

**THE FOOTBALL ASSOCIATION**

**and**

**LUIS SUAREZ**

**REASONS OF THE REGULATORY COMMISSION**

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## **I Introduction**

1. On Saturday 15 October 2011, Liverpool FC played Manchester United FC at Anfield in a Premier League fixture. In the 58th minute of the game with the score at 0-0, Luis Suarez, the Liverpool striker, fouled Patrice Evra, the Manchester United captain and left-back. The referee awarded a free kick. Five minutes later, in the 63rd minute, Mr Suarez won a corner for Liverpool. Mr Evra's job was to mark Mr Suarez at Liverpool corners. This corner was the first occasion that the players had come together since the foul.
2. As Steven Gerrard was preparing to take the corner, Mr Evra moved towards Mr Suarez in the goalmouth. They spoke animatedly to each other. The conversation continued as they walked along the goal-line until Dirk Kuyt, the Liverpool player, came between them. Mr Suarez then ran towards the near post in anticipation of the corner, and Mr Evra ran with him. The referee having blown his whistle for the corner to be taken, which it was, blew his whistle again to stop play. His attention had been drawn to the exchanges on the goal-line involving Mr Evra and Mr Suarez. He called both players over and spoke to them to tell them to calm down. As the players walked away from the referee, Mr Suarez put his hand on the back of Mr Evra's head. Mr Evra pushed Mr Suarez's arm away. The referee called them back and spoke to them again. The players walked away from the referee again, and the corner was taken. The game ended in a 1-1 draw.
3. Mr Evra made a complaint to the referee during and immediately after the game about what Mr Suarez is alleged to have said to him while they were waiting for the corner to be taken. The Football Association ("the FA") investigated Mr Evra's complaint. On 16 November 2011, the FA charged Mr Suarez with misconduct contrary to FA Rule E3. The charge brought is that Mr Suarez used abusive and/or insulting words and/or behaviour towards Mr Evra contrary to Rule E3(1), and that this breach of Rule E3(1) included a reference to Mr Evra's ethnic origin and/or colour and/or race within the meaning of Rule E3(2) ("the Charge").
4. Between 14 and 20 December 2011, we sat as an independent Regulatory Commission ("the Commission") to consider the Charge brought by the FA. The parties before us were the FA on the one hand, and Mr Suarez on the other. The FA was represented by Mr Paul

Greaney QC, assisted by Mr Dario Giovanelli of the FA. Mr Suarez was represented by Mr Peter McCormick OBE, of McCormicks Solicitors, assisted by Ms Natalie Wignall and Ms Zoe Ward, respectively the General Counsel and Club Secretary of Liverpool FC. We received evidence from match officials, players, managers and others. Mr Evra and Mr Suarez gave very different and contradictory accounts to us of what took place in the penalty area.

5. The FA's case, in short, was as follows. In the goalmouth, Mr Evra and Mr Suarez spoke to each other in Spanish. Mr Evra asked Mr Suarez why he had kicked him, referring to the foul five minutes previously. Mr Suarez replied "Porque tu eres negro", meaning "Because you are black". Mr Evra then said to Mr Suarez "say it to me again, I'm going to punch you". Mr Suarez replied "No hablo con los negros", meaning "I don't speak to blacks". Mr Evra continued by saying that he now thought he was going to punch Mr Suarez. Mr Suarez replied "Dale, negro, negro, negro", which meant "okay, blackie, blackie, blackie". As Mr Suarez said this, he reached out to touch Mr Evra's arm, gesturing at his skin. Mr Kuyt then intervened. When the referee blew his whistle and called the players over to him shortly after the exchanges in the goalmouth, Mr Evra said to the referee "ref, ref, he just called me a fucking black".
6. Mr Suarez denied the Charge. His case, in short, was as follows. He agreed with Mr Evra that they spoke to each other in Spanish in the goalmouth. When Mr Evra asked why he had kicked him, Mr Suarez replied that it was a normal foul and shrugged his shoulders. Mr Evra then said that he was going to kick Mr Suarez, to which Mr Suarez told him to shut up. As Mr Kuyt was approaching, Mr Suarez touched Mr Evra's left arm in a pinching style movement. According to Mr Suarez, at no point in the goalmouth did he use the word "negro". When the referee blew his whistle to stop play, Mr Evra spoke to Mr Suarez and said (in English) "Don't touch me, South American". Mr Suarez replied "Por que, negro?". He says that he used the word "negro" in a way with which he was familiar from his upbringing in Uruguay. In this sense, Mr Suarez claimed, it is used as a noun and as a friendly form of address to people seen as black or brown-skinned (or even just black-haired). Thus, it meant "Why, black?" Mr Suarez maintained that when he said "Por que, negro?" to Mr Evra, it was intended in a conciliatory and friendly way. Mr Suarez said this

was the only time that he used the word “negro” in his exchanges with Mr Evra during the match.

7. On 20 December 2011, after closing submissions from the parties and lengthy deliberations on our part, we announced our decision to the parties. We found the Charge proved, albeit we did not accept the FA's case in its entirety. Having then received submissions on penalty, we announced to the parties that Mr Suarez would be warned as to his future conduct, fined £40,000, suspended for eight first team matches and ordered to pay costs. We stayed the match suspension pending any appeal by Mr Suarez.
8. We set out below our findings of fact, the reasons for our decision finding the Charge proved, and the reasons for the penalty imposed. These are the reasons of the Commission as a whole, to which all three members have contributed.

## **II The Proceedings**

9. Before turning to the facts in more detail, we shall describe in broad terms what happened between the match on 15 October and the conclusion of the hearing on 20 December 2011 so far as these proceedings are concerned. The purpose of doing so is to provide a chronology of the proceedings and to explain the context in which we made our decision.

### **The FA's investigation**

10. On Sunday 16 October, the day after the match, the referee Andre Marriner submitted to the FA an Extraordinary Incident Report Form in which he referred to the complaint that was made by Mr Evra immediately after the match. The FA decided to investigate.
11. On Thursday 20 October, Ms Kennedy, the Head of Off-Field Regulation and a member of the Regulatory Legal Team at the FA, interviewed Mr Evra in Manchester. Mr Evra was asked to give further details about what had happened during the match, which he did. This included mentioning the names of other players who, so Mr Evra thought, might be able to give relevant evidence.
12. During the interview, the FA and Mr Evra watched some video footage of the match. Mr Evra pointed out to the FA, by reference to the video footage, when it was during the

match that Mr Suarez made the comments about which Mr Evra had complained. This information enabled the FA to ask broadcasters to provide video footage of what appeared to be the key moments of the game, so far as Mr Evra's complaint was concerned. This video footage was provided in due course. It contained material which was not broadcast, including footage of the exchanges in the penalty area in the 63rd minute taken from a number of different camera angles.

13. The FA arranged to meet Mr Suarez to obtain his account of what had taken place between him and Mr Evra during the match. Ms Kennedy interviewed Mr Suarez on 2 November in Liverpool. Mr Suarez was accompanied by an interpreter from the Club (Mr Adrian McGrath), Ms Ward and Ms Wignall. An independent professional interpreter (Mr Hugo Pinero) was also present. On the same day, the FA also interviewed Mr Kenny Dalglish (the Liverpool manager), Mr Damien Comolli (the Liverpool Director of Football), Mr Ray Haughan (the Liverpool Team Administration Manager) and Mr Kuyt. The interviews were recorded and transcripts were produced.
14. Between 4 and 7 November, the FA obtained signed witness statements from the following individuals: Mr Evra, Mr Marriner (the referee), Mr Phil Dowd (the fourth official at the match), Sir Alex Ferguson (the Manchester United manager), Mr Ryan Giggs, Valencia, Hernandez, Nani, and Anderson (all Manchester United players). In the case of each of the Manchester United players who provided a witness statement, except for Mr Giggs, the statement was provided in the player's native language and also in English, using the services of a professional translator. This meant that statements were provided in Spanish for Valencia (who is Ecuadorian) and Hernandez (who is Mexican), and in Portuguese for Anderson (who is Brazilian) and Nani (who is Portuguese).
15. On 11 November, the FA instructed two experts, Dr Scorer and Professor Wade. The experts were instructed to prepare a written report on the linguistic and cultural interpretations of the words "negro" and "negros" in Rioplatense Spanish. The instructions went into further detail as to the issues which the experts were asked to cover. The FA provided the experts with relevant materials, including 12 video clips of the match, the witness statement of Mr Evra and the transcript of the interview with Mr Suarez. The experts provided a written report to the FA on 15 November.

### The Charge letter

16. On 16 November, the FA charged Mr Suarez. Details of the Charge were set out in the FA's letter of the same date to Mr Suarez ("the Charge letter"). Having referred to the fixture, the letter continued:

"You are hereby charged with misconduct for a breach of FA Rule E3 in respect of this fixture.

It is alleged that in or around the 63rd minute of the above fixture you used abusive and/or insulting words and/or behaviour towards an opponent Mr Patrice Evra contrary to Rule E3(1) ("particular one").

It is further alleged that your breach of Rule E3(1) included a reference to the ethnic origin and/or colour and/or race of Mr Patrice Evra within the meaning of Rule E3(2) ("particular two").

Please note that the two particulars are free-standing, albeit sequential, and separate decisions will be required in relation to each by the Regulatory Commission. Please also note that, by reference to FA Rule E3(2), should a Regulatory Commission find a breach of Rule E3(1) proved, and find that it includes a reference to ethnic origin and/or race then the Commission shall consider the imposition of an increased sanction, as set out at page 119 of the FA Handbook 2011-12.

The Football Association intends to rely on the evidence listed in the attached Schedule 1.

The Football Association also provides with this letter documentation listed in the attached Schedule 2. This documentation is not relied upon by The Association but is disclosed to you as unused material.

You are required to submit the enclosed Reply Form A by close of business on 24 November 2011. This should indicate whether you wish to admit or deny the charge; and whether you request a personal hearing.

...

You should at the same time provide The Football Association with any representations you wish to make including copies of any evidence or other documentation upon which you intend to rely in support of your plea. This should include the details and full written statements of any witnesses you intend to call.

You should furthermore indicate which of the witnesses whose evidence is contained in the list at Schedule 1 to this letter you will require to attend any hearing in order to be cross-examined. If you do not request a witness to attend to be cross-examined you will be deemed to have accepted their evidence in full."

17. The unused material referred to in Schedule 2 is, as its description suggests, material which the FA had gathered or considered in the course of its investigation but on which it did not intend to rely. The purpose of providing it to Mr Suarez was to enable him and his advisers to examine the unused material to see whether, in their view, it was relevant and helpful to Mr Suarez in defending the Charge. For example, the contents of a document amongst the unused material might be thought by Mr Suarez and his advisers to be directly helpful in itself or to set them on a train of enquiry which might lead to their acquiring helpful evidence. The disclosure to Mr Suarez of unused material is intended to achieve fairness and transparency in the process. The Commission did not see the unused material unless it was relied on by Mr Suarez.
18. As a result of a question raised by the Commission during the course of the hearing, it transpired that the FA had interviewed Mr Evra on 20 October, and that this interview had been recorded. No transcript had been made. The tapes should have been, but were not, included in the schedule of unused material. Upon enquiring into this omission, it also emerged that the FA was in possession of some brief notes of interviews, which also should have been, but were not, included in the schedule of unused material. When this came to light, Mr Greaney properly offered to provide copies of the tapes and other notes to Mr Suarez and his advisers. This development took place before Mr Evra had started to give evidence. In the circumstances, the Commission directed that this additional unused material should be disclosed forthwith to Mr McCormick; that Mr McCormick should have an adequate opportunity to review the material, including listening to the tapes, to take instructions from Mr Suarez on any matters arising from this additional material, and to review his planned cross-examination of Mr Evra in the light of it.
19. Whilst Mr McCormick was listening to the tapes, the Commission did the same. There were, in fact, two tapes of the FA's interview with Mr Evra on 20 October. On the first, Mr Evra described what, according to him, had occurred during the match. On the second, Mr Evra gave his account of what had happened by reference to video clips that were viewed by those present at the interview (which did not, at that time, include the unbroadcast material which the FA subsequently obtained). The Commission arranged for the stenographers, who were present for the purpose of transcribing the hearing, to produce

such transcripts of the tapes as they could in the time available. A transcript of the first, longer tape was available by the time Mr McCormick commenced his cross-examination of Mr Evra, and was added to the bundle of documents before the Commission.

20. Mr McCormick, whilst understandably critical of the omission of the tapes from the schedule of unused material, confirmed that he had had an adequate opportunity to listen to the tapes and to review the brief notes of interviews before commencing his cross-examination of Mr Evra. He did not consider it necessary for a transcript of the second, shorter tape to be produced. All present had, in the event, listened to it, and Mr McCormick was able to question Mr Evra without the necessity of a transcript of the second tape.

#### **Mr Suarez's application for an extension of time to submit documents**

21. As appears from the Charge letter set out in paragraph 16 above, the FA required Mr Suarez to submit his Reply by 24 November, together with copies of documents on which he intended to rely, including statements from any witnesses he wished to call. This timetable was in accordance with the standard directions laid down in Regulation 4.3 of the FA Disciplinary Regulations.
22. On 21 November, Mr Suarez submitted his Reply Form (A) stating that he denied the Charge, and requesting a personal hearing. By letter of the same date, Mr McCormick applied for an extension of time for Mr Suarez to submit the further documentation and witness statements on which he intended to rely in defence of the Charge. He sought an extension of 14 days until Thursday 8 December. He relied on the following arguments in support of this application. First, that Mr Suarez required further particulars in relation to the Charge. In fact, he requested these from the FA on 21 November, and the FA provided them to him on 22 November. Secondly, that the material served by the FA with the Charge letter was substantial and required careful consideration by Mr Suarez and his advisers, especially in view of the serious nature of the Charge, for which additional time was required. Thirdly, Mr McCormick, who was Mr Suarez's chosen representative for these proceedings, had a number of pre-existing professional commitments over the relevant period.

23. The FA's response to Mr McCormick's application for an extension of time was that it was prepared to agree an extension to Monday 5 December but not to Thursday 8th as sought. The FA stressed the importance of concluding the hearing of the Charge as soon as reasonably practicable in the interests of Mr Suarez, Mr Evra and others involved. It was pointed out that it might be necessary for the FA to respond to the documents submitted by Mr Suarez and an extension to 8 December would leave very little time for the FA to do this if a hearing was to take place in the week commencing 12 December. That week was clearly desirable for the hearing otherwise, with Christmas and New Year intervening, the hearing would be unlikely to be concluded until January 2012.
24. On 23 November, the Chairman issued a written decision on Mr McCormick's application, based on the papers submitted to him. Before doing so, the Chairman obtained from the parties details of dates to avoid for the hearing from the point of view of the availability of witnesses and the parties' representatives. The Chairman recognised that a serious charge had been brought against Mr Suarez and that he should have adequate time in which to prepare to meet the Charge with the assistance of his chosen legal representative. It was also important that this matter should not be left hanging over the parties any longer than necessary, and that the hearing should be concluded in December if reasonably and fairly practicable.
25. A balance was to be struck in weighing these various factors. In the circumstances, the Chairman granted an extension of time to Mr Suarez until 5pm on Wednesday 7 December. This provided him with a period of 21 days between the date of the Charge letter and the deadline to submit his response, and took account of Mr McCormick's other pre-existing professional commitments. It was one day less than requested by Mr Suarez, but was intended to allow sufficient time for the further necessary steps to be taken so that a hearing could take place commencing on Wednesday 14 December with a view to evidence and argument being concluded on Friday 16 December.

#### **The Chairman's directions for the hearing**

26. At the same time as granting Mr Suarez an extension of time in which to submit his response, the Chairman gave various directions including that (1) by noon on Monday 12

December, the FA should serve on Mr Suarez copies of any material (including supplemental witness statements) on which it intended to rely in reply to material served by Mr Suarez; (2) by noon on Tuesday 13 December, Mr Suarez and the FA should give written notice to the other of the names of those witnesses, whose statements had been served by the other party, who were required to attend the hearing for cross-examination; (3) by 10am on Wednesday 14 December, Mr Suarez and the FA should serve on each other opening skeleton arguments in relation to (a) any preliminary issues and (b) the Charge; and (4) a transcript should be taken of the hearing.

