. Nor is it desirable or sustainable, as it doesn't consider attracting wider audiences—men, boys, women without children—to the women's game."³²

Studies into broadcasting in women's sport generally have shown a disparity between the coverage shown to men and women, which is related to broadcasting airtime, as well as the quality and standard.³³ This is further exemplified by the recent controversy surrounding comments made by ex-professional football player Joey Barton who tweeted that women "shouldn't be talking with any kind of authority" on men's football, before comparing having women on commentary, co-commentary or punditry duty as "like me talking about knitting or netball."³⁴ These sorts of comments rooted in hegemonic masculinity only serve to reinforce the disparity in treatment in gender from athletes, to coaches, to pundits.

2.5 Refereeing

Also of interest is the standard of refereeing at women's football matches. The most obvious reason for this is that in the men's English Premier League, referees are fully professional. This is not the same for referees in the Women's Super League which immediately raises issue. This is also the case in various leagues around the globe. Many coaches have called for referees to be fully professional, as well as the introduction of VAR. Chelsea manger Emma Hayes stated that women's footballers were being treated like "second-class citizens" and being left behind by not introducing the technology.³⁵ There have been many controversies in the WSL as to refereeing decisions in recent times, with the latest one coming in Manchester City's clash with Chelsea in October 2023 when Alex Greenwood was given a second yellow card for time-wasting, despite there being only 22 seconds between the free kick being awarded and her taking it.³⁶

³² Ibid

³³ For example, see Crabill et al. (2022) and Pope et al. (2022)

³⁴ The Independent, Luke Baker (2023) <https://www.independent.co.uk/sport/football/alex-scott-joey-barton-women-tweets-bbc-b2461600.html>. Accessed 18th December 2023

³⁵ Give Me Sport (2022) <https://www.givemesport.com/87973694-wsl-are-referee-decisions-having-a-negative-impact-on-the-outcome-of-the-league/>. Accessed 13th October 2023

³⁶ The Athletic. <https://theathletic.com/4941440/2023/10/08/alex-greenwood-red-card-time-wasting/>. Accessed 13th October 2023

2.6 Inequality and growth

These inequalities above are in spite of the fact that women's sport is, in many ways, thriving. The popularity and engagement with women's sport is increasing universally, from grass roots to elite level. In the UK, a record 15.1 million people watched women's sport in the first three months of 2021,³⁷ whilst the 2022 Women's Euro Final was watched by over 365 million people globally.³⁸ In the US, the 2023 US Tennis Open final attracted 3.4 million viewers (compared to the men's final which attracted 2.3 million viewers).³⁹ Likewise, the friendly clash between the USWNT and the England Lionesses sold out in less than 24 hours and is the fastest selling game at the new Wembley.⁴⁰ Further illustrating the growth and increasing interest in women's sport across the globe, a survey across eight key markets around the world; including the U.S., U.K, France, Italy, Germany, Spain, Australia and New Zealand, concluded that 84% of sports fans are interested in women's sport. Amongst that 84%, 51% were male.⁴¹ It was also established that 45% would consider attending a women's sport event, and 46% would watch women's sport if it was available on TV.⁴² Perhaps most interesting and progressive, were the attributes that were linked to women's sport. These included that women's sport and athletes were regarded as more inspiring when compared to men, whilst women's sport was also regarded as more progressive and less money driven, as well as more family orientated.⁴³

In addition to popularity in terms of attendance and viewing, women's sport has likewise grown commercially. A new UEFA report, published in 2022, suggested the commercial value of women's football in Europe could enjoy a six-fold increase to almost £678 million per year over the next

³⁷ Sky Sports News (2022) <https://www.skysports.com/football/news/11095/12605508/record-viewing-figures-for-womens-sport-in-first-three-months-of-2022-as-over-15m-tune-in>. Accessed 12th October 2023

³⁸ UEFA (2022) <https://www.uefa.com/insideuefa/news/0278-15ff73f066e1-c729b5099cbb-1000--women-s-euro-watched-by-over-365-million-people-globally/>. Accessed 12th October 2023

³⁹ ESPN. <https://espnpressroom.com/us/press-releases/2023/09/coco-gauffs-us-open-victory-marks-most-viewed-womens-major-tennis-final-ever-on-espn/#:~:text=Novak%20Djokovic%27s%20victory%20over%20Daniil,%3A6%2C%206%3A3>. Accessed 12th October 2023