#### **Witnesses whose evidence was agreed**

27. The parties notified each other, in advance of the hearing, of those witnesses for the other side whom they wished to attend the hearing for cross-examination, in accordance with the Chairman's direction. The effect of this was that the evidence of witnesses who were not called for cross-examination was agreed in full. That this was the effect was stated in the Charge letter, but was also expressly confirmed to be the position by Mr Greaney and Mr McCormick during the hearing in response to a question from the Commission.
28. The FA wished to cross-examine Mr Suarez, Mr Kuyt, Mr Comolli and Mr Dalglish who were witnesses for Mr Suarez. This meant that the FA accepted in full the evidence of Mr Haughan, Mr Mick McDonough, Mr Scott Ledger, both assistant referees, Mr David Horlick, the match assessor, Mr John Bramhall of the PFA and Mr David De Gea, the Manchester United goalkeeper.
29. Mr McCormick wished to cross-examine Mr Evra, Mr Marriner and Mr Giggs. This meant that Mr Suarez accepted in full the evidence of Mr Dowd, Valencia, Hernandez, Nani, Anderson, Sir Alex Ferguson, Mr Mike Riley and Mr Stephane Guy of Canal +, the French TV station. There was one caveat to this which was that Mr Greaney invited the Commission to attach no weight to paragraph 8 of Hernandez's statement, which largely contained a statement of his opinion on the use of the Spanish language (on the basis that a witness may generally only give evidence of facts, not opinion unless he is called as an expert, here in the Spanish language, which Hernandez was not). In addition, even though

Mr Marriner was asked to attend the hearing and was cross-examined, Mr McCormick stated that Mr Suarez accepted the contents of Mr Marriner's witness statement.

### **The Chairman's further directions**

30. On Tuesday 13 December, the Chairman gave further directions in relation to the hearing. These included the following, that (1) the parties' representatives should seek to agree and place before the Commission at the start of the hearing, a list of the principal factual and legal issues which they considered the Commission was required to address; and (2) the parties' representatives should be prepared for their witnesses to give oral evidence in chief on the central factual issues in dispute without reference to their written witness statements, if required by the Commission.

### **The issues**

31. In accordance with the Chairman's direction, the parties agreed that the following were, simply stated, the issues which the Commission was required to address:

31.1. On the balance of probabilities, is the account of Mr Evra true and reliable?

31.2. If it is:

(a) does that mean that Mr Suarez used abusive and/or insulting words and/or behaviour towards Mr Evra, in breach of Rule E3(1); and

(b) if it does, did the abusive and/or insulting words and/or behaviour of Mr Suarez include a reference to the ethnic origin and/or colour and/or race of Mr Evra within the meaning of Rule E3(2).

31.3. If it is not:

(a) on the account of Mr Suarez, did he use abusive and/or insulting words and/or behaviour towards Mr Evra, in breach of Rule E3(1); and

- (b) if he did, did the abusive and/or insulting words and/or behaviour of Mr Suarez include a reference to the ethnic origin and/or colour and/or race of Mr Evra within the meaning of Rule E3(2).

### **The manner in which witnesses gave evidence**

32. The reason for the direction that the Commission might require witnesses to give oral evidence in chief on the central factual issues was as follows. In civil litigation, it is now the norm for parties to be required in advance of a hearing to exchange with each other the written statements of the evidence of their witnesses. Often, a judge will read the witness statements in advance of the hearing. In such a case, there is generally no need for the witness to read out his statement at the hearing. The statement stands as the witness's evidence in chief and the witness will proceed to be cross-examined by the opposing party's lawyer, perhaps after some initial questioning by his own lawyer to help the witness familiarise himself with the process. This approach can save time and costs, and, by preventing one party being taken by surprise by what a witness says, enable the facts to be fully presented and examined. There is, however, a danger in this approach. In civil cases, it is understood that a witness statement should be in the witness's own words, although lawyers will often draft the statement based on the witness's instructions. If the witness statement stands as the witness's evidence in chief, the court may not get as clear an impression of how credible and reliable the evidence is as it would do if the witness gave oral evidence. This is particularly so in a case that turns on significant factual disputes.
33. The Commission read all the witness statements (in their English version) and other documents, and watched video clips with which we were provided, in advance of the hearing. However, given the significant factual disputes which we were asked to resolve, we required Mr Evra and Mr Suarez to give oral evidence in chief on the central factual disputes as to what happened in the penalty area. Essentially, they were asked to describe in their own words what they recalled of the incidents, before being cross-examined. This assisted us in forming our view as to the credibility and reliability of their evidence.

34. The Commission informed all witnesses that the hearing was private and that they should not discuss with anyone outside the hearing room anything that they had heard inside the hearing room.

### **The hearing**

35. The hearing commenced just after 3pm on Wednesday 14 December. Although Mr Greaney and Mr McCormick had exchanged opening skeleton arguments, which described their respective cases in outline and which the Commission had read, they made opening statements. In Mr McCormick's opening statement he showed us some video clips which were taken from an international broadcast of the match, which had not previously been provided to us.
36. Mr Marriner gave evidence on Wednesday 14th, after which the hearing adjourned at 6.20pm. The hearing re-commenced shortly after 9am on Thursday 15th. Much of the Thursday morning was taken up with listening to the tapes of the FA's interview of Mr Evra, which are discussed in paragraphs 18-19 above.
37. Mr Evra then gave evidence, followed by Mr Giggs. It was then the turn of Mr Suarez to give evidence, followed by his witnesses, Mr Kuyt, Mr Comolli and Mr Dalglish. The hearing adjourned at about 6.30pm on the 15th.
38. It will be apparent from this order of witnesses that the Commission had the benefit of seeing and hearing the evidence of Mr Evra and Mr Suarez on the same day, separated only by Mr Giggs' evidence which was brief. We were thus able to compare the evidence of one as against the other, which helped in forming our view as to the credibility and reliability of that evidence.
39. The hearing continued on Friday 16th at about 9am. Mr Greaney made closing submissions for the FA, followed by Mr McCormick, who had the last word, for Mr Suarez. Mr Greaney had also submitted a further written submission during the course of the hearing on certain legal issues in response to an invitation by the Commission to both parties to do so, should they wish. These legal issues are discussed in Section III below.

40. Closing submissions concluded on Friday 16th a little after 3pm. The Commission then began its deliberations. It was soon apparent that we would not be in a position to reach a decision on the Friday afternoon. It would be necessary to review the evidence and submissions with considerable care. We informed the parties that realistically we did not expect to be in a position to announce our decision before 2pm on Tuesday 20 December at the earliest. We agreed to sit at 3pm on Tuesday 20th to enable Mr Suarez to take part in training earlier that day.

### **Announcement of the decision**

41. Between the afternoon of Friday 16th and the afternoon of Tuesday 20th, the Commission spent very many hours reviewing the evidence and submissions and reaching its decision. We re-read the witness statements and documents that had been placed before us, the parties' opening and closing submissions, we read the transcripts of the hearing, and watched the video clips many times.

42. We reached a decision by 3pm on Tuesday 20 December. Regulation 7.4 of the Disciplinary Regulations provides that the Commission shall announce its decision as to whether Misconduct is proved or not as soon as reasonably practicable in such manner as it considers appropriate. Where the decision is reached at a hearing at which the alleged offender is present it should be announced immediately, save where the Commission considers it appropriate to act otherwise. Mr Suarez was, of course, present at the hearing. He had returned from training to hear our decision. Neither party suggested to the Commission that we should depart from the normal course of announcing the decision at the hearing.

43. In view of the fact that we decided that the Charge was proved, it was appropriate to give the parties an opportunity to make submissions as to the appropriate penalty. In order to assist the parties in making those submissions, as part of the announcement of our decision we informed the parties of our central findings of fact. We also allowed the parties as much time as they needed to consider our decision before making submissions on mitigation. The FA made submissions through Mr Giovanelli (as Mr Greaney was unavailable on that particular day due to pre-existing professional commitments),

followed by Mr McCormick. We then adjourned at approximately 4.40pm to consider penalty.

44. We reviewed the submissions on penalty in the light of our findings of fact and the decision we had reached that the Charge was proved. We announced our decision on penalty to the parties at approximately 6.20pm.
45. Paragraph 3.3 of the General Provisions Relating to Regulatory Commissions of the FA provides that the FA has the power to publish in the public press, on a web site or in any other manner considered appropriate, amongst other things, reports of any decision of any hearing whether or not this reflects on the character or conduct of a participant. Each participant shall be deemed to have consented to the publication of any such report.
46. The Commission's decision on the Charge and penalty was published by the FA at about 8pm on Tuesday 20th. That publication was a matter for the FA to decide in accordance with paragraph 3.3 of the General Provisions, and not a matter for the Commission. The parties were informed at the conclusion of the hearing at approximately 6.30pm that publication of the decision was embargoed until 8pm.

### **III The Relevant Rules**

47. There are two issues regarding the relevant Rules which arise for consideration in this case: first, the meaning of Rules E3(1) and E3(2); and, secondly, the burden and standard of proof. We shall consider each in turn.

#### **The meaning of Rules E3(1) and E3(2)**

48. The Rule pursuant to which Mr Suarez was charged is found in section E of the FA Rules under the general heading "Conduct". Rule E1, with the sub-heading "Misconduct", provides, so far as relevant:

"The Association may act against a Participant in respect of any "Misconduct", which is defined as being a breach of the following:

...

(b) the Rules and regulations of The Association and in particular Rules E3 to 28 below;"

In the FA Rules, a Participant includes a player.

49. Rule E3, with the sub-heading "General Behaviour", provides as follows:

"(1) A Participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.

(2) In the event of any breach of Rule E3(1) including a reference to any one or more of a person's ethnic origin, colour, race, nationality, faith, gender, sexual orientation or disability (an "aggravating factor"), a Regulatory Commission shall consider the imposition of an increased sanction, taking into account the following entry points:

For a first offence, a sanction that is double that which the Regulatory Commission would have applied had the aggravating factor not been present.

For a second offence, a sanction that is treble that which the Regulatory Commission would have applied had the aggravating factor not been present.

Any further such offence(s) shall give rise to consideration of a permanent suspension.

These entry points are intended to guide the Regulatory Commission and are not mandatory.

The Regulatory Commission shall have the discretion to impose a sanction greater or less than the entry point, according to the aggravating or mitigating factors present in each case."

The issue: objective or subjective test?

50. In deciding whether there has been a breach of Rule E3, it is necessary to ask what has to be proved in order to establish a breach. In particular, is it sufficient to prove that in a case such as this, the words or behaviour are *objectively speaking* abusive or insulting in the judgment of the Commission (the objective test)? Or is it necessary to go further and prove that, in addition to the words or behaviour being abusive or insulting, the alleged offender *subjectively intended* them to be abusive or insulting (the subjective test)? The Commission invited the parties to address it on this particular issue.

### The submissions for the FA

51. Mr Greaney submitted that, as a matter of construction, Rule E3(1) requires the application of an objective test, and does not depend at all upon the state of mind of the Participant. The judgment the Rule requires is whether, objectively assessed, the Participant has used abusive or insulting words or behaviour.
52. Mr Greaney submitted that the point was underlined by considering what other types of general behaviour are covered by Rule E3(1). He asked: could it be suggested that the question of whether a Participant has used serious foul play depends upon whether he regarded it as foul play or intended to foul? He submitted as a matter of construction it could not, nor could it as a matter of logic.
53. According to Mr Greaney, whether Mr Suarez used abusive or insulting words or behaviour is a question of fact for the Commission, applying this objective standard. He referred to analogous statutory provisions under the Public Order Acts in support of this submission. We refer to some of these provisions below.

### The submissions for Mr Suarez

54. Mr McCormick's primary submission on this issue was that the test for a breach of Rule E3(1) is subjective. In other words, if Mr Suarez did not intend his words or behaviour to be abusive or insulting, then he did not breach the Rule. Otherwise, he submitted, Rule E3(1) creates a strict liability offence which is more severe than the current criminal law in relation to analogous public order offences. Mr Suarez would breach the Rule, according to Mr McCormick, only if he intended his words or behaviour to be abusive or insulting, or was aware that they may be abusive or insulting.
55. Mr McCormick's alternative submission was that if we conclude that the test for breach of Rule E3(1) is objective, then the objective test must be applied in its proper context, which includes the number of overseas players now playing football in England. In this case, Mr McCormick submitted, it is necessary to assess the behaviour of Mr Suarez in the context of a Uruguayan national, and a black Frenchman, speaking to each other in Spanish.

56. Mr McCormick accepted that, if the test is objective, whilst the context must be taken fully into account, the Commission was entitled to apply standards that we consider should be applicable to games in England under the FA's jurisdiction. He agreed that ultimately, as the Commission, we have to ask ourselves: do we consider the words or behaviour abusive or insulting? We have to form our own view. We are, in effect, the jury for that purpose.

### Discussion and conclusions

57. In our judgment, the test for breach of Rule E3(1) is objective. The question is simply whether the words or behaviour are abusive or insulting. This is a matter for the Commission to decide, having regard to all the relevant facts and circumstances of the case. It is not necessary that the alleged offender *intends* his words or behaviour to be abusive or insulting in order for him to breach Rule E3(1). There are a number of reasons which lead us to this conclusion.

58. First, the starting-point is the natural and ordinary meaning of the words of Rule E3(1). Focussing on the words applicable to this case, Rule E3(1) states that a Participant shall not use abusive or insulting words or behaviour. The words are not complicated. The words of the Rule suggest to us that we should ask ourselves: do we consider the words or behaviour to be abusive or insulting? We have been entrusted with the task of answering that question. That the question may be difficult to answer in particular cases does not alter the fact that it is a straightforward question, uncomplicated by legal technicalities.

59. Secondly, it would be highly surprising if the subjective test applied to some of the other types of behaviour prohibited by Rule E3(1). For example, it can be said with some force that whether a player has used violent conduct should not depend on whether he intended his conduct to be violent. Likewise, whether a player is guilty of serious foul play does not generally, and should not in the context of Rule E3(1), depend on his intention.

60. Mr McCormick accepted the principle of this point, namely that the objective test applies to some of the prohibited behaviour in Rule E3(1). But, he submitted, not to all. He accepted the logic of his argument was that, in deciding whether Rule E3(1) has been

breached, the objective test applies to some of the prohibited conduct (intention is not required), and the subjective test applies to the rest (intention is required). The objective test applies, he submitted, to violent conduct and serious foul play. The subjective test applies, he submitted, to threatening, abusive or insulting words or behaviour. He thought "indecent" words or behaviour could be between the two.

61. In our judgment, it would be an odd conclusion to reach that the drafters of Rule E3(1) intended a different test to apply to different parts of the same Rule. All the more so if they left it up to those responsible for complying with, and those applying, the Rules to decide which test applied to which parts without any guidance. These problems are avoided if the objective test applies to Rule E3(1) as a whole.
62. Thirdly, it is instructive to consider analogous legal provisions to see whether they shed any light on this issue.
63. The House of Lords considered similar wording to Rule E3(1) in the case of Brutus v Cozens [1973] AC 854. During the 1972 Wimbledon tennis tournament, an anti-apartheid protester entered the number 2 court during a doubles match involving a South African player. He threw around leaflets, sat down on the court and was eventually ejected. He was charged with using insulting behaviour whereby a breach of the peace was likely to be occasioned contrary to section 5 of the Public Order Act 1936. The justices held that his behaviour had not been insulting. The Divisional Court overturned this decision but the House of Lords restored the justices' ruling.
64. As to whether the behaviour was insulting, Lord Reid stated at 861D-E:

"It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved."
65. Similar wording to Rule E3(1) is now found in section 5(1) of the Public Order Act 1986 ("the 1986 Act"), which provides:

"(1) A person is guilty of an offence if he -

(a) uses threatening, abusive or insulting words or behaviour or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

66. However, it is notable that the requirement of subjective intention is introduced to this offence in express terms by section 6(4) of the same Act, which provides:

"A person is guilty of an offence under section 5 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly."

67. Mr Greaney submitted that Parliament would not have deemed it necessary expressly to provide for subjective intention via section 6(4) if that requirement was already inherent in section 5. By parity of reasoning, he submitted, Rule E3(1) requires no subjective intention since its wording is similar to section 5(1) and yet there is no express requirement of subjective intention written into the FA Rules, as there is into section 5(1) by section 6(4) of the 1986 Act.

68. Mr McCormick relied on these Public Order Act provisions to support his argument that Rule E3(1) must require subjective intention. Otherwise, he submitted, Rule E3(1) imposes a stricter requirement than the criminal law.

69. We agree with the submissions of Mr Greaney. The express provision of a subjective element in section 6(4) of the 1986 Act suggests that Parliament considered that section 5, read alone, did not require subjective intention. Similarly, the wording of Rule E3(1) does not incorporate any requirement for subjective intention, and there is no equivalent to section 6(4) in the FA Rules.

70. As for Mr McCormick's submission that, in the absence of subjective intention, Rule E3(1) imposes a stricter standard than the criminal law, the analogy is inapposite. Breach of Rule

E3(1), whilst a serious matter, does not amount to a criminal offence, the criminal standard of proof does not apply, and criminal sanctions are not imposed on those in breach.

71. We do accept the broad thrust of Mr McCormick's alternative submission however. In applying the objective test and asking ourselves whether, in our assessment, the words or behaviour are abusive or insulting, it is necessary to view the matter in context, taking account of all relevant facts and circumstances. This would include, amongst other things, the fact that many overseas players play their football in England, and many languages are spoken by the players.

#### Rule E3(2)

72. Rule E3(2) provides that in the event of any breach of Rule E3(1) including a reference to, amongst other things, a person's ethnic origin, colour or race, a Commission shall consider the imposition of an increased sanction. The wording of Rule E3(2) is clear. It is a question of fact whether a breach of Rule E3(1) *includes a reference* to the protected characteristics. No question of subjective intention arises here.
73. In some cases it will be possible to draw a clear dividing line between the conduct which amounts to a breach of Rule E3(1) and the inclusion of a reference to a protected characteristic of the kind listed in Rule E3(2). However, in this case, the element of ethnic origin, colour or race is really inherent in the abusive or insulting words. If Mr Suarez did not use the word "negro" towards Mr Evra, then abusive or insulting words are unlikely to have been used. The only exception to that in this case might be in relation to Mr Suarez's alleged pinching of Mr Evra's skin. That might be said to be abusive or insulting behaviour in breach of Rule E3(1) in itself. If so, the separate question would then arise as to whether that pinching included a reference to Mr Evra's ethnic origin, colour or race. However, in relation to Mr Evra's other allegations, the first question of whether the words used were abusive or insulting is inextricably linked to the second question of whether they included reference to ethnic origin, colour or race.

### **The burden and standard of proof**

74. The second issue regarding the relevant Rules which arises concerns the burden and standard of proof.

### **The burden of proof**

75. It is common ground between the parties that the burden of proving a breach of Rule E3(1) and (2) lies on the FA. It is not for Mr Suarez to satisfy the Commission that he did not breach the Rules. Rather, it is for the FA to satisfy us to the required standard that Mr Suarez did breach the Rules.

### **The standard of proof**

76. Regulation 7.3 of the Disciplinary Regulations is in these terms:

"The applicable standard of proof shall be the flexible civil standard of the balance of probability. The more serious the allegation, taking into account the nature of the Misconduct alleged and the context of the case, the greater the burden of evidence required to prove the matter."

77. There are two different standards of proof which can apply in legal cases. One is the criminal standard which applies in criminal cases. The jury must be satisfied beyond a reasonable doubt, or as it is sometimes put, so that it is sure, that the accused committed the alleged crime.
78. The other standard is the civil standard on the balance of probability. This is enshrined in Regulation 7.3 set out above, and applies to this case. It is a lower standard than the criminal standard. It is for the FA to satisfy us on the balance of probability that Mr Suarez breached the Rules. Alternative formulations for the civil standard are sometimes used, such as more likely than not to be correct, or probably correct.
79. Regulation 7.3 includes an important reference to the civil standard of proof being flexible. This means, as the Regulation states, that the more serious the allegation, taking into account the nature of the Misconduct alleged and the context of the case, the greater the burden of evidence required to prove the matter. This is sometimes described in this way: the more serious the allegation, the less likely it is to have happened, and therefore the

greater the burden of evidence required to prove that it did. This does not set the standard any higher than the balance of probability. But, the more serious the allegation, the greater the burden of evidence required to prove the matter to that standard.

80. The FA accepts that the Charge against Mr Suarez is serious, as do we. It is for this reason that we have reminded ourselves that a greater burden of evidence is required to prove the Charge against Mr Suarez.

#### **IV The Background Facts**

81. In this section of the Reasons, we set out the background facts as they unfolded during and after the match. Many of these facts are common ground between the parties although we shall have to resolve some factual disputes in this section. We refer to these as the background facts so as to distinguish them from the main factual disputes in this case which concern what Mr Evra and Mr Suarez said to each other in the penalty area in the 63rd to 65<sup>th</sup> minutes. We set out and explain our findings on those main factual disputes in Section VI of these Reasons.

#### **Mr Suarez fouls Mr Evra**

82. In the 58th minute of the game, Mr Suarez fouled Mr Evra between the edge of the Manchester United penalty area and the corner flag at the Kop end. It seemed to us to be a deliberate foul, and the referee awarded a free kick. The foul was committed by Mr Suarez kicking Mr Evra on his right knee. Mr Evra explained that he had previously had a bad problem in that knee. He remained on the ground receiving medical treatment for about one minute after the tackle.
83. Mr Evra said that while he was lying on the ground, Mr Kuyt came up to him and said "stand up, you fucking prick". Mr Kuyt said "This is untrue. What I did say was something to the effect of "Stand up, stand up", as if to say that it had been a foul but he was making too much of it". The video footage did not show Mr Kuyt speaking to Mr Evra at this time, but Mr Kuyt admitted that he did so. The dispute is about what Mr Kuyt said, not about whether he said anything to Mr Evra at that time. Very little attention was paid to this

dispute during the hearing, and we did not find it necessary in reaching our decision to make a finding about what Mr Kuyt had said to Mr Evra.

#### **Mr Suarez wins a corner**

84. On 62 minutes and 37 seconds, Mr Suarez won a corner for Liverpool with a shot that was deflected past the post. Mr Suarez retrieved the ball from behind the goal and kicked it across to Steven Gerrard to take the corner. Mr Suarez started to move past the near post and along the goal-line.

#### **Mr Evra and Mr Suarez in the goalmouth**

85. It was Mr Evra's job to mark Mr Suarez at corners even though he was not marking him generally throughout the game. Mr Evra moved close to Mr Suarez so that he could mark him when the corner was taken. This was the first time that they had come together since Mr Suarez's foul on Mr Evra five minutes previously.

86. Mr Evra faced up to Mr Suarez and kept walking towards him. This forced Mr Suarez to move backwards along the goal-line and, in fact, slightly behind the goal-line. All the while they were talking to each other. They reached a position approximately halfway along the goal line when Mr Kuyt, the Liverpool player stepped in between Mr Suarez and Mr Evra. Mr Kuyt had been standing in the middle of the six-yard box where he was being marked by Jonny Evans, the Manchester United defender. Mr Kuyt faced up to Mr Evra and prodded him in the chest with his finger. Mr Evra pushed Mr Kuyt away in the chest with both hands. At this point, Mr Suarez started a run out of the six-yard box towards the near post. Mr Evra ran with him. The corner was taken on 63 minutes and 5 seconds but by the time that Mr Suarez had flicked the ball on with his head into the goalmouth area, the referee had blown his whistle to stop play.

87. Mr Evra and Mr Suarez are agreed that they spoke to each other in Spanish in the goalmouth. Mr Evra said that he is not exactly fluent in Spanish but that he can easily converse in Spanish. For Mr Suarez, Spanish is his native language as a Uruguayan. Mr Evra told us that he began the conversation by saying "Concha de tu hermana". Mr Evra's evidence was that this is a phrase used in Spanish like when you say "fucking hell" in

English, but the literal translation is "your sister's pussy". Mr Suarez did not hear Mr Evra say this. One of the video clips that we have seen, taken from a close up angle behind the goal, does appear to support Mr Evra's evidence that he started the conversation with this comment.

88. Mr Suarez said that he did not hear this first comment from Mr Evra but that he heard him whispering something. Mr Suarez told us that he then said "What did you say?" It does seem from the video footage that Mr Suarez does say something at this point in response to Mr Evra's opening comment.
89. Mr Evra told us that he then said to Mr Suarez "Porque me diste un golpe", meaning "Why did you kick me?". The video footage shows that Mr Evra looked down at his knee then at Mr Suarez's face as he asked this question, which does support his evidence that he asked a question about being kicked in the knee. Mr Evra said that, when he asked that question, he was in shock and upset at having been kicked in the knee by Mr Suarez. Mr Suarez agrees that, at this point, Mr Evra asked him why he had kicked him, referring to the earlier foul. That is largely the end of the agreement between them as to what was said in the goalmouth.
90. Mr Evra's evidence was that, in response to his question "Why did you kick me?", Mr Suarez replied "Porque tu eres negro". Mr Evra said that at the time Mr Suarez made that comment, he (Mr Evra) understood it to mean "Because you are a nigger". He now says that he believes the words used by Mr Suarez mean "Because you are black". We shall consider further below Mr Evra's understanding of the Spanish word "negro".
91. Mr Suarez said that he replied to Mr Evra's question "Why did you kick me?" by saying "que habia sido una falta normal", meaning "it was just a normal foul". He said he shrugged his shoulders and put his arms out in a gesture to say that there was nothing serious about it. At this point on the video footage, Mr Suarez's face is obscured, but he does appear to shrug his shoulders.
92. Mr Evra said that he followed up Mr Suarez's reply "Because you are black" by saying "Habla otra vez asi, te voy a dar una porrada", which means "Say it to me again, I'm going to punch you". Mr Suarez replied by saying "No hablo con los negros". Mr Evra said that,

at the time, he understood this to mean "I don't speak to niggers", although he now says it means "I don't speak to blacks".

93. Mr Suarez's evidence was that Mr Evra replied to the comment "it was just a normal foul" by saying "Ok, you kicked me, I'm going to kick you". Mr Suarez said in his witness statement that his response was "Le dije que se callara e hice un gesto breve con mi mano izquierda parecido a la mocion de un "pato cuando hace cuac" para indicarle que hablaba mucho y deberia callarse", which was translated as "I told him to shut up and made a brief gesture with my left hand like a "quacking" motion as if to say he was talking too much and should be quiet".
94. Mr Evra said that after Mr Suarez said "I don't speak to blacks", he (Mr Evra) said "Ahora te voy a dar realmente una porrada", which means "Okay, now I think I'm going to punch you". To this he says that Mr Suarez replied "Dale, negro...negro...negro". At the time, Mr Evra understood this to mean "Okay, nigger, nigger, nigger". He now says it means "Okay, blackie, blackie, blackie". The expert witnesses stated that the phrase "Dale, negro" can be understood as "Bring it on, blackie" or "do it, blackie" or "go ahead, blackie" (see paragraph 184 below).
95. Mr Evra said that as Mr Suarez was speaking he reached out to touch Mr Evra's arm, gesturing at his skin. Mr Evra said that Mr Suarez was drawing attention to the colour of Mr Evra's skin. This gesture is clearly shown on the video footage, just as Mr Kuyt comes between them. It seemed to us that Mr Suarez reached out and pinched Mr Evra's left forearm. In cross-examination, Mr Evra said that at the time he did not realise that Mr Suarez had pinched his arm. He was more focussed on his lips and what he was saying. Mr Evra only realised that Mr Suarez had touched his arm in this way when he saw the video footage later.
96. As to the pinching of Mr Evra's arm, Mr Suarez said this in paragraph 27 of his witness statement:

"Evra did not back off and Dirk Kuyt was approaching us to stand between us. At this point I touched PE's left arm in a pinching type movement. This all happened very quickly. I was trying to defuse the situation and was trying to intimate to Evra that he was not untouchable by reference to his question about the foul. Under no

circumstances was this action intended to be offensive and most certainly not racially offensive. It was not in any way a reference to the colour of PE's skin."

97. Mr Suarez said that at no point did he use the word "negro" during the exchange with Mr Evra in the goalmouth.
98. At the time of these exchanges, there were other players in the six-yard box. These included David De Gea, the Manchester United goalkeeper, Jonny Evans, the Manchester United defender who was marking Dirk Kuyt, and Mr Kuyt himself. Mr De Gea, who is Spanish, said that he did not hear any exchange between Mr Evra and Mr Suarez. It is clear that there was an exchange of some sort between Mr Evra and Mr Suarez. We found it unsurprising that Mr De Gea did not hear any exchange. He appears from the video footage to be focused on the corner, and looking mainly in that direction. Mr Kuyt said that he could not hear what was being said by Mr Evra and Mr Suarez but it seemed clear to him that Mr Evra was trying to provoke Mr Suarez so he (Mr Kuyt) stepped between them and told Mr Evra to leave Mr Suarez alone.
99. Mr Evra's evidence is that up to this point Mr Suarez had used the word "negro" or "negros" five times in the goalmouth: "Because you are black", "I don't speak to blacks" and "Okay, blackie, blackie, blackie".

#### **The referee stops play**

100. As Mr Kuyt stood between Mr Suarez and Mr Evra, Mr Suarez went on a run in anticipation of the corner. Mr Evra ran with him as his marker. The referee signalled for the corner to be taken and the ball was hit towards Mr Suarez. By the time that Mr Suarez flicked the ball on with his head in the direction of the goalmouth, the referee had blown his whistle to stop play.
101. Mr Marriner, the referee, explained that he had been told on his headset by the assistant referee that there was a coming together between Mr Evra and Mr Suarez and to get them over and tell them to cut it out. This must have been a reference to what had taken place in the goalmouth.

102. We examined closely the video footage of this moment which took place in the 64th minute. When the referee blew his whistle to stop play, Mr Evra and Mr Suarez were standing close to each other, having just run and challenged for the corner. The referee called them over to him. Mr Suarez said something to Mr Evra, then started to walk away. There is a clear reaction by Mr Evra to Mr Suarez's comment. This is apparent in two ways. First, there is a facial reaction by Mr Evra, akin to a look of surprise. Secondly, whilst looking at the referee, Mr Evra points to Mr Suarez, first with his forefinger then with his thumb. Mr Evra walks towards the referee and says something while pointing back at Mr Suarez.
103. Mr Evra's evidence was that while he was walking towards the referee he said "ref, ref, he just called me a fucking black". He said that he did not know whether the referee heard his comment. The referee said something like "Calm down, Patrice, the game has been brilliant, stop the pushing between you and Suarez, the game is going well."
104. Mr Suarez's evidence was that simultaneously with the blowing of the whistle, Mr Evra said to him "Don't touch me, South American". Mr Suarez took this to be a reference to his touching Mr Evra's arm on the goal-line a few moments earlier. Mr Suarez said that he turned to Mr Evra and said "Por que, negro?". He said that he used the word "negro" at this point in the way that he did when he was growing up in Uruguay, that is as a friendly form of address to people seen as black or brown-skinned or even just black-haired. He said that he used it in the same way that he did when he spoke to Glen Johnson, the black Liverpool player. He said in no way was the use of the word "negro" intended to be offensive or to be racially offensive. It was intended as an attempt at conciliation.
105. Mr Marriner, the referee, was shown the footage of this incident at the hearing. He had not seen the footage before. He agreed that Mr Evra appeared to be saying something to the referee as he walks in the referee's direction. Mr Marriner said that he could not recall what was being said to him. He explained that he wanted to take control of the situation, that the game had gone "swimmingly" up until that point with no confrontation between any players, and he just wanted to get his point across to the players. He said that he told the players to get on with it, and calm down. That is why he took charge of the situation and really did not take on board what was being said to him.

106. We found Mr Marriner's account to be plausible and credible. He did take control in that the players listened to what he had to say and did not say anything back to him. The fact that Mr Marriner did not hear what Mr Evra said is not inconsistent with Mr Evra's evidence that, as he walked towards the referee, he said "ref, ref, he just called me a fucking black".

#### **Mr Suarez puts his hand on Mr Evra's head**

107. After he had spoken to them, Mr Evra and Mr Suarez walked away from the referee in the direction of the goalmouth. They walked side by side. Mr Suarez stretched out his left arm, and put his left hand on the back of Mr Evra's head. Mr Evra immediately and firmly pushed Mr Suarez's arm away. The referee called them back and spoke to them again. He spoke first to Mr Suarez. The referee clasped Mr Suarez's two arms down by his side, and spoke to him. He then spoke briefly to Mr Evra. Mr Evra made a comment as he and Mr Suarez walked away. Mr Suarez can then be seen making a comment to Mr Evra.

108. Mr Evra's evidence on this incident was as follows. As he and Mr Suarez walked away from the referee, Mr Suarez put his hand on Mr Evra's head. Mr Evra pushed his hand away as he did not want Mr Suarez to touch him. The referee must have seen this as he called them over and told them to calm down. The referee told Mr Suarez not to touch Mr Evra as Mr Evra was saying he did not want Mr Suarez to touch him. As they walked away Mr Suarez said something to Mr Evra but he did not remember what he said to him or what Mr Evra said to Mr Suarez.

109. Mr Suarez's account was as follows. The referee called the players to him the first time. Mr Suarez did not understand what the referee was saying but he gained the impression that what he was doing was to say that they should each say sorry to each other and get on with the game. As they walked away from the referee, Mr Suarez took his advice and patted Mr Evra on the back of the head. According to Mr Suarez, this was "a friendly gesture designed to be conciliatory" but Mr Evra reacted adversely to it and quite violently pushed his arm away. At that point the referee called them both back again to him, spoke to them again and, Mr Suarez believed, delivered the same message about getting on with the game. There was no more conversation between Mr Evra and Mr Suarez for the rest of

the game. It will be noted that Mr Suarez makes no mention of the players talking to each other as they walk away from the referee for the second time.