⁴⁰ The Guardian (2022) <https://www.theguardian.com/football/2022/oct/07/lionesses-v-usa-the-fastest-selling-england-game-at-new-wembley#:~:text=The%20Lionesses%27%20showdown%20with%20the,in%20less%20than%2024%20hours>. Accessed 12th October 2023

⁴¹ Nielson Sports (2018) <https://nielsen.com/global-interest-womens-sports-rise/>. Accessed 12th October 2023

⁴² Ibid

⁴³ Ibid

decade.⁴⁴ The key findings of this report included that women's football had a positive image, rapid investment is supporting professionalisation, and that the game is attracting new and existing football fans.⁴⁵ The report also focuses on commercialisation, and this is echoed by the fact that brands are now actively choosing to invest in the female athlete; for example, England captain Leah Williamson has sponsorship deals with Gucci, Nike and Pepsi,⁴⁶ whilst Swiss star Alisha Lehmann has recently become the first female athlete to endorse sport drink Prime, joining Manchester City's Erling Haaland and UFC fighter Israel Adesanya.⁴⁷ The report notes that media rights could grow sevenfold over the next decade, reaching an annual value of €256m by 2023, whilst 69% of clubs ranked sponsorship as one of three fastest growing revenue streams since 2016/2017.⁴⁸ Thus, from the above, it is clear that although women have had to fight to compete and that there is still a significant way to go in terms of both equality and equity, the potential and interest is present in women's sport that makes the fight for equal treatment a winnable one, particularly when utilising the law.

This brief overview outlines the various but not exhaustive list of issues regarding equal treatment within female sport. However, the above illustrates that in spite of these inequalities, women's sport, and in particular football, is still thriving. Thus, the fight for equality is not only about how to continue to grow the sport, but also do ensure that the above growth does not stagnate. When discussing these issues, many take the view that it is simply about equal pay or access to professional facilities. However, it is above much more than that. It includes protection from discrimination, adequate coaching and transport, a good standard of broadcasting and refereeing and a holistic approach to equality within the women's game. Thus, having looked at examples of some of these inequalities which are currently in existence, it is now necessary to examine the potential avenues athletes can utilise to achieve equal treatment.

3 FIFA Statutes and the IOC

As above, there are two potential avenues which athletes can utilise in order to achieve equal treatment, namely: sports governing bodies own internal policies and their own domestic laws in relation to equal treatment. The legal precedent set down by *Pechstein v International Skating Union*⁴⁹ illustrates that the standard arbitration agreements athletes sign means that when disputes arise, athletes should use their own governing bodies internal dispute resolution mechanisms and that of CAS in the first instance.⁵⁰ However, in the German Federal Constitutional Court, following a decision by the European Court of Human Rights,⁵¹ the court ruled that by signing these arbitration agreements, which athletes are required to do in order to compete, consent had not freely been given and thus Pechstein had not waived her right to a fair trial in the 'strictly legal' courts, particularly due to the fact that CAS had not given her a public hearing.⁵² This means that athletes have two mechanisms in which to achieve equality in terms of treatment.

With reference governing bodies own internal dispute resolution mechanisms, athletes are able to utilise FIFA tribunals and if necessary, CAS. In order to do so, female athletes' claim should be that FIFA is breaching its own internal statutes, particularly articles 3 and 4, which commit to the protection of human rights and to protection from discrimination, including on the basis of sex. Article 3 states, "FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights."⁵³ Article 4 then goes on to state that,

"discrimination of any kind against a country, private person or group of people on account of race, skin colour, ethnic, national or social origin, gender, disability, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason is strictly prohibited and punishable by suspension or expulsion."⁵⁴

These rights are adopted from and use similar language to the United Nations Guiding Principles on Business and

⁴⁴ UEFA Women's Football, 'The Business Case for Women's Football'. https://editorial.uefa.com/resources/0278-15e121074702-c9be7dcd0a29-1000/business_case_for_women_s_football-_external_report_1_.pdf, page 8. Accessed 12th October 2023

⁴⁵ Ibid

⁴⁶ BBC. <https://www.bbc.co.uk/news/business-62320684>. Accessed 12th October 2023

⁴⁷ SportsProMedia (2023) <https://www.sportspromedia.com/news/alisha-lehmann-prime-ksi-logan-paul-brand-endorsement-ambassador/>. Accessed 12th October 2023

⁴⁸ UEFA Women's Football. https://editorial.uefa.com/resources/0278-15e121074702-c9be7dcd0a29-1000/business_case_for_women_s_football-_external_report_1_.pdf page 22, Accessed 12th October 2023

⁴⁹ CAS 2009/A/1912

⁵⁰ Ibid at (UEFA 2023) – [74]

⁵¹ Mutu and Pechstein v Switzerland (2019) (Applications nos. 40575/10 and 67474/10)

⁵² BVerfG, ruling of the 2nd Chamber of the First Senate of 3 June 2022, 1 BvR 2103/16—Rn. (1–54).