110. It is at this point in his witness statement, having referred to these incidents, that Mr Suarez said at paragraph 35:

"It seems to me that PE misunderstood my use of the word *negro*. As I have said, it was meant in a conciliatory and friendly way in the context in which I have used the word throughout my life and as set out earlier in this Statement."

#### **The referee books Mr Evra**

111. The corner came to nothing and the ball went out of play with Manchester United being awarded a goal kick. As the players moved upfield, there was an exchange between Mr Evra and Mr Kuyt. The referee called Mr Evra over and gave him a yellow card. Mr Giggs spoke to the referee about the caution and then spoke to Mr Evra.
112. The evidence of Mr Marriner about this incident was as follows. In the 65th minute of the game, he had to issue a caution to Mr Evra after he saw him push Mr Kuyt in the chest following a coming together. Mr Evra was clearly upset and mentioned that he was being called "black". Mr Marriner did not hear whether Mr Evra said who was calling him "black" and he did not understand what Mr Evra was referring to at the time. Mr Evra made no other comment to the referee.
113. Mr Evra described the booking in the following way. Mr Kuyt told him to stop diving so Mr Evra pushed him away. The referee called Mr Evra over to book him. Mr Evra asked the referee why he was booking him and the referee said it was because he had pushed Mr Kuyt. When he was being booked, Mr Evra told the referee again that he had been called black. Mr Evra added that after booking him, the referee spoke to Ryan Giggs. Mr Giggs then asked Mr Evra what was wrong and Mr Evra told him that he had been called black. Mr Giggs told Mr Evra to calm down and not get sent off.
114. Mr Giggs gave evidence before us. He said that he was reasonably close to the referee and after he had shown Mr Evra the yellow card, Mr Giggs approached the referee and asked him why he had booked Mr Evra. The referee said to Mr Giggs "just calm Patrice down".

Mr Giggs then moved away from the referee and towards Mr Evra. It was obvious to Mr Giggs from looking at Mr Evra that he was upset. He said that Mr Evra did not seem quite with it, you might call it red mist. Mr Giggs said to Mr Evra "what's happened?". Mr Evra replied "he called me black". Mr Giggs assumed that Mr Evra was speaking about Mr Kuyt since he had just been booked for some kind of tussle with Mr Kuyt. Mr Giggs said to Mr Evra "did the ref hear it?", to which Mr Evra replied "I don't think so". Mr Giggs then told Mr Evra to calm down and not get himself sent off.

115. Mr Kuyt gave a slightly different version from Mr Marriner, Mr Evra and Mr Giggs. He said that after the goal kick he was close to Mr Evra and said "Come on, let's move on, let's keep going with the game" and touched Mr Evra just on the arm. According to Mr Kuyt, Mr Evra reacted aggressively and smashed his arm away and at that point, the referee having seen the incident, called Mr Evra to him and booked him. Mr Kuyt said that he was very close to Mr Evra and the referee at this time. He said he was "absolutely certain" that he heard Mr Evra say that the referee was only booking him because he was black.
116. We found the evidence of Mr Marriner on this point to be credible and plausible. He recalled Mr Evra telling him that he was being called black. This is consistent with Mr Evra's evidence of what he told Mr Marriner at that time, and also with Mr Giggs' evidence of what Mr Evra said to him shortly afterwards. In light of this, we reject Mr Kuyt's evidence that Mr Evra said that the referee was only booking him because he was black, however certain Mr Kuyt was that he heard it. Moreover, it would make no sense in the circumstances for Mr Evra to accuse the referee of only booking him because he was black. Not only had Mr Evra pushed Mr Kuyt away, which he is likely to have realised had led to his booking, but his concern at that stage was that he had been called black (bearing in mind that, at the very least, Mr Suarez admits having called Mr Evra "negro" by this stage of the game).

#### **Mr Evra's comments to his team-mates**

117. There was no evidence of any further exchanges between Mr Evra and Mr Suarez during the remaining 25 minutes or so of the game. Two goals were scored in that period, first by Steven Gerrard in the 69th minute, followed by a Hernandez equaliser in the 81st minute.

118. We received evidence from four of Mr Evra's team-mates about what happened immediately after the game. They were Valencia, Hernandez, Nani and Anderson. Their evidence was given in the form of written witness statements. These were served on Mr Suarez on 16 November 2011 with the Charge letter. Mr Suarez did not require any of these four players to attend the hearing for cross-examination and so Mr Suarez accepted their evidence in full. We proceeded, therefore, on the basis that the evidence contained in those witness statements is true and sets out what did, in fact, happen immediately after the game.

119. As the players went into the dressing room at the end of the game, Mr Evra was really angry and upset. Valencia said he could see it. He explained that Mr Evra is not normally angry after games. Mr Evra said that he was angry because Mr Suarez had insulted him.

120. Mr Evra was speaking a mix of Spanish and Portuguese. All the Spanish and Portuguese players at Manchester United speak to each other like this so that they can all understand and talk to each other.

121. Valencia said this:

"I cannot remember exactly the words Evra used but he said that Suarez had said that he wouldn't speak to him because he was black. I think the words Evra used were words similar to "Negro, no hablas conmigo"."

122. Hernandez saw that Mr Evra was angry and upset. He said this:

"Although I was stood with the medical staff, I could clearly hear Evra as he was speaking loudly. He said that during the game, Suarez said to him words similar to "No voy a platicar contigo porque eres negro".

I understood from what Evra said that Suarez had been racially abusive towards him and that he had told Evra that he would not speak to him because he was black."

123. Nani said that he always sits close to Mr Evra in the dressing room and at the end of the game when he came into the dressing room, Mr Evra was upset. Nani said:

"I cannot remember exactly what Evra said but he was complaining that Suarez had said something racist towards him. He said that Suarez had said that he wouldn't talk to him because he was black. When he said this in English I think he used the

word "nigger" but in Spanish/Portuguese he used the word "negro" or "preto", I cannot remember exactly which.

Evra was also angry that Suarez had not been booked for saying what he did. Evra said something like, "This is a joke. How is it possible that the referee does nothing when he knows what happened?" Evra said that he had told the referee what Suarez said to him."

124. Anderson said that Mr Evra was really angry in the dressing room after the match. He said:

"I cannot remember all the exact words Evra used but he told us that Suarez had said to him on the pitch that he wouldn't speak to Evra because he was black. I think he used words similar to "no hablo con negro"."

125. Mr Evra said in evidence that some of the other players could see that he was upset and asked him what was wrong. He said that Mr Suarez had called him a nigger and said that he had kicked him because of that. Mr Evra said that he told the other players that Mr Suarez had said "porque tu eres negro". We note that Mr Evra did not say in his own evidence that he had told his team-mates that Mr Suarez had said he would not speak to him because he was black. However, we accept that Mr Evra did say this to his team-mates after the match because that is what all four of them say in their statements and their evidence has been accepted in full by Mr Suarez. It is possible that Mr Evra also told them that Mr Suarez had said he had kicked him "porque tu eres negro", and this was not recalled by the players.

126. Valencia and Anderson told Mr Evra that he must tell the manager and go and see the referee because this was serious. When Sir Alex Ferguson and Mr Evra left the dressing room to go and speak to the referee, Valencia and Anderson followed them. They wanted to support Mr Evra but they were not allowed into the referee's room, only Mr Evra and Sir Alex Ferguson went in.

#### **Sir Alex Ferguson and Mr Evra speak to the referee**

127. Sir Alex Ferguson provided a witness statement. The FA served his statement with the Charge letter on Mr Suarez, who did not require Sir Alex Ferguson to attend the hearing.

As a result, as in the case of the four Manchester United players, Mr Suarez accepted in full the evidence of Sir Alex.

128. Sir Alex said that as he was speaking to David De Gea, Mr Evra approached him. He said "Boss, Suarez called me a nigger." It was obvious to Sir Alex that Mr Evra was upset and angry. Sir Alex was shocked and asked Mr Evra what he wanted to do about it. Sir Alex told him that he should report it to the referee and asked Mr Evra if he wanted to do that. Mr Evra said that he did.
129. Sir Alex and Mr Evra went to the referee's room. Sir Alex went in first, followed by Mr Evra. Sir Alex told Mr Marriner that they had a complaint to make. Sir Alex told him "Evra has been called a nigger by one of the Liverpool players." Sir Alex then motioned for Mr Evra to tell the referee what had been said. The referee told Phil Dowd, the fourth official who was also in the room, to take notes of what was said. Mr Evra then told the referee what had been said to him on the pitch and left the room. The referee told Sir Alex that he (the referee) would need to speak to Liverpool officials about the complaint.
130. Mr Evra said that he told the referee that Mr Suarez had called him a nigger. According to Mr Evra, the referee said to him "Oh, that is why you were talking about being called black", referring back to what Mr Evra had said to the referee on the pitch. Mr Evra said "Yes."
131. Mr Marriner gave evidence about this in his witness statement (the contents of which, it will be recalled, were also accepted by Mr Suarez). He said that Sir Alex told him that he wished to register a formal complaint about a comment that was made to Mr Evra by a Liverpool player. Sir Alex asked Mr Marriner to write down what they were about to say. Mr Marriner then asked Mr Dowd to note down what Sir Alex and Mr Evra wished to say. Mr Evra, speaking in English, then told Mr Marriner that during a coming together in the penalty area in the second half of the match, Mr Suarez said to Mr Evra, "I don't talk to you because you niggers". Mr Marriner told Sir Alex and Mr Evra that he would include the incident in his report. He also told them that he needed to speak to the Liverpool manager, Kenny Dalglish, in order to seek Mr Suarez's version of events.

### **Liverpool FC learn about Mr Evra's complaint**

132. Mr Ray Haughan is the Team Administration Manager at Liverpool FC. He gave a witness statement on behalf of Mr Suarez. The FA did not require him to attend the hearing and so his evidence is accepted in full by them.
133. At half-time and full-time on matchdays at Anfield, Mr Haughan normally stands outside the home dressing room, which is immediately opposite the referee's room and next to the away dressing room. He does this in case anyone needs anything. While he was standing there after the end of the game, he saw Sir Alex Ferguson and Mr Evra come out of the away dressing room and go into the referee's room. Sir Alex knocked on the door, which was not closed, and went in.
134. Mr Haughan told us that he heard Sir Alex say "I want to make a complaint because Suarez has called him (meaning Evra) a nigger five times." Mr Haughan heard the referee ask Sir Alex to close the door and the door was closed.
135. Mr Haughan thought that the Liverpool management should be aware of what was happening. He went into the Liverpool dressing room and told Kevin Keen (a member of the Liverpool coaching staff). Mr Keen took Mr Haughan to see the management, Kenny Dalglish, Damien Comolli and Steve Clarke. Mr Comolli said in evidence that Mr Haughan told the Liverpool management that Sir Alex had gone into the referee's room with Mr Evra saying that Mr Evra had been racially abused by Mr Suarez five times during the game and he wanted it reporting.

### **Mr Dalglish and Mr Comolli speak to Mr Suarez**

136. Mr Comolli told us that the Liverpool management had been told by Mr Haughan about the racial abuse allegation before Mr Dowd came to the Liverpool dressing room (see paragraph 143 below). The management spoke to Mr Suarez and asked him what had happened.
137. Mr Comolli, who is of French origin, speaks several languages "on a working basis, including Spanish and English", as he told us. He gave his evidence to us in English. Mr

Comolli spoke to Mr Suarez in Spanish. Mr Comolli agreed that, when he spoke to Mr Suarez in the dressing room, he (Mr Comolli) thought that this was a potentially serious issue. He agreed that for an allegation of racist abuse to be made against one of his players would potentially have consequences for the player and possibly for the reputation of Liverpool football club. He agreed that as a result of this he wanted to take care how the matter was dealt with. Mr Comolli secured from Mr Suarez his version of events before he went into the referee's room where he passed on to the referee what that account was.

138. Mr Comolli said in his witness statement that Mr Suarez told him nothing happened. He said that there was one incident where he said sorry to Mr Evra and Mr Evra told him "Don't touch me, South American" to which Mr Comolli thought Mr Suarez said he had replied "Por que, tu eres negro?". Mr Suarez was emphatic that he had not said anything that could be classified as racial abuse. Mr Comolli confirmed under cross-examination that he believed that what he was told by Mr Suarez in this meeting was that the words he had used to Mr Evra translated as "Why, because you are black".
139. Mr Dalglish also gave evidence on this point. He said that they thought it was sensible to get Mr Comolli, as a Spanish speaking person, to speak to Mr Suarez in his native tongue. Mr Dalglish does not speak Spanish, other than what he called "restaurant Spanish". He did, however, tell us that he knew (before the conversation with Mr Suarez) that the Spanish word "negro" means black.
140. Mr Dalglish said that, having spoken to Mr Suarez, Mr Comolli explained to Mr Dalglish that Mr Suarez had said that Mr Evra had called him South American and that Mr Suarez had replied "Tu eres negro" which is "you are black". Mr Comolli reported the Spanish words to Mr Dalglish, that is he told him that Mr Suarez had said "Tu eres negro", and then Mr Comolli told Mr Dalglish that this meant "you are black", although Mr Dalglish already had an idea what it meant. Mr Suarez was still in the room when Mr Comolli told Mr Dalglish that Mr Suarez had said "Tu eres negro" to Mr Evra.
141. Mr Suarez's version of this conversation was as follows. He said that Mr Comolli explained to him that Sir Alex Ferguson and Mr Evra had complained to the referee that Mr Suarez had racially insulted Mr Evra five times during the game. Mr Comolli asked Mr

Suarez to tell him what happened. Mr Suarez told him that Mr Evra had said to him "Don't touch me, South American". Mr Suarez had said "Por que negro?". Mr Suarez told Mr Comolli that this was the only thing he had said.

### **Mr Dalglish speaks to the referee**

142. After Sir Alex Ferguson and Mr Evra had left the referee's dressing room, Mr Marriner asked Mr Dowd to go and find Mr Dalglish and Mr Suarez and ask that they come to the referee's room so that he could speak to them.
143. Mr Dowd, the fourth official, whose evidence was accepted by Mr Suarez, went to the Liverpool dressing room. He opened the door and stood in the entrance. He said could someone tell Mr Dalglish that they needed to see him and Mr Suarez in the referee's dressing room. As he was saying this, Mr Dalglish put his head around a door to the coaching team's area of the dressing room. Mr Dalglish had clearly heard what Mr Dowd said and made a joke about having to wait 30 minutes before speaking to the referee. This was a reference to the usual rule that managers are not allowed to approach match officials until 30 minutes after the game.
144. Mr Dowd then left the Liverpool dressing room and went back to the referee's room. Moments later, Mr Dalglish came into the referee's dressing room. Mr Dalglish was on his own. Mr Marriner asked Mr Dalglish why Mr Suarez was not with him. Mr Dalglish said that he had not brought him because Mr Suarez does not speak English. Mr Marriner explained to Mr Dalglish what had been reported to him by Sir Alex and Mr Evra. Mr Marriner said in his witness statement that Mr Evra had told him that Mr Suarez had said to him "I don't talk to you because you niggers", although Mr Dalglish told us that he did not remember the referee saying that to him. Since Mr Suarez accepted Mr. Marriner's witness statement, we accept Mr Marriner's evidence that he said this to Mr Dalglish.
145. Mr Dalglish said, "hasn't he done this before?". This was the evidence to us of Mr Dowd, which was also accepted by Mr Suarez. Mr Dowd remembered this as it caused him to consciously stop and think whether he was aware of any previous allegation involving Mr Evra.

146. Mr Marriner's evidence as to Mr Dalglish's explanation of what happened was as follows:

"Dalglish said to me that Suarez had told him that he had said to Evra "you are black", having been taunted by Evra with the comment "you are South American".

147. Mr Dalglish's evidence of his explanation was in the following terms:

"I said to the Referee that LS had told me (meaning in the general discussion to which Damien Comolli was a party as well) that he had referred to PE being *negro* (black) and that PE had referred to LS as "South American"."

148. Mr Marriner told Mr Dalglish that because a formal complaint had been made he had asked to speak to him and the player to get their version of events. He said that he would put it in his report. Mr Dalglish then left the room.

#### **Mr Comolli speaks to the referee**

149. Mr Marriner told us that a few minutes after Mr Dalglish had left the referee's room, Mr Comolli entered the room. Mr Marriner did not know who Mr Comolli was so he introduced himself. Mr Comolli told Mr Marriner that he wanted to confirm the version of events told to Mr Marriner by Mr Dalglish.