⁵³ FIFA Statutes, Article 3, available at <https://digitalhub.fifa.com/m/5eb2b45e547ff39f/original/ndfxogwkoukoe4dm3uk0-.pdf>. Accessed 14th October 2023

⁵⁴ Ibid at Article 4

Human Rights.⁵⁵ In 2016, FIFA adopted these principles and revised its own statutes to respect human rights.⁵⁶ In June 2017, FIFA adopted and published its Human Rights Policy stating that human rights commitments are binding on all FIFA bodies and officials.⁵⁷ Thus, this extends to bodies including UEFA and national football associations. Under the United Nations Guiding Principles, there are three pillars: protect, respect and remedy. As such, not only should FIFA respect and protect human rights, they should also provide adequate remedy should these rights be breached. *In terms of providing equal treatment to its male and female athletes, it can be persuasively argued that FIFA, and its associations, are in breach of their own statutes.* This includes on both international duty and within the club context. In the international context, all national governing bodies are signatories to FIFA and thereby are bound by their rules, and thus should provide equal treatment, irrespective of gender. In the club context, by virtue of the European model of sport, each club is also a signatory to the FIFA statutes by virtue of its contractual relationship with UEFA and then FIFA and thus, again, not providing equal treatment is a breach of these internal rules.

This is not the first instance in which discussion has arisen as to whether FIFA has breached its own internal statutes. In October 2023, Human Rights Watch published an article outlining the various ways in which FIFA is breaching its own statutes by not requiring due diligence reports when awarding World Cups to host nations.⁵⁸ There was likewise controversy surrounding FIFA and its commitment to human rights when it banned players from wearing the one love armband in the 2022 Qatar World Cup. This was argued to be a breach of both articles 3 and 4.⁵⁹ Also in the build up to the World Cup, there were numerous breaches of human rights. FIFA were responsible for workers building stadiums and infrastructure, yet “failed to impose strong conditions to protect workers and became a complacent enabler to the widespread abuse workers suffered, including illegal recruitment fees, wage theft, injuries, and deaths.”⁶⁰ This is a clear

breach of Article 3. There were also various issues as to Qatari laws on their treatment of women and the LGBTQ community, bringing into focus the breaches of FIFA’s own regulations.⁶¹ In the context of this research, a clear focus on these breaches of sports’ governing bodies own statutes, and in particularly the UN’s Guiding Principles, can be a key driver in the fight for equality in women’s sport, in particular, for equal treatment.

Further emphasising the importance of these statutes and the principle of non-discrimination, is the fact that FIFA is a signatory to the Olympic Charter. Under this, International Sports federations are recognised by the IOC to administer sports at world level. Whilst these federations preserve their independence and autonomy as to the administration of their individual sports, to have IOC recognition, the governing bodies must ensure that their statutes and practices conform with the Olympic Charter.⁶² In the context of equal treatment of athletes, Principle 6 of the Olympic Charter is of particular interest. It states,

“the enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁶³

This principle is not unlike Article 4 of the FIFA statutes and reinforces the importance of anti-discrimination in sport in that athletes should not be disadvantaged on the basis of their gender. The above analysis which outlines the various ways in which female athletes face unequal treatment, from medical treatment to broadcasting quality, shows the ways in which Principle 6 of the Olympic Charter is being breached. Sports’ governing bodies cannot provide athletes with differing standards of treatment purely on the basis of sex. This is further reinforced by the fact that the IOC has itself adopted the UN Guiding Principles and in September 2022, mandated a ‘Strategic Framework on Human Rights.’⁶⁴ Thus, the analysis above which outlines the ways in which women receive unequal treatment and the ways in which FIFA is breaching its human rights obligations and principles of non-discrimination, is only strengthened by the fact that it

⁵⁵ See United Nations Guiding Principles on Business and Human Rights, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf. Accessed 19th October 2023

⁵⁶ Human Rights Watch (2023a) <https://www.hrw.org/news/2023/10/27/fifa-statutory-human-rights-requirements>. Accessed 19th December 2023

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ For example, see James (2022) <https://www.asser.nl/SportsLaw/Blog/post/time-to-focus-on-freedom-of-expression-rainbows-armbands-and-fifa-s-commitment-to-human-rights-by-prof-mark-james-manchester-metropolitan-university>. Accessed 14th October 2023

⁶⁰ Human Rights Watch (2022). <https://www.hrw.org/news/2022/11/14/qatar-rights-abuses-stain-fifa-world-cup>. Accessed 14th October 2023

⁶¹ Ibid

⁶² International Olympic Committee, ‘International Sports Federations.’ <https://olympics.com/ioc/international-federations>. Accessed 14th October 2023

⁶³ The Olympic Charter, Principle 6, available at https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf?_ga=2.267826381.2110837780.1697300724-1042261140.1697300724. Accessed 14th October 2023

⁶⁴ Human Rights Watch (2023a) <https://www.hrw.org/news/2023/10/27/fifa-statutory-human-rights-requirements>. Accessed 19th December 2023

is a signatory to the IOC which not only also adopts the UN Guiding Principles, but demands there is a framework to achieve the universal protection of human rights. In short, by treating athletes differently in terms of professionalism by virtue of the fact that they are women, national associations such as the FA, UEFA and FIFA are not only in breach of FIFA's own internal statutes, but also of the Olympic Charter and the UN Guiding Principles.

To conclude, it is well established that athletes are entitled to use their governing bodies own internal dispute resolution mechanisms as well as that of CAS. It is also well established by the above analysis that there is a clear breach of the following: the UN Guiding Principles, FIFA's statutes and the Olympic Charter. These breaches have occurred by virtue of the fact that female athletes are being given less favourable treatment than their male counterparts in various ways, purely on the basis of their gender. This treatment ranges from access to professionalism, refereeing standards, medical treatment and elite standards of coaching amongst others. As such, this paper advocates that in order to achieve parity of treatment, female athletes should first utilise sports own internal mechanisms on the basis of the above breaches. However, this is not the only weapon in their armoury. In order to fully explore the remedies available, it is also necessary to examine states own domestic legislation.

4 Domestic equal treatment laws

Within the EU and across the globe, the majority of jurisdictions have legislation which guarantee equal treatment in the course of employment. As noted above, this is guaranteed in the EU by both the TFEU and the TEU as well as the Directive; for example, in the UK, the Equality Act 2010 guarantees equal treatment and legally protects people from discrimination in the workplace and in wider society. This Act replaced previous anti-discrimination laws with a single Act, and sets out various protected characteristics, one of which is gender. Thus, a person may not be discriminated against, or rather, treated differently because of their sex. Although under s195 of the Act there is a 'sporting exemption' which allows men and women in gender effected sports to compete in separate categories, this does not apply in terms of equal treatment and rather only allows for discrimination on the basis of health and safety and fairness.⁶⁵ In 2022, Spain introduced a new anti-discrimination law, which guarantees the equal treatment and non-discrimination of employees on the basis of a broad list of grounds, including gender, as well as race, age, disability and sexual orientation amongst others.⁶⁶ The German Equal Treatment Act (2006) likewise

protects against discrimination on the basis of gender, whilst in Greece Law 4443/2016 prohibits discrimination and guarantees equal treatment in the course of employment. These anti-discrimination laws exist in all jurisdictions within the EU and also many across the globe and are entrenched in law to protect individuals from being discriminated against, or from receiving unequal treatment on the basis of gender.

When applying these laws to sport, there is simply no justification nor defence for non-compliance. By means of example, it could be argued that equal pay laws cannot strictly be applied to sport because 'sport is special,' in that players are treated as commodities by virtue of the transfer system. They are bought and sold and are worth whatever a club is willing to pay for them in transfer fees and in salary. It is not about discrimination in this sense—a left back is not paid a certain amount, nor is a striker and instead it is about the negotiations between the athlete, agent and club, and the bargaining power of the individual athlete. However, in both the international and club context, there is no defence for not treating athletes in the same professional manner. This includes access to the best facilities, coaching standards, medical treatment and sports science, amongst a host of others. There is no specificity of sport considerations here. Whether representing their country under the sports' governing body, or playing for their club under the same employer, athletes are entitled, by law, to the same treatment.

Generally, across jurisdictions, the defence for infringement of equal treatment legislation is that the discriminatory treatment is a legitimate means of achieving a proportionate aim.⁶⁷ In terms of sport, it is hard to comprehend any proportionate aim which has the result of treating men and women differently in terms of professionalism. In the context of football, women play the same 90 mins, on the same size of pitch, with the same size of goals, under the same rules, and regulated by the same sport's governing body. This is becoming particularly relevant in the Women's Super League where clubs such as Manchester City and Manchester United advertise their one club policy—they simply cannot, in law, then treat their women's team differently in terms of professionalism.