150. According to Mr Marriner's evidence, Mr Comolli told Mr Marriner that he speaks fluent Spanish and that Mr Suarez had told him that Mr Evra had said to Mr Suarez "you are South American" and that Mr Suarez had replied with "Tues negro" which Mr Comolli said translates to "you are black". Mr Dowd said that he asked Mr Comolli to spell "Tues negro", as neither Mr Dowd nor Mr Marriner spoke fluent Spanish. Mr Comolli spelt it, and Mr Dowd then noted it down. Mr Comolli then said that he thought that there had been a translation problem and that at no point had Mr Suarez said the word "niggers". Mr Marriner told Mr Comolli that the incident would be included in his report, and Mr Comolli left the room.

151. Mr Comolli in his evidence said that he relayed to the referee what he thought Mr Suarez had said to Mr Evra, and Mr Dowd made a note of it. He told us that he explained to the referee that the context in which the word "negro" was used was not in any way name-calling or an insult. He said that he felt something had been lost in translation in the way

in which Mr Evra had interpreted the remark and had taken offence when none was intended. Mr Comolli confirmed to Mr Marriner that at no point had Mr Suarez said the word "niggers".

### **The referee's report**

152. Mr Marriner wrote up his report that evening. He referred to the notes that Mr Dowd had taken, which Mr Dowd had given to Mr Marriner before they left the ground. Mr Dowd told us that the notes consisted of 4 or 5 bullet points where he had roughly recorded what had been said. He did not write down exactly what everyone had said; he had just paraphrased the main points. Once he had finished his report, Mr Marriner threw away Mr Dowd's notes.

153. Mr Marriner's report was contained in an Extraordinary Incident Report Form which he filed with the FA. His report is in the following terms:

"I have to bring to your attention an unsavoury event which happened today and was reported to me in my dressing room after the above game.

Sir Alex Ferguson and Patrice Evra entered my dressing room to register an official complaint about a comment made to Patrice Evra by Liverpool player Luis Suarez.

During a coming together in the penalty area in the second half of play, Luis Suarez is alleged to have said to Patrice Evra "I don't talk to you because you niggers".

I said to Sir Alex and Patrice that I would include the incident in my report but needed to speak to Liverpool manager Kenny Dalglish to seek Luis Suarez' version of events.

Kenny Dalglish entered my dressing room at my request and having been told about the incident responded with a different version of events. He said Suarez had responded with "you are black" having first been taunted with "you are South American" by Evra.

Liverpool Director of football Damien Comolli then entered the dressing room to confirm Suarez' version of events as he speaks fluent Spanish.

Evra first said "you are South American" to Suarez who responded with "Tues Negro" which translates "you are Black". Damien Comolli went on to say he thinks it got lost in translation and at no time did Suarez say the word "Niggers".

I confirmed that this incident would be reported."

### Mr Evra's interview on Canal+

154. Mr Evra gave an interview to the French TV channel Canal+ after the game. We were provided with a transcript of the item broadcast on Canal+ which includes an introduction by the presenter followed by part of the interview with Mr Evra. The transcript reads as follows:

"After the Manchester United match in Liverpool yesterday, Patrice Evra spoke again on Luis Suarez' attitude. The Uruguayan striker allegedly made racial slurs against him throughout the match. Commentary by Stephane Guy at the microphone.

"Is this the first time that this has happened to you on a professional field?"

First time that it has happened to me, first time that a player has said racist things to me like that. I am really, I am really concerned because he has no need for that, he is a good player and then this. He tried to make me lose it. It shows that it was really to make me lose it, but at the start, well, we will see. It still hurts. If it's by the fans, I won't say it's fine, because it's still a shame, but when it's a player who is playing the same game as you, it's even harder to accept. Especially when I think that he has played with teammates who were my colour. So, at the start, well I won't go into a big debate about it, we are going to see the arbitrator, there will be an investigation, there is the video. You can even see clearly on his lips what he told me at least ten times. So I'm calm from that point of view."

Patrice Evra's allegations have indeed been taken very seriously by the English Association and an investigation has certainly been launched."

155. In his witness statement, Mr Comolli made reference to Mr Evra's Canal+ interview. He said that a few hours after the game, he received telephone calls from Canal+ who said that Mr Evra had been to see them in the tunnel after the game and said "I want to talk on TV. I want to report my record because I've been abused racially by Suarez ten times". The television representatives asked Mr Comolli if he was aware of this and he said "Yes, I am aware of what happened after the game, because Ferguson went to the changing room saying he's been abused five times". Mr Comolli told us that he said he was not aware about ten times, he was aware about five times.

156. Mr Evra served a supplemental witness statement to clarify the circumstances surrounding the interview he gave to Canal+. He said that as he is the only French player in the Manchester United team, Canal+ ask him to do an interview with them after every

game. He usually agrees to the interviews and would probably agree to 25 out of every 30 requests. After the match on 15 October, Canal+ asked Mr Evra for an interview as usual and he agreed. He said that he knew the Canal+ staff well and they could see that he was upset by something. He told them what had happened between Mr Suarez and him during the game.

157. Mr Evra denied saying what Mr Comolli said he was told, namely that he wanted to talk on TV and report his record because he had been abused racially by Mr Suarez ten times. He said that he specifically asked Canal+ not to ask him about the incident with Mr Suarez during the interview. However, the interviewer did ask him about why he was upset with Mr Suarez during the game. Mr Evra decided to answer the question but was careful not to say exactly the words that had been used. He told us that he would have preferred for the interviewer not to ask him about the incident but journalists always ask whatever they like.
158. The FA obtained from the Canal+ interviewer his account of what had happened. In an email to Ms Kennedy of the FA, Stephane Guy, the interviewer, said that Mr Evra answered the interviewer's request for an interview. He said that as Mr Evra is the only French-speaking player at Man U, the interviewer asks him each time that he covers the team's matches. Noticing that he was very distressed coming out of the changing room, Mr Guy first questioned Mr Evra off the record. It was then that Mr Evra revealed what Mr Guy described as "what has become the Suarez case". According to Mr Guy, it was his duty as a journalist to ask Mr Evra the same question again on the record even if he was not spontaneously in agreement to talk about it.
159. Mr Evra added, in his supplemental statement, that when he answered the question, he mentioned that a word had been said to him ten times. He told us that he did not mean this in the literal sense, it was just a way of talking. In French, he said, it is common to say something like "more than 10 times" but for you not to mean that it was actually over 10 times. It was just a figure of speech.
160. When Mr Comolli gave evidence, Mr McCormick asked him whether that evidence from Mr Evra about the phrase ten times accorded with Mr Comolli's knowledge as a

Frenchman of the French language and French behaviour. His answer was: not in these circumstances. He said that if his daughter asked him for a toy for Christmas and she says it five, six, seven times, he might say "You already told me ten times". But, in those circumstances (referring to Mr Evra giving an interview after the game), nobody in the French language will say that (ie ten times) because it's too important. You have to be precise in what you say.

### **Mr Suarez's posts**

161. On Sunday 16 October, Mr Suarez posted the following on his Facebook page (in English and Spanish):

"I'm upset by the accusations of racism. I can only say that I have always respected and respect everybody. We are all the same. I go to the field with the maximum illusion of a little child who enjoys what he does, not to create conflicts."

He posted the same message on his website, and a version of it on Twitter.

### **V The Expert Evidence**

162. In light of the conflicting accounts given by Mr Evra and Mr Suarez in their interviews with the FA as to their exchanges in the penalty area, and in particular Mr Suarez's claim that he referred to Mr Evra as "negro" in an affectionate and friendly way which was common in Uruguay, the FA instructed independent Spanish language experts to give their opinion.

163. The FA instructed the experts to prepare a written report on the various linguistic and cultural interpretations of the word "negro" or "negros" in Latin American Spanish and especially Spanish as spoken in the River Plate region (castellano rioplatense).

164. The experts who were instructed are Professor Peter Wade and Dr James Scorer who are both affiliated to the Centre for Latin American and Caribbean Studies at the University of Manchester. Peter Wade works in the Department of Social Anthropology and is a specialist in race and ethnicity in Latin America, with particular emphasis on black populations, genetics and sexuality; he has also worked on the ties between Colombian national identity, popular music and race. He learnt his Spanish mainly in Colombia, has

been a fluent speaker for nearly 30 years, and has experience of Spanish usage mainly in Colombia, Mexico and Spain. James Scorer works in the Department of Spanish, Portuguese and Latin American Studies. His research focuses on Latin American cities, particularly urban politics and cultures in Buenos Aires, as well as on national and regional identities in Latin American cinema, including that of Uruguay. He learnt his Spanish predominantly in Buenos Aires, and has been a fluent speaker of Castellano for nearly 10 years.

165. The experts provided a written report dated 15 November 2011. In their report the experts began by making some general observations about the use of the word "negro" in Uruguay and Latin America. They then analysed the statements made by Mr Evra (in the form of his witness statement which was subsequently placed before the Commission) and Mr Suarez (in the form of the transcript of his interview by the FA on 2 November) with particular reference not just to the word "negro" but also to other statements and insults made in Spanish, as well as to the use of a specific gesture by Mr Suarez. The experts made their observations on the premise that in each case the statement made by the player in question was an accurate retelling of the events that took place.

166. In the paragraphs which follow, we summarise the salient contents of the experts' report.

#### **Experts' observations about the use of the word "negro" in Uruguay and Latin America**

167. According to the experts, the Spanish word "negro" cannot simply be translated as "nigger". Whereas "nigger" refers exclusively to a person with dark skin, "negro" can be used both as a noun ("a black") and as an adjective; as an adjective it might be used to refer to a person ("un hombre negro" [a black man]) but equally to an object ("una caja negra" [a black box]).

168. It is important to grasp that the word "negro" is ambiguous in all countries and regions of Latin America.

169. In Uruguay and other areas of Latin America, some people who self-identify as black object to the use of the word "negro" as a term of address, as they say it highlights skin colour when this should be irrelevant; they point out that the term "blanco" [white] is

rarely used in this fashion. Others, however, actively claim the term "negro" as a political identity, seeking to overturn its possible negative connotations.

170. The word "negro" can have pejorative connotations, as it may be associated with low class status, ugliness, vulgar behaviour, noisiness, violence, dishonesty, sexual promiscuity etc. In the River Plate region, for example, "los negros" is sometimes employed as a general term for the lower classes and especially for lower-class people whose behaviour is deemed vulgar and not "respectable".
171. Thus, the word can be employed with the intent to offend and to offend in racial terms; often the word would be appended with further insult, as in the example "negro de mierda" [shitty black].
172. The word "negro" is by no means, however, always used offensively. The term can also be used as a friendly form of address to someone seen as somewhat brown-skinned or even just black-haired. It may be used affectionately between man and wife, or girlfriend/boyfriend, it may be used as a nickname in everyday speech, it may be used to identify in neutral and descriptive fashion someone of dark skin; several famous people in Uruguay are known as "el negro/la negra such-and-such".
173. "Negro" can be used in the same way that other words referring to physical characteristics are used as descriptors for particular individuals, eg "el flaco" [the thin one/beanpole] or "el gordo" [the fat one/fatso]; these words can also be used without the article, eg "hola, gordo" [hi, fatso] or "chau, flaco" [bye, beanpole]; thus, a group of friends waiting for another friend might exclaim "mira, ahí viene el negro" [look, here comes the black one/blackie].
174. In Latin America, other terms may be used in ways that sound odd to a European ear. In Colombia, the word "mono" (literally, "monkey") is used to address light-skinned people or people whose hair is lighter than pure black. In Mexico, the word "güero" is used to address blond or light-haired people. In many areas, the word "moreno" [brown] may be used as a term of address in similar ways to "negro".

175. Though these terms are often used between friends or relatives, they are not used exclusively so; thus, an individual might call out to a passer-by "ay, negro, querés jugar con nosotros?" [hey, blackie, do you want to play with us?]; in all cases, however, when the word is used in this way it implies a sense of rapport or the attempt to create such rapport; naturally, if the term were used with a sneer, then it might carry some of the negative connotations referred to above.
176. In Latin America more widely, the term "negro" can be used to refer to any person perceived to have darker skin than the user of the word; in the River Plate region, the word is also sometimes used to refer to someone with very dark hair.

#### **Experts' observations on Mr Evra's account**

177. The experts reviewed the paragraphs in Mr Evra's witness statement where he described what happened in the goalmouth, together with video clips of the goalmouth coming together. They proceeded, for the purpose of this part of their report, on the basis that the substance of Mr Evra's account was accurate (ie allowing for linguistic errors made by a non-native speaker of Spanish). Having done so, the experts provided the following observations on Mr Evra's account.
178. Mr Evra stated that the goalmouth incident started when he addressed Mr Suarez, beginning with the phrase "Concha de tu hermana". According to the experts, the literal translation is "your sister's cunt" and it can be taken as a general swear word expressing anger, although the word "concha" is not as taboo as the English word "cunt". It is thus equivalent to "fucking hell" or "fuck me". If directed at someone in particular, it can also be understood as "[you] son of a bitch".
179. Assuming Mr Suarez responded with "Porque tu eres negro", this would be interpreted in Uruguay and other regions of Latin America as racially offensive. When the noun is used in the way described by Mr Evra, it is not a friendly form of address, but is used in an insulting way: it is given as the rationale for an act of physical aggression (the foul), as if the person deserved such an attack since they are black. The term is not being used as in paragraphs 172 and 173 above, but in the sense of paragraph 171.

180. The experts noted that, in interview, Mr Evra translated the word "negro" as French "nègre", which is translatable as both "Negro" and "nigger" and in current French usage is clearly a racially offensive term. The more neutral term in French is "noir".
181. The experts noted that the use of the verb form "porque *tu eres* negro" is not the most usual form for Montevidean Spanish, since the form of the verb "ser" most commonly used would be the "vos" form, that is "porque (*vos*) *sos* negro". Nevertheless, a small percentage of people from Montevideo do use the "tu" form (in contrast to Buenos Aires, where it is rarely used) or even a mixture of both. In the interview with Mr Suarez the transcription indicated to the experts that he uses the "tu" form of the verb, though there are other filmed interviews published on the internet in which he uses the "vos" form of the verb. Given that he has spent some considerable time in Europe it is possible that his use of Spanish alters between Uruguayan and European contexts. It is also possible that Mr Evra, who may have learned his Spanish in Spain, where the "vos" form is not used, may, when recalling the incident in interview, have rendered Mr Suarez's usage as the "tu" form, even if Mr Suarez used the "vos" form.
182. The experts considered it worth noting that the phrase "porque tu eres negro" struck both of them as slightly unusual. In this instance, a direct racial slur would more likely have been something like "porque eres un negro de mierda" [because you are a shitty black].
183. The sentence attributed to Mr Suarez, "No hablo con los negros", falls into the same category of racist usage. It assumes that the individual did not merit being talked to as he belongs to a whole category of people classed as black. Again, the term is not being used as in paragraphs 172 and 173 above, but in the sense of paragraph 171.
184. The expression "dale, negro" can be understood as "bring it on, blackie" or "do it, blackie" or "go ahead, blackie". (These all correspond to the French expression "vas-y", which Mr Evra said he understood by the phrase.) In the context of the previous usages of "negro" and "negros", this usage would retain its provocative and offensive connotations, even though, in a different context, the phrase "dale, negro" could easily be inoffensive.
185. Mr Evra stated that Mr Suarez touched his arm at this stage, "indicating my skin". Mr Suarez's action is difficult to interpret; it looks like a pinch, intended perhaps to annoy or

provoke. The experts were not aware of any River Plate-specific meaning attached to this gesture. It was by no means clear to the experts that this was a reference to skin colour, but it might have been. In the experience of Peter Wade, in Colombia people may touch their own forearms to indicate their own skin colour or when issues of skin colour are being discussed or when they are indicating that skin colour was at issue in some incident, the gesture is usually to rub the forearm with the forefinger; the gesture is not used on someone else. In the context of all the previous usages of "negro" and "negros", however, it is very possible that this gesture was a way of highlighting Mr Evra's skin colour and would therefore constitute a racially offensive gesture.

186. The experts concluded their observations on Mr Evra's account as follows. If Mr Suarez used the words "negro" and "negros" as described by Mr Evra, this would be understood as offensive and offensive in racial terms in Uruguay and Spanish-speaking America more generally. The physical gesture of touching Mr Evra's arm would also, in the context of the phrases used, be interpreted as racist.

#### **Experts' observations on Mr Suarez's account**

187. The experts reviewed the interview of Mr Suarez (transcribed in both Spanish and English), together with video clips of the referee's intervention. They proceeded, for the purpose of this part of their report, on the basis that the substance of Mr Suarez's account was accurate. They made the following observations on Mr Suarez's account.

188. To analyse the word "negro" in Mr Suarez's interview it was important to remember that the word was used during a football match, which establishes the context as one of informal social relations.

189. Although there was clearly already bad feeling between Mr Suarez and Mr Evra at the time of their second exchange (by which we understand the experts to refer to when the referee blew his whistle to stop the corner), the fact that Mr Suarez indicates that Mr Evra had already spoken to him in Spanish in the earlier exchange means that he could well have felt that a linguistic and/or cultural relationship had been established between them (even though Mr Evra subsequently spoke to him in English).

190. Given paragraphs 188 and 189, Mr Suarez would not have needed any further sense of familiarity to use the word "negro", which is to say how well Mr Suarez knew Mr Evra is not of particular importance; in Rioplatense Spanish the use of "negro" as described here by Mr Suarez would not be offensive. Indeed, it is possible that the term was intended as an attempt at conciliation and/or to establish rapport (see 175 above).
191. The question "Por qué, negro?" as transcribed in Mr Suarez's interview sounded right linguistically and culturally and is in line with the use set out by Mr Suarez when referring to Glen Johnson; Mr Suarez was also correct in highlighting that "negro de mierda" would be a clear racial slur.
192. The term "sudamericano" [South American] might be offensive for a South American if taken as an implied slight against a regional identity; a more derogatory insult along these lines would be the term "sudaca", a term most frequently used in Spain to label South American immigrants. Though the experts are not familiar with either "sudamericano" or "South American" being used as an insult, if they were said with a sneer then they might well be understood as such.
193. As stated above, Mr Suarez's gesture towards Mr Evra's arm is difficult to interpret. In the context of the events as set out by Mr Suarez then there is nothing to indicate that the gesture was racially offensive.
194. The experts concluded their observations on Mr Suarez's account as follows. If Mr Suarez used the word "negro" as described by Mr Suarez, this would not be interpreted as either offensive or offensive in racial terms in Uruguay and Spanish-speaking America more generally; it is being used along the lines of paragraphs 172, 173 and 175 above.

### **Relevance of the expert evidence**

195. We have set out the expert evidence at length because we consider that it provides helpful background to the issues which we have to resolve. In particular, it provides valuable insight into, amongst other things, the different ways in which the word "negro" might be used in Uruguay.

196. It is important to note that both the FA and Mr Suarez agreed the contents of the experts' report. Neither required the experts to attend the hearing for cross-examination.
197. Of course, they wished to rely on different parts of the report to support their case. The FA relied, in particular, on the experts' conclusion that if Mr Suarez used the words "negro" and "negros" as described by Mr Evra, this would be understood as offensive and offensive in racial terms in Uruguay and Spanish-speaking America more generally. The physical gesture of touching Mr Evra's arm would also, in the context of the phrases used, be interpreted as racist.
198. Mr Suarez, on the other hand, relied on the experts' conclusion that if he used the word "negro" as described by him, this would not be interpreted as either offensive or offensive in racial terms in Uruguay and Spanish-speaking America more generally.
199. We reviewed the experts' report with considerable care in reaching our decision, and took its contents fully into account. Whilst recognising the usefulness of the entire report, we draw particular attention to the following features.
200. First, there are some black people in Uruguay and other areas of Latin America who object to the use of the word "negro" as a term of address, as they say it highlights skin colour when this should be irrelevant. This is the use of the word "negro" (ie as a term of address) which Mr Suarez contended before us is acceptable, yet his view appears to be contentious with some in Uruguay and Latin America.
201. Secondly, use of the word "negro" can be seen as offensive or inoffensive in Uruguay and Latin America. It appears to depend, largely, on the context. It might be seen by some as inoffensive when used to address relatives, friends or passers-by. However, we note the experts' comment that in all cases when the word is used in this way it implies a sense of rapport or the attempt to create such rapport; naturally, if the term were used with a sneer, then it might carry negative connotations. It is important to examine closely the context in which it is used, and the way in which it is used, in order to decide whether it is being used offensively and offensively in racial terms.

202. Thirdly, the experts' confine their conclusions on Mr Evra's and Mr Suarez's accounts to how the word would be understood in Uruguay and Spanish-speaking America more generally. They were right to do so, no doubt recognising that whilst it is legitimate and helpful for the experts to give their opinion on whether or not the word might be used to offend in Uruguay and Latin America, it is the Commission's task to decide whether the use of the word in England is abusive or insulting. The use of the word in a particular way might be seen as inoffensive by many in Uruguay. The same use of the same word in England might nevertheless be abusive or insulting.

## **VI The Main Factual Disputes**

### **Identifying the main factual disputes**

203. In Section IV above, we have set out our findings on the background facts. That section deals with the events as they unfolded from the moment of Mr Suarez's foul on Mr Evra in the 58th minute of the match until Mr Suarez's online postings the following day. Many of those facts were not in issue between the parties, although there were some disputes as to the background facts which we have resolved in the manner set out in that section.

204. Those facts provide the background to the main factual disputes between the parties, to which we now turn. In broad terms, the principal factual issue which we have to address, as agreed between the parties, is whether on the balance of probabilities, Mr Evra's account is true and reliable.

205. This requires us to answer a number of questions, including: Do we accept Mr Suarez's evidence that he used the word "negro" only once when he said to Mr Evra "Por que, negro?" ("Why, black?"), which was used in a conciliatory and friendly way that is customary in Uruguay? Or, do we accept Mr Evra's evidence that Mr Suarez used the word "negro" five times in the goalmouth when he said to Mr Evra "Porque tu eres negro" ("Because you are black"), "No hablo con negros" ("I don't speak with blacks"), and "Dale, negro, negro, negro" ("Okay, blackie, blackie, blackie)?

### Our approach to resolving the main factual disputes

206. It may help if, at this stage, we explain in general terms the approach that we adopted to resolving the main factual disputes. Having done so, we will turn to particular factors and describe the part they played in reaching our decision. There are three aspects of our general approach which merit specific mention.

### The court's approach to resolving factual disputes

207. The courts are accustomed to resolving factual disputes. This does not mean that the task is always an easy one, often it is not. Nevertheless, in assessing the credibility of a witness, and the reliability of his evidence, the courts have developed various tests which assist in this task.

208. There is no authoritative or exhaustive list of these tests, and different judges make different uses of, and place different emphases on, the available tests. It always has to be borne in mind that no two cases are identical, and the tests chosen, and the degree of reliance placed on them, must be appropriate to the particular case. These are largely matters for the exercise of judgment by the fact-finding tribunal, which in this case is the Commission.

209. We shall say a little about four of these tests: demeanour, inconsistency, credit and probability.

210. First, demeanour. We had an opportunity to observe the demeanour of the witnesses, in particular Mr Evra and Mr Suarez, and from that to judge their credibility. The demeanour of a witness includes matters such as his conduct, manner, bearing, behaviour, delivery, and inflexion. They are matters of impression which are not necessarily revealed by reading a transcript of evidence. However, care should be taken not to place too much weight on this factor, bearing in mind that giving evidence can be an unnerving experience (even before a Commission which operates without the full formalities of a court of law), some witnesses naturally perform better than others in such settings, and these difficulties can be compounded when giving evidence in a foreign language or through an interpreter.

211. Secondly, inconsistency. It can be helpful to consider whether there are inconsistencies in the witness's evidence. Inconsistency can arise in more than one way. First, the witness's evidence may be inconsistent with what is clearly shown to have occurred, such as in video footage or in notes taken shortly after the incident. Secondly, the evidence may be inconsistent with what the witness has previously said about what happened. A witness whose evidence is inconsistent in one or more ways might be considered unreliable, depending on the circumstances.
212. Thirdly, the credit of the witness in relation to matters unconnected with the present dispute might be relevant. The idea here is that if a witness can be shown to have acted dishonestly or unreliably in one situation, it can be inferred that he is acting dishonestly or unreliably in another. The relevance of this factor is contentious, but it can have its uses in appropriate cases. We mention it here in order to make clear that it has played no part in our consideration. This is because neither party suggested that it should. Mr McCormick did not submit that Mr Evra's evidence should be rejected because he had been shown to be unreliable in making accusations or giving evidence on any other occasion. Mr Greaney did not submit that Mr Suarez's evidence should be rejected for the same reason, or because he had been shown to use insulting language referring to a person's colour on any other occasion.
213. Fourthly, probability. Another useful test is to ask of the evidence as a whole, or of a particular part of it: whose account is more probable? It should be remembered that the improbable can sometimes be true, although such a case might require stronger evidence before concluding that it is true.

#### The nature of this case

214. The tests described above (except for credit in relation to unconnected matters) all had some part to play in reaching our decision. This case is not simply about one person's word against another. Whilst there were conflicting accounts of what happened which were presented to us by Mr Evra and Mr Suarez, there was other relevant evidence which we were able to take into account in reaching our decision. This other evidence included video footage of the match; the evidence of others as to what happened during or

immediately after the match; documentation in the form of the referee's report which was based on conversations he had immediately after the match; transcripts of interviews with the main protagonists and other witnesses conducted in the course of the FA's investigation before witness statements were prepared for the purpose of this hearing; and the evidence given to us by other witnesses quite apart from Mr Evra and Mr Suarez, including expert witnesses on Spanish language. We reached our decision on the basis of a consideration of the totality of the evidence attaching such weight as we considered appropriate to the different elements of it.

215. It was accepted by both Mr Greaney and Mr McCormick in closing submissions that this is not simply a case of one person's word against another. Mr McCormick nevertheless submitted that the case turns very substantially on the evidence of the two main protagonists, that we should think very carefully before reaching a conclusion based solely on the word of the main protagonist for the FA, and that we should look at the other evidence, and see whether there is other evidence that corroborates Mr Evra's story. We agree that at the heart of this case is a dispute between Mr Evra and Mr Suarez as to what was said. Before reaching our decision, we assessed the credibility of those two individuals and examined all the other evidence with great care to see whether it supported or undermined Mr Evra's or Mr Suarez's account. We asked ourselves which account was more probable. We kept in mind the seriousness of the Charge, and the burden and standard of proof.

#### Decision based solely on evidence and argument at the hearing

216. It is important to emphasise that the decision that we reached is that of the Commission alone, that it is limited to the Charge brought, and that it is based solely on the evidence and arguments presented at the hearing.
217. First, the decision is that of the Commission. The structure of the FA's disciplinary process as it applied in this case is, broadly, as follows. The Regulatory Legal Team within the FA is responsible for conducting investigations into complaints that are made, such as the complaint made by Mr Evra after the game on 15 October. The decision that facts or

matters may give rise to Misconduct and that a Charge be brought is made by the Chief Regulatory Officer on behalf of the FA: Regulation 3.1 of the Disciplinary Regulations.

218. Where any facts or matters give rise to alleged Misconduct by a Participant under Rule E1(b)-(f) of the FA Rules (which is the case here), the FA will serve a written Charge on the Participant: Regulation 3.2 of the Disciplinary Regulations. Mr Suarez was served with the Charge letter on 16 November.
219. A copy of the Charge is forwarded to the Chairman of the Judicial Panel who appoints a Regulatory Commission in accordance with, and subject to, the terms of reference of the Judicial Panel: Regulation 3.3 of the Disciplinary Regulations. The Judicial Panel is established by the FA Council as the group of individuals from which Regulatory Commissions and Appeal Boards will be drawn by the Judicial Panel Chairman. The Judicial Panel consists of four categories of Panel Member, namely Council Panel Members, Football Panel Members, Chairman's Panel Members and Special Panel Members. Detailed provisions regarding the Judicial Panel can be found in the FA Handbook. One purpose of these provisions is to ensure the independence of Regulatory Commissions when deciding on a Charge.
220. Once the Regulatory Commission is appointed to any case, it is responsible for the conduct of proceedings and for making a decision on the Charge. The two parties before the Commission are the FA and the alleged offender. The FA presents the case in support of the Charge. It may appoint outside counsel, as it did in this case. The alleged offender may choose to be represented, as Mr Suarez chose to be in this case. The parties are informed of the identity of the three members of the Commission well in advance of the hearing which provides an opportunity for the parties to object to any particular individual acting as a member of the Commission in the case, should they consider it appropriate to do so. There was no such objection made in respect of members of the Commission in this case.
221. Whilst a degree of informality and flexibility is retained throughout, the Disciplinary Regulations contain detailed provisions regarding the conduct of proceedings before a Commission. It may give directions for the proper conduct of the proceedings, and rule on

applications made to it by the parties. Generally, directions in advance of the main hearing are dealt with by the Chairman alone. A decision of a Regulatory Commission will be determined by a majority. Each member of the Regulatory Commission shall have one vote, save that the Chairman has a second and casting vote in the event of deadlock: Regulation 7.2 of the Disciplinary Regulations. In this case, our decisions on the Charge and on penalty were unanimous.

222. Secondly, the decision is limited to the Charge brought. The Commission has to make a decision on the Charge (and any penalty to follow, if the Charge is proved), and nothing else. We have set out above the Charge that was brought in this case. It was limited to whether Mr Suarez used abusive and/or insulting words and/or behaviour towards Mr Evra in the match on 15 October and, if so, whether that conduct included a reference to Mr Evra's ethnic origin and/or colour and/or race. We were not asked to decide anything beyond this limited, albeit important, matter.

223. Mr Greaney emphasised the limited nature of this task in his opening written argument for the FA as follows:

"First, this case is not about whether Mr Suarez is in fact a racist. Indeed, the Commission will no doubt conclude that there are some indications that he is not. For example, Mr Suarez is himself of mixed heritage, it seems clear that he has experienced the diversity of life and it is plain from the materials submitted on his behalf that he has done good work in the field of community relations. Moreover, even Mr Evra says in his witness statement: "I don't think that Luis Suarez is racist". However, the question is not whether Mr Suarez is in fact a racist. Rather the question is whether, on 15th October 2011, for whatever reason, Mr Suarez used language and behaviour which was racially offensive. This is an important difference and, we submit, that the Commission will need to take care to ensure that the questions it answers at the end of these proceedings are the narrow questions posed by the charge and not any broader question as to the personal attitude of Mr Suarez."

224. We agree with that submission subject to one qualification. We would not ourselves describe the question for us as whether Mr Suarez used language and behaviour which was "racially offensive". Those words are not found in the relevant Rules or in the Charge brought against Mr Suarez, and are prone to mislead. The question for us is, as we have

stated, whether Mr Suarez used abusive or insulting words or behaviour which included a reference to Mr Evra's ethnic origin, colour or race.

225. Thirdly, our decision is based solely on the evidence and arguments presented to us at the hearing. It was for the parties, with the assistance of experienced legal representatives, to decide what evidence to place before us and what arguments to advance in support of their case. It was for us to reach our decision based solely on that evidence and those arguments to the exclusion of all extraneous considerations.

226. At one point during the course of the hearing, both parties asked the Commission not to read a particular newspaper article lest it influence our thinking in any way. The Chairman disclosed that he had already read the article before being asked not to do so, but did not consider that it contained anything of note affecting the task before the Commission. The other Commission members did not read the article. The Commission assured the parties that it was confident that it could put out of its mind anything that it might have read or heard at any stage about the dispute, and decide the case solely on the basis of the evidence and submissions which it received at the hearing.

227. Both parties endorsed this view. Mr McCormick stated that he was:

"More than confident, whatever the extreme of being more than confident would be in this situation, that the three of you are absolutely capable of deciding this case on the facts and on the merits of it, without our friends from the fourth estate becoming involved in the matter and trying to influence it one way or the other."

228. Against that background, we now turn to describe our assessment of the credibility of the witnesses and the reliability of their evidence. We do so by reference to the tests of demeanour, inconsistency and probability which we have described above, although these categories are not rigid and there may be areas of overlap between them.

### Demeanour

#### Mr Evra

229. Mr Evra has played for Manchester United and France for a number of years. He has captained both. He speaks a number of languages including Senegalese, French, Spanish,

Italian and some Portuguese. He gave his evidence to us in English. Although an interpreter was present to assist him in giving evidence if he required it, in the event he did not.

230. The FA applied for Mrs Wiley, the Assistant Club Secretary of Manchester United to be permitted to attend the hearing while Mr Evra gave evidence for the purpose of reducing his anxiety, which we allowed.

231. We found Mr Evra to be an impressive witness. He gave his evidence to us in a calm, composed and clear manner. Due to the circumstances in which the tape of the FA interview of Mr Evra on 20 October came to light, which we have described in paragraphs 18-19 above, we were able to listen to him giving his account of events on that previous occasion also. So far as we could tell from listening to the tape, he gave his evidence in a similar way to that in which he gave it at the hearing before us.

232. Mr Evra also demonstrated a measure of balance in his evidence. For example, he was prepared to make a number of concessions before us. Prior to 15 October 2011, Mr Evra and Mr Suarez had played against each other when Mr Evra was playing for Manchester United and in a France v Uruguay match. They had no relationship outside football, and Mr Evra had experienced no problems with Mr Suarez on the pitch before this match. In his written evidence, Mr Evra said:

"There is no need for any player to be racially abusive towards another player, it's completely out of order. I was so surprised because Suarez has played with many black players and I don't think he's racist but I don't know why he said that."