This approach has already had success in the context of sport. The US Women's second, less talked about or publicised and successful claim, was that they did not receive equal or comparable treatment in contrast with their male counterparts. This claim was that US Soccer had breached the Civil Rights Act (1964), specifically Title VII (7) which prohibits discrimination during the course of employment on the basis of sex.⁶⁸ The claim was based upon unequal working conditions in relation to both field surfaces and travel

⁶⁵ Equality Act, (2010) s195

⁶⁶ Spanish Comprehensive Law 15/2022

⁶⁷ For example, see Equality Act, (2010) s13(2)

⁶⁸ Civil Rights Act (1964), s701(e)

conditions.⁶⁹ It is notable that under this legislation, the burden of proof falls on the plaintiff to show that they have been discriminated against. If this is proven, that burden is then shifted to the defendant who must provide a legitimate, non-discriminatory reason for difference in working conditions.⁷⁰ In relation to field surfaces, the women's team were made to play on inferior surfaces more often than that of the men's team. However, the defence that the reason for this was,

“to spread its Senior National Team games across various cities in various regions of the country, the relatively large number of games required to be played in a relatively short period of time during fall and winter, and the desire to prioritize venues with grass fields for 2016 in preparation for the Olympic Games all played a role in the number and concentration of games on artificial turf.”⁷¹

The reason to not install temporary grass as often for the women's as the men's team was,

“that it did not anticipate generating enough revenue from those matches to make it financially prudent to install temporary grass over the turf at those venues, nor did USSF believe doing so would be necessary to attract opponents.”⁷²

In spite of these apparent non-sensical reasons, these were both held to be legitimate and non-discriminatory, with no real explanation as to why. It would seem logical that if cities had to provide grass in order to host national teams, they would. In fact, in order to host the 2026 Men's World Cup, FIFA has required the 8 of the 16 host stadiums which normally have artificial turf, to install grass.⁷³ Similarly, the fact that grass is not necessary to attract opponents should not be regarded as a sufficient reason to play on an inferior surface.

With regard to charter flights, the women's national team had around \$4 million less spent on air fare and hotels, despite playing more often.⁷⁴ US Soccer's justification that this was to give the struggling men's side a competitive advantage was described as “weak and implausible”, and thus was a breach.⁷⁵ In order to avoid this issue going to trial, the women's team and US Soccer came to an agreement

upon working conditions in April 2021, which guarantees women the same access to facilities, training and professional support as their male counterparts.⁷⁶ The fact that an agreement was reached in relation to all treatment, in spite of the field surfaces claim failing, reinforces the benefit of engaging with equal treatment legislation. Simply by relying on the legislation in one instance, this allowed the US Women's team to gain equality in all areas of performance when on international duty, rather than field surfaces and charter flights which they complained about in Court, thus showing the advantage of using equal treatment legislation to guarantee equality.

The above analysis shows that various jurisdictions have legislation which guarantees equal treatment in the course of employment. This sort of legislation has been entrenched in law for a significant period of time. Unlike equal pay arguments for example, where there are ‘sport is special’ considerations in terms of paying individual players’ differently, this is not the case here. The same can be said for any proposed justifications for differences in treatment. Generally, these justifications have to be a proportionate means of achieving a legitimate aim. It is difficult to imagine any legitimate aim for having female athletes receive subpar training, coaching, facilities or officiating. Thus, by utilising the relevant domestic laws within their jurisdiction, athletes can achieve equality in terms of treatment. Should remedy not be provided by football's own internal dispute resolution mechanisms, then by evoking the ‘strictly legal’ equal treatment legislation, female athletes can achieve equality, in terms of treatment.