233. In his oral evidence, after giving his account of what Mr Suarez said when they were in the goalmouth, Mr Evra said:

"For me it was like I think a bad dream, because I respect so much that player because he's a really good player"

234. In giving his account of their exchanges in the goalmouth, Mr Evra described how he started the conversation with the offensive phrase, "Concha de tu hermana". He said this in his first interview with the FA on 20 October, and included it in his witness statement placed before us, even though it reflected badly on him. Mr Suarez did not hear Mr Evra

use these words, and would not have known that he had used them unless Mr Evra had said so.

### Mr Suarez

235. Mr Suarez speaks little English. There were occasions during the hearing when he clearly understood a question in English because he gave a response in a few words of English or by a nod of the head. But these were few and far between.

236. Mr Suarez was present for the whole of the hearing. It was inevitably a stressful time for Mr Suarez facing, as he was, a serious charge in unfamiliar surroundings. He sat with his own interpreter, who translated the proceedings for him throughout. When he gave evidence, he did so through an independent interpreter. He gave evidence in a respectful manner. We are conscious of the difficulties for Mr Suarez in giving evidence in the circumstances which we have described.

237. However, Mr Suarez was not as impressive a witness as Mr Evra. His answers were not always clear or directly addressed to the question. We give one example in paragraph 246 below. Whether this was due to language difficulties or evasiveness was not entirely clear and so, whenever we could, we gave Mr Suarez the benefit of the doubt. We were certainly more concerned by the substance of his evidence (as explained below) than by the manner in which he gave it.

### Inconsistency with the facts established by other evidence

238. We consider now whether the evidence of Mr Evra and Mr Suarez was inconsistent with the facts either as we have found them to be in Section IV above, or as established by other evidence. We found the video footage particularly helpful on this point. The footage was not of any real direct assistance in terms of what was said by Mr Suarez in the goalmouth. It was not possible to try and lip-read what Mr Suarez said largely because his face was obscured at the crucial moments, either because his back was to the camera behind the goal, or because his face was obscured by a camera fixed to the back stanchion. However, the video footage did shed considerable light on the sequence of events and the way in which Mr Evra and Mr Suarez acted towards each other.

### The video evidence of the goalmouth

239. We have described the facts as they unfolded in general in Section IV above. We now focus in more detail on the events in the penalty area from the moment the corner was awarded to Liverpool.
240. Mr Evra started the encounter in the goalmouth, albeit Mr Evra was in shock (as he put it) and responding to Mr Suarez having fouled him five minutes previously. He first approached Mr Suarez at the near post. He moved towards him so that they were standing very close to each other, face to face, and Mr Evra then followed Mr Suarez closely as he moved back along the goal-line. Mr Evra opened the conversation with the offensive phrase which we have described in paragraph 87 above, although Mr Suarez did not hear the words he used at the time. Mr Evra was the initiator of this confrontation. He was clearly angry with Mr Suarez.
241. Mr Suarez responded in kind. His facial expression was hostile towards Mr Evra, he was speaking forcefully to him, he looked Mr Evra up and down and then reached out and pinched Mr Evra's bare left forearm. This was an unpleasant and petty gesture which appeared designed to aggravate Mr Evra, and was likely to have that effect.
242. The corner was initially taken, and Mr Suarez and Mr Evra challenged for the ball in the penalty area but away from the goalmouth. It was at this point that the referee blew his whistle to stop play, his assistant referee having told him, via his headset, about the altercation between Mr Evra and Mr Suarez in the goalmouth. The video footage shows that, as play stopped, Mr Suarez said something to Mr Evra which caused Mr Evra to visibly react. He looked taken aback, moved towards the referee saying something while pointing at Mr Suarez. It is this moment on which Mr Suarez finally settled as the moment when he said to Mr Evra "Por que, negro?" in response to Mr Evra's "Don't touch me, South American".
243. The referee spoke to both players. They listened and then walked away. As they did, Mr Suarez put his hand on the back of Mr Evra's head. There are, of course, many ways of touching an opposing player with the hand. Some are obvious attempts at conciliation such as a handshake or sometimes a pat on the back. Others are intended to further

aggravate the opposing player whilst, perhaps, being made to appear like an attempt at conciliation. In our judgment, Mr Suarez placing his hand on the back of Mr Evra's head fell into the latter category. It appeared calculated to wind him up and had that effect, which is shown by Mr Evra forcefully pushing Mr Suarez's arm away.

244. The referee called the players back and spoke to them a second time. The referee spoke first to Mr Suarez then Mr Evra. Mr Evra gestured to his head, which is certainly consistent with Mr Evra saying that he did not want Mr Suarez to touch him, which was Mr Evra's evidence. As they walked away, Mr Suarez said something to Mr Evra, and the corner was then taken.

Mr Suarez's claim that the pinching was an attempt to defuse the situation

245. In paragraph 27 of his witness statement, Mr Suarez said this:

"Evra did not back off and Dirk Kuyt was approaching us to stand between us. At this point I touched PE's left arm in a pinching type of movement. This all happened very quickly. I was trying to defuse the situation and was trying to intimate to Evra that he was not untouchable by reference to his question about the foul. Under no circumstances was this action intended to be offensive and most certainly not racially offensive. It was not in any way a reference to the colour of PE's skin." (emphasis added)

246. Mr Greaney cross-examined Mr Suarez about this paragraph in Mr Suarez's witness statement, just after showing Mr Suarez a clip of the goalmouth incident. The extract from the transcript below omits the translation of the questions into Spanish, and Mr Suarez's answers in Spanish. The answers given below are the interpreter's translation of Mr Suarez's answers in Spanish.

"MR GREANEY: Mr Suarez, the first thing I would like to ask you, now that we have seen those again, is: is it correct, as you say in paragraph 27 of your witness statement, that you were trying to defuse or calm down the situation in the goal mouth?

A. That's why I was explaining to him that it was a normal foul.

Q. Let me be as clear as I can. Was your aim, when you were in the goal mouth, and speaking to Mr Evra, to calm down the situation?

A. I wasn't thinking about speaking to anyone. He was the one to come to me and speak to me.

Q. What we want to know, or at least I do, is what was in your mind? Was it in your mind to try to calm down the situation?

A. He was asking me, "Why did you kick me?" Those were football conversations, and I replied, "This is a normal foul. What do you want me to do?"

Q. Do you see paragraph 27 of your statement? Does it read: "I was trying to defuse or calm the situation"?

A. By the gesture I was doing with my hands, I could show that I was trying to explain the situation, because these are conversations that you have in the field.

Q. Mr Suarez, I have to suggest to you that my question is really a very simple one. In the goal mouth, and in particular as you pinched the skin of Mr Evra, do you say you were trying to calm the situation?

A. Not after the pinch, because he was saying that he was going to hit me.

Q. I'll just make one more attempt, and then we will move on. In your statement, over which we have understood you took some care, you have said of the pinching: "I was trying to defuse the situation." All I wish to know is whether that is true or not.

A. I was not trying to calm down the situation, but trying to explain to Evra why I was doing this foul, and when - then he replied, "I'm going to hit you", and I was trying to show him that he was not untouchable, not in the foul and not by the gesture that I did with the - by the pinch I was doing to his arm, that he wasn't untouchable."

247. Having said in his witness statement that he was trying to defuse the situation when he touched Mr Evra's left arm in a "pinching type movement", Mr Suarez eventually answered, after persistent questioning, that he was not trying to calm down the situation by doing so.

248. It was plain to us that Mr Suarez's pinching of Mr Evra's arm was not an attempt to defuse the situation. It could not conceivably be described in that way. In our judgment, the pinching was calculated to have the opposite effect, namely to aggravate Mr Evra and to inflame the situation. We infer that this was Mr Suarez's intention. Mr Suarez's face reveals hostility towards Mr Evra, the pinching is preceded by Mr Suarez looking Mr Evra

up and down, and Mr Suarez steps away having pinched Mr Evra as Mr Kuyt steps in to face up to Mr Evra.

249. What concerned us also was that Mr Suarez should have made what we considered to be such an unarguable assertion in his witness statement, ie that the pinching was an attempt to defuse the situation when it plainly was not.
250. The Commission asked Mr McCormick whether he accepted that the pinching could not reasonably be construed as an attempt to defuse the situation. He did. The Commission then asked Mr McCormick what, if anything, we were to infer from the fact that the assertion was made in Mr Suarez's signed statement in the first place, there being no basis whatsoever for it. Mr McCormick submitted that it was down to bad drafting. Mr Suarez was intending to say that his response to Mr Evra's question "Why did you kick me?" was an attempt to defuse the situation in that Mr Suarez put out his hands as people do when they say "Look, there's no problem. There's nothing to get excited about".
251. We did not accept that that was a satisfactory explanation for Mr Suarez's plainly incorrect assertion that the pinching was an attempt to defuse the situation. Mr McCormick had already explained to us the care that was taken over the preparation of Mr Suarez's witness statement. An English draft was prepared based on detailed notes of instructions which had been given by Mr Suarez. That draft was translated into Spanish. There was a further meeting with Mr Suarez with the two drafts, in English and Spanish in front of him, and the interpreter present. The witness statement was then finalised and signed.
252. This was one example of where Mr Suarez's witness statement was demonstrated to be inconsistent with the facts as shown in the video footage. No satisfactory explanation was given for this inconsistency.

Mr Suarez's claim to be acting in a conciliatory and friendly way

253. Mr Suarez claimed that when he used the word "negro" in speaking to Mr Evra, he was doing so in a conciliatory and friendly way.

254. In his interview with the FA on 2 November, Mr Suarez said that the term "negro" was used in an affectionate or friendly way. He was asked whether he would call a black stranger "negro", or whether you needed to have a relationship with them before you could use that term. He replied "When you're having a normal conversation in a friendly way, you can call him black". He was then asked if he would use the word "negro" straightaway when speaking to an English black person. He said "No, because I wouldn't know how to say it in a friendly or affectionate way, how to call him black in English. Because maybe I tell them black in English, maybe they get upset, because I don't know how to call them black in a friendly way in English."
255. On 15 November, Professor Wade and Dr Scorey provided their written experts' report, which was served on Mr Suarez with the Charge letter on 16 November. We have summarised the contents of their report in Section V above. The experts had read the transcript of the interview with Mr Suarez and commented on his account. They said in their report that it was possible that Mr Suarez's use of the term was intended as an attempt at conciliation and/or to establish rapport. In his interview prior to the report being prepared, Mr Suarez had not used the word "conciliation" in connection with his use of the word "negro".
256. Mr Suarez signed his witness statement on 6 December, which was after he had received the experts' report. In paragraph 13 of his witness statement, Mr Suarez said this:

"I explain in paragraph 34 below [this should read 35] that I did use the word "negro" by reference to Mr Evra during the game on 15th October 2011. I was using the word in the way that I normally would to refer to dark-skinned people as "negro" (black). Where I grew up, the word *negro* is used (and has been used throughout my life by me) as a friendly form of address to people seen as black or brown-skinned (or even just black-haired). To use some examples of how this word is used: I was darker when I was younger and had very dark hair and because of this my wife calls me *negro*, in an affectionate way, and so do many of my friends. Similarly, I would refer to Glen Johnson as "negro" in the same way that I might refer to Dirk Kuyt as "Blondie" (because he has blond hair) or Andy Carroll as "*Grandote*" (Big Man - because he is very tall). Where I come from it is normal to refer to people in this way by reference to what they look like. There is no aggression in referring to somebody in this way and there is certainly no racial connotation. For the word "Negro" to be used in an offensive way it would have to be used with another word such as "negro de mierda" (shitty black). There is no word that means "Nigger" in Spanish and I was not aware of this word until the allegations made by Mr Evra."

257. Pausing there, the experts disagreed with Mr Suarez's comment in the penultimate sentence of paragraph 13. They said "Thus, the word can be employed with intent to offend and to offend in racial terms; often the word would be appended with further insult, as in the example "negro de mierda" [shitty black]." Thus, the experts do not say, as Mr Suarez does, that to be used in an offensive way "negro" would have to be used with another word such as "negro de mierda". They say it often would be appended with a further insult, but their report makes clear that the word can be used in an offensive and racially offensive way without such an appendage.

258. At paragraph 30 of his statement, Mr Suarez said this:

"Simultaneously with the blowing of the whistle, PE spoke to me and said "*Don't touch me, South American*" (in English). I took this to be a reference to the touching of the arm on the goal line a few moments earlier. I turned to him and said "*Por que negro*". My use of the word "*negro*" at this point was in the manner described in paragraphs 13 to 15 of this Statement. This is the only time I used the word *negro*. I used the word *negro*, as I said in the interview, in the same way that I do when I talk to Glen Johnson. In no way was the use of the word *negro* intended to be offensive or to be racially offensive. It was intended as an attempt at conciliation." (emphasis added)

259. Mr Suarez explained, in answer to a question from the Commission, that when in paragraph 30 of his statement he referred back to the description in paragraphs 13 to 15 of his use of "negro", he said he meant the first part of paragraph 13 (see paragraph 256 above).

260. Finally, on this point, in paragraph 35 of his statement (which is referred to in paragraph 13 of his statement), Mr Suarez said:

"It seems to me that PE misunderstood my use of the word *negro*. As I have said, it was meant in a conciliatory and friendly way in the context in which I have used the word throughout my life and as set out earlier in this Statement." (emphasis added)

261. Whilst Mr Suarez had, in his interview with the FA, said that he had used the word "negro" towards Mr Evra in a "friendly and affectionate" way, the first time that he used the words "conciliation" and "conciliatory" was in his witness statement. This was signed after Mr Suarez had received the experts' report which referred to the possibility that Mr Suarez's use of the term was intended as an attempt at conciliation. It is difficult to avoid

the conclusion that Mr Suarez used the words conciliation and conciliatory to describe his use of the word "negro" because the experts had used those terms to describe the circumstances in which the word would not generally be offensive in Uruguay.

262. What is more significant, in our judgment, is the substance of Mr Suarez's evidence that his use of the word "negro" with Mr Evra "was intended as an attempt at conciliation" and "was meant in a conciliatory and friendly way".
263. The whole episode in the match starting with Mr Suarez's foul on Mr Evra in the 58th minute, and continuing with their encounter in the penalty area in the 63rd to 65th minutes was confrontational and hostile. In the goalmouth, Mr Evra fired the first verbal assault and Mr Suarez responded in a hostile fashion judged by his demeanour as shown on the video footage and his pinching of Mr Evra's skin. When the referee blew his whistle to stop play, it was less than 10 seconds after the pinching in the goalmouth. This is when Mr Suarez claimed to have used the word "negro" for the one and only time. The players' demeanour, as shown in the video footage, showed that the exchanges continued to be confrontational. This was followed, after the referee had spoken to the players, by Mr Suarez putting his hand on the back of Mr Evra's head in a way which, in our judgment, was intended to aggravate Mr Evra.
264. The whole tenor of the players' exchanges during this episode was one of animosity. They behaved in a confrontational and argumentative way. This continued at all times during their exchanges in the penalty area. Whilst Mr Evra is partly to blame for starting the confrontation at that moment, Mr Suarez's attitude and actions were the very antithesis of the conciliation and friendliness that he would have us believe.
265. The experts referred to the use of the word "negro" to address friends, relatives or passers-by in a way that would be perceived by many as inoffensive in Uruguay. However, they say in their paragraph (ix) that

"in all cases, however, when the word is used this way it implies a sense of rapport or the attempt to create such rapport; naturally, if the term were used with a sneer, then it might carry some of the negative connotations referred to above"

Later, they say:

"in Rioplatense Spanish the use of "negro" as described here by LS would not be offensive. Indeed, it is possible that the term was intended as an attempt at conciliation and/or to establish rapport (see (ix) above)."

266. In our judgment, Mr Suarez's use of the term was not intended as an attempt at conciliation or to establish rapport; neither was it meant in a conciliatory and friendly way. It was not explained by any feeling on Mr Suarez's part that a linguistic or cultural relationship had been established between them or that the context was one of informal social relations. The video footage, when viewed in detail and when looked at as a whole, shows that the players continued their animosity throughout this incident. Their hostility is shown in their actions and demeanour before, at the moment of, and after Mr Suarez's admitted use of the word.

267. Once more, we were troubled by the fact that Mr Suarez advanced this case to us and relied on it to the extent that he did, when it was unsustainable. The suggestion that he behaved towards Mr Evra at this time in a conciliatory and friendly way, or intended to do so in using the word "negro", is, in our judgment, simply not credible. His evidence is again inconsistent with the video footage. Once again, there was no satisfactory explanation for this inconsistency.

268. In contrast, Mr Evra's evidence was not shown to be inconsistent with the facts established by other evidence, such as the video footage, in any material respect.

#### **Inconsistency with previous evidence of the witness**

269. We now consider the extent to which the witnesses have been consistent or inconsistent over time in the accounts they have given of what happened during the match.

#### **Mr Evra**

##### *Mr Evra's understanding of the word "negro"*

270. Mr Evra complained to the referee twice during the match about being called black. The first was when the referee blew the whistle to stop the corner being taken. In his witness statement, Mr Evra said that he said to the referee "ref, ref, he just called me a fucking black". His oral evidence varied between, on the one hand, Mr Evra telling us that he used

these words to the referee and, on the other hand, telling us that he said "he just called me again a fucking black". The second occasion was when he was booked and told the referee again that he had been called black. He also complained to Mr Giggs, just after the booking, that he had been called black.

271. When, shortly after the match, he went to see the referee with the manager, Mr Evra complained that Mr Suarez had said "I don't talk to you because you niggers". Mr Evra told us that he believed, from the moment he heard Mr Suarez use the word "negro", that this meant nigger. The Commission asked Mr Evra why, then, did he not tell the referee that he had been called nigger, as opposed to black. Mr Evra's answer was that even when he pronounced the word "niggers", it was not a word he liked to use. He added that maybe it was also because he was speaking in English, that "black" was the English word in his mind, and he felt he had done enough to complain by telling the referee that he had been called black.
272. It seemed to us that Mr Evra's understanding of the Spanish word "negro" was influenced by his knowledge of Italian. In his interview with the FA on 20 October, Mr Evra said that he thought "nero" meant "black", whereas "negro" meant "nigger". This was what he thought from his knowledge of Italian, and he went away to check the position in Spanish. However, he did say in that same interview that it was still unacceptable to be told that you had been kicked because you were black. The expert witnesses told us that the Spanish word "negro" cannot simply be translated as "nigger".
273. In our judgment, nothing turns on the fact that Mr Evra may have thought that the word "negro" as used by Mr Suarez in the match translated as "nigger". Ultimately, it is a matter for us as a Commission to decide whether the words used were abusive or insulting and whether they included a reference to ethnic origin, colour or race.
274. However, we do not believe that Mr Suarez used the Spanish word "negro" in the sense that can reasonably be understood, in English, as "nigger". Rather, he used it to mean black, both as an adjective and as a noun.
275. In relation to whether Mr Evra told the referee that he had been called a black, or that he had again been called a black, we noted that, in his witness statement and in part of his

oral evidence, Mr Evra did not use the word "again" when relating this comment. We were not persuaded that he used the word again when reporting the comment to the referee for the first time during the match. Although this is an inconsistency in Mr Evra's account, it is a minor inconsistency which arose only in the course of his oral evidence about whether he used the word "again" when speaking to the referee, and it is not of any material significance to the issues we have to decide.

*The number of times that Mr Evra said Mr Suarez used the word "negro".*

276. Mr Haughan said that when he overheard Sir Alex Ferguson complain to the referee after the match, he heard him say that Mr Suarez had called Mr Evra a nigger "five times". If that is true, it is probable that Mr Evra was the source for Sir Alex's figure. Mr Evra said in his evidence to us that he had been called "negro" five times, namely (1) "Porque tu eres negro", (2) "No hablo con los negros", and (3) "Dale negro, negro, negro". Thus, it might appear that Mr Haughan's evidence supports Mr Evra's evidence that the word was used five times in the goalmouth.

277. In a supplemental statement, Sir Alex said that he thought he may have told the referee that Mr Evra had been called the word several times, but did not recall having said specifically that it was five times and thinks it unlikely he would have done so. Mr Evra did not mention in his evidence any specific number that he told Sir Alex at the time.

278. Nonetheless, Mr Haughan does remember Sir Alex saying five times. This is the sort of detail that Mr Haughan might remember given the unusual circumstances in which he overheard the complaint and the fact that Mr Haughan reported what he had heard to the Liverpool management. In our judgment, this lent some weight to the credibility of Mr Evra's evidence that Mr Suarez used the word five times in the goalmouth.

279. In his interview with Canal+ shortly after the game, Mr Evra said "You can even see clearly on his lips what he told me at least ten times". It is worth bearing in mind that Mr Evra had only told the journalist about the incident off the record, but that the journalist nevertheless asked Mr Evra about it during the filmed interview. This is the unchallenged evidence of Mr Guy, the journalist, supported by Mr Evra.

280. Mr Evra said that the phrase "ten times" was just a figure of speech in France. We understood Mr Comolli to say broadly the same thing, though he thought that Mr Evra should have been more precise when giving evidence on such a serious matter on television.

281. We find that Mr Evra's use of the phrase "ten times" was a figure of speech and not meant to be taken literally. In circumstances where he was angry and upset after the game, he had only spoken to Canal+ about this topic off the record, they had nevertheless asked him about it when filming (contrary to his request that they not do so), and he was using what appears to be a common figure of speech in France, there is nothing in the Canal+ interview which materially undermines Mr Evra's evidence.

### Mr Suarez

#### *Mr Suarez's account straight after the match*

282. We have described above in paragraphs 136 to 141 how Mr Comolli spoke to Mr Suarez in the dressing room soon after the match had finished. This was prompted by Mr Haughan telling the Liverpool management that he had seen Sir Alex Ferguson and Mr Evra going into the referee's room and heard Sir Alex making a complaint that Mr Suarez had called Mr Evra a nigger five times.

283. Mr Comolli spoke to Mr Suarez in Spanish to get his version of what had happened. Based on that conversation, first Mr Dalglish, then Mr Comolli reported to the referee what Mr Suarez had said. Mr Dowd, the fourth official, made notes and Mr Marriner, the referee, wrote up his report of the incident later that day.

284. This means that we have the benefit of Mr Marriner's contemporaneous report, made on the day, and based on what was reported to him that day. Mr Marriner's report records that Mr Dalglish told him that Mr Suarez had responded with "you are black" having first been taunted with "you are South American" by Mr Evra. The report also records that Mr Comolli speaks fluent Spanish. Mr Comolli said to the referee that Mr Evra first said "you are South American" to Mr Suarez who responded with "Tues Negro" which translates as "you are black".

285. We acknowledge that Mr Marriner's report records what Mr Comolli said that Mr Suarez had told him. As for Mr Dalglish, whilst he understood some of what Mr Suarez said in Spanish, he also relied on what Mr Comolli told him that Mr Suarez said. Some of the contents of the report are, therefore, second or third-hand. We are also conscious of the fact that the conversation between Mr Comolli and Mr Suarez took place at the end of an intense match when Mr Suarez is likely to have been exhausted. Mr Dalglish said that Mr Suarez looked surprised that an allegation of this nature had been made against him and Mr Comolli said that Mr Suarez appeared surprised by Mr Comolli's questions. In any case, it is not reasonable to expect Mr Suarez to have been able to recall every aspect of this incident, or the precise sequence in which it took place. We should be careful not to deconstruct every incident with the benefit of hindsight and then make unfair criticism of players for imperfect recall. This applies to all witnesses in the case, not only Mr Suarez and Mr Evra. These features caused us to exercise caution in reading too much into this account.
286. However, against that, Mr Comolli accepted in evidence that he realised at the time that the allegation was a serious one with potential implications for the player and the club and as a result he wanted to take care over how the matter was dealt with. This seems entirely credible. Mr Comolli would want to get as clear an account as he could from Mr Suarez, soon after the match, as to what had happened.
287. The referee recorded in his report that Mr Comolli spoke fluent Spanish. Mr Comolli denied in evidence that he had told Mr Marriner that he spoke fluent Spanish, telling us instead that he simply told Mr Marriner that he spoke Spanish. However, we do not think that Mr Marriner would have recorded in his report that Mr Comolli speaks fluent Spanish unless Mr Comolli had told Mr Marriner that he did. Mr Marriner did not know who Mr Comolli was when he entered the referee's room, so it is unlikely that Mr Marriner understood from any other source that Mr Marriner spoke fluent Spanish. Mr Marriner says in his witness statement that Mr Comolli told him that he speaks fluent Spanish, and Mr Marriner's witness statement was accepted by Mr Suarez. We accept Mr Marriner's evidence that Mr Comolli told him that he spoke fluent Spanish.

288. In addition, the referee's report was made on the day of the match. It should, therefore, be given some weight as a contemporaneous record of what people were told had happened soon after the incident, rather than what they recalled at some later date.
289. With those matters in mind, we turn to consider what Mr Marriner was told. Mr Dalglish told him that Mr Suarez had said "you are black". Mr Comolli told him that Mr Suarez said "Tues negro". As Mr Dowd told us, Mr Comolli spelt "Tues negro" and Mr Dowd noted it down. In cross-examination on this point, Mr Comolli agreed that he told Mr Marriner that Mr Suarez had said "Porque tu es negro". But, he denied that he dictated all the words. He said that he just said "negro", that Mr Dowd asked Mr Comolli to spell "negro", and he did not remember dictating the full sentence. We were surprised by Mr Comolli's evidence that he only dictated the word "negro" in view of the contents of Mr Marriner's report, and his and Mr Dowd's witness statements. Mr Dowd stated that he asked Mr Comolli to spell "Tues negro" and Mr Dowd then noted it down. Those words appear in Mr Marriner's report. Mr Marriner's and Mr Dowd's witness statements were accepted in full by Mr Suarez. We find that Mr Comolli told Mr Marriner that Mr Suarez had said "Porque tu es negro" to Mr Evra, and that Mr Comolli spelt "Tues negro" for Mr Dowd, who wrote it down.
290. The difficulty this presents for Mr Suarez is that it appears to be inconsistent with the case that he advanced before us. He told us that all that he said to Mr Evra was "Por que, negro", and not "Porque tu es negro" or "Porque tu eres negro". If Mr Suarez had said "Porque tu es negro", then he would not be using "negro" as a noun to address Mr Evra, but as an adjective, meaning "Because you are black". At the end of his cross-examination, Mr Comolli agreed that he believed he was told by Mr Suarez that the words that he had used translated as "Why, because you are black". Of course, it is Mr Evra's case that Mr Suarez did say to him "Porque tu eres negro" meaning "Because you are black". It is, however, right to point out that Mr Evra contends that Mr Suarez said this to him in response to his question "Why did you kick me", whereas Mr Suarez maintains that he said "Por que, negro" in response to Mr Evra's comment "Don't touch me, South American".

291. By the time witness statements were served, Mr Suarez and the Liverpool management had become aware of the apparent discrepancy between Mr Suarez's present case on his use of the word "negro" on the one hand, and what Mr Comolli and Mr Dalglish had told the referee on the other.

292. Mr Suarez said this in his witness statement:

"After the match, Damien Comolli spoke to me and explained that Ferguson and Evra had complained to the Referee that I had racially insulted Evra five times during the game. He asked me to tell him what happened. I told him that Evra had said to me "Don't touch me, South American". I said I had replied "Por que negro?" I said that was the only thing I had said. There seems to have been a misunderstanding on Mr Comolli's part because he interpreted what I said to him to mean that I said the equivalent of "Why can't I touch you? Because you are black?". This was not, in fact, what I said but, even if I had said it, it would have made sense at the time and would not have been intended to be offensive or racially offensive. Nonetheless, I did not say it."

293. Mr Comolli dealt with the matter in this way in his witness statement:

"[M]y recollection was that LS had replied to PE "Why, because you are black?". I thought he had said "Por que, tu eres negro?" or "Por que es negro?". "Por que" can mean both "Because" and "Why" in Spanish. I thought that LS had said "Por que" meaning "Because" and therefore assumed that he would have used the words "you are" to say "Because you are black?". Instead LS said "Por que" to mean "why" as in "Por que negro?". I therefore accept LS's version that he said "Por que negro?" in reply to PE's request that he should not touch him."

294. Mr McCormick submitted that this explanation is credible and we should accept it. In support of this submission, he pointed to the translation by the independent interpreter of one of Mr Suarez's answers in his interview with the FA on 2 November. In the extract below, LS is Mr Suarez, HP is the interpreter, and JK is Jenni Kennedy of the FA. We include the Spanish words only where relevant to this point.

"JK: And can you tell me, in Spanish, exactly what you said to Patrice?

LS: Por que negro?

HP: Why, Black? Why because your (sic) black.

JK: "Por que, negro?" no other words?

LS: No.

HP: Solamente? Por que negro?

LS: Por que negro.

HP: Just "But why, Black?" But I think the meaning is, "Why, because you're black?" (inaudible) in English, it doesn't make sense.

295. There is some force in Mr McCormick's submission but it faces two difficulties. The first is that there is an important difference between the situation of the interpreter and that of Mr Comolli. In the interview on 2 November, the interpreter was seeking to translate the Spanish phrase "Por que, negro?" into English. However, when Mr Comolli spoke to the referee he told him the Spanish words that Mr Comolli understood from his conversation in Spanish with Mr Suarez that Mr Suarez had used. It would be surprising if, in asking Mr Suarez about a serious allegation and wanting to take care how the matter was dealt with, Mr Comolli did not carefully note the exact Spanish words that Mr Suarez used. It would also be surprising if Mr Suarez told Mr Comolli that he had said "Por que, negro?" and Mr Comolli told the referee that Mr Suarez had said "Porque tu es negro". It is, of course, possible, that Mr Comolli heard what Mr Suarez said in Spanish, and interpreted it to mean something else, or translated it into another language (whether French or English) and back again into Spanish before telling the referee. But, this was not suggested to us and we doubt that Mr Comolli, as a Spanish speaker, would have gone about things in that way. In addition, Mr Comolli told Mr Dalglish the Spanish words that Mr Suarez said he had used, which Mr Dalglish said were "Tu es negro". Mr Suarez was still in the room when Mr Comolli reported his words in Spanish to Mr Dalglish, and it is perhaps surprising that Mr Suarez did not correct Mr Comolli if he got it wrong.

296. The second difficulty in the way of Mr McCormick's submission is Mr Kuyt's evidence. When Mr Kuyt was interviewed by the FA on 2 November, he said that he had spoken to Mr Suarez after the game about Mr Evra's complaint. Mr Kuyt said that Mr Suarez speaks Dutch very well and so they always speak to each other in Dutch. Mr Kuyt had heard about Mr Evra's complaint and asked Mr Suarez what he had said to Mr Evra. Mr Kuyt told the FA in Dutch what he recalled Mr Suarez saying to him in the dressing room. The interview with Mr Kuyt was recorded, and the FA subsequently transcribed the Dutch words used by Mr Kuyt and had these translated by an independent interpreter. This

means that we were able to consider what Mr Kuyt then recalled Mr Suarez having said to him in Dutch, together with a translation from the Dutch into English.

297. According to Mr Kuyt, Mr Suarez said to him that he had touched Mr Evra on the head and he (Mr Evra) said something along the lines of "get away from me South American", to which Mr Suarez replied "because you're black can't...why can't I touch you then". The Dutch words which Mr Kuyt recalled Mr Suarez using were "omdat je zwart bent mag...waarom mag ik je daarom niet aanraken". Mr Kuyt explained to us that the initial phrase in this passage means "because you are black", i.e. omdat (because) je (you) zwart (black) bent (are).

298. Mr Suarez gave evidence about the conversation he had with Mr Kuyt after the game. By the time of his witness statement, Mr Suarez had clearly become aware of what Mr Kuyt had said to the FA in his interview. As with Mr Comolli's account given to the referee after the game, what Mr Kuyt had told the FA was potentially difficult for Mr Suarez given the case he was now putting forward.

299. Mr Suarez dealt with this discrepancy in the following way in his witness statement:

"Dirk Kuyt also spoke to me after the match and I explained to him in Dutch what had happened. His Dutch version of what was said appears to have lost something in translation because he, too, is supposed to have heard from me that I said "Why can't I touch you? Because you're black?" but all I said was "Por que negro?".

300. When Mr Suarez said in this passage that Mr Kuyt "too" misheard Mr Suarez, that is a reference to Mr Comolli also "mishearing" what Mr Suarez said.

301. Mr Kuyt also dealt in his witness statement with the discrepancy between what he told the FA on 2 November that he had understood Mr Suarez had said and what Mr Suarez claimed he told Mr Kuyt after the game. Mr Kuyt said:

"I am aware that LS will state in evidence that what he actually said in response to the remark from PE was (translated into English) "Why, black?" or "Why, negro?" and I am perfectly happy to accept that this is what he said. I may have misunderstood what he was saying or perhaps sought to interpret what he was saying as what I thought LS might have said when, in fact, it was not what he said."

302. The position, therefore, is as follows. Mr Suarez spoke in Spanish to Mr Comolli soon after the game about this serious allegation. Mr Suarez also spoke in Dutch to Mr Kuyt. Both Mr Comolli and Mr Kuyt understood Mr Suarez to have told them that when he spoke to Mr Evra he said words which translate into English as, "Because you are black". According to Mr Suarez, Mr Comolli misheard what Mr