5 Moving forward in the fight for equal treatment in sport

Women's sport is growing. From viewing, to participation, to commercialisation and merchandising, the interest and engagement in women's sport is clear. More people than ever are watching, whether this be on television or attending live events and women's football in particular is attracting new and existing fans. Brands are actively seeking engagement with female athletes, through sponsorship and merchandising opportunities, whilst commercial investment in the game generally is also increasing. Brands have realised the value of being associated with the women's game and the new opportunities which are and may arise. This growth is in spite of the fact that female athletes exist and compete within a framework of inequality. This inequality is not confined to one particular area and encompasses a host of ways in which they are treated differently to male athletes. This includes adequate preparation and training for tournaments, professional and qualified

⁶⁹ Alex Morgan et al v. United States Soccer Federation, Inc (2020) Case No. 2:19-cv-01717-RGK-AGR, supra note 64, at 22

⁷⁰ Alex Morgan et al v. United States Soccer Federation, Inc (2020) Case No. 2:19-cv-01717-RGK-AGR, supra note 64, at 25–26

⁷¹ Ibid

⁷² Ibid

⁷³ Sports Business Journal, Alex Silverman (2023). <https://www.sportsbusinessjournal.com/Articles/2023/11/06/america-stadiums-side.aspx>. Accessed 19th December 2023

⁷⁴ Ibid at 29

⁷⁵ Ibid at 31

⁷⁶ Carrick et al. (2021, pp. 289–311, at 303)

coaching staff, access to medical facilities and research aimed at the female athlete, refereeing and broadcasting quality amongst a host of others. In almost every area of the game, from preparation to the final whistle, women are treated at a subpar standard compared to that of their male counterparts. In order to continue the above growth of the game, and to avoid this growth stagnating, it is imperative that women achieve equality in terms of treatment.

Equal treatment in the context of employment is not a novel concept. This principle of equal treatment has long been respected by the EU and in jurisdictions beyond. Article 157 of the TFEU ensures measures are adopted to guarantee equality of treatment, as does Article 2 and 3 of the TEU. This is bolstered by Directive 2006/54/EC which ensures member states legislate to ensure equal opportunities and treatment of both men and women in employment. In the context of sport, equal treatment legislation is not only entrenched in law, but within sports' governing bodies own internal statutes and within the Olympic Charter. These guarantees of equality are further strengthened by FIFA and the IOC's commitment to abide by the UN Guiding Principles on Human Rights. Together, these guarantee the protection of human rights and from discrimination on the basis of gender. By treating female athletes differently, there are not only breaches of domestic and international laws, but also of FIFA and the IOC's own internal statute as well as the UN's Guiding Principles. Thus, in order to achieve parity in terms of treatment, female athletes have two options.

The first, and preferred option would be to invoke the internal dispute resolution mechanisms of FIFA and/or their national federations. This claim would be on the basis that FIFA are breaching both Article 3 and 4 of their own statutes, coupled with principle 6 of the Olympic Charter. Moreover, this argument would be strengthened by the fact that FIFA and the IOC have committed to respecting human rights as set down by the UN Guiding Principles on Human Rights and Business. This claim is strengthened by the various other ways in FIFA have been accused of breaching their own rules. Should FIFA's own mechanisms not provide sufficient remedy, athletes then have the option of appealing this to CAS. In short, by not providing equality of treatment to male and female athletes, FIFA are in breach of their statutes and thus athletes have a sports internal dispute mechanism they can use to remedy this wrong.

However, should these mechanisms, whether it be a FIFA tribunal or CAS appeal, not provide appropriate redress, female athletes have a two-pronged approach available to them in order to achieve equality. The second is through the 'strictly legal' method. By utilising existing equal treatment laws, which have been entrenched in the legal framework of various jurisdictions for a significant period of time, athletes can likewise seek remedy. Although it is preferable that this redress is provided through sports governing bodies own mechanisms,

should this not be the case, equal treatment within employment is so enshrined in law that it does provide another alternative, viable option and the US litigation provides a successful example of this. Thus, athletes can rely upon their own domestic legislation, whether this be within the EU or not, to achieve equal treatment in what is pragmatically, the workplace.

In conclusion, there is a two-pronged approach to equal treatment. Together with FIFA's statutes which protect human rights and protect from discrimination and the Olympic Charter, there is a clear, substantiated legal framework which female athletes can utilise in order to gain equality. As outlined in the above research, this equality is not just confined to the pitch. In order for female sport to continue to grow, the approach to equality has to be holistic. This includes the quality of pitches, coaching staff, access to medical and rehab facilities, high quality training facilities, properly trained referees and broadcasting deals and outputs which sufficiently promote and grow the game. These protections for equal treatment are not only entrenched in law but also within sports' own governing bodies policies and charters. Thus, reliance on the above discussed remedies can provide female athlete with equality in terms of treatment which in turn will allow the sport to continue to grow in terms of standard, interest and commercially.

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Data availability No datasets were generated or analysed during the current study.

Declarations

Conflict of interest There are no competing interests, or financial or non-financial concerned with this paper.

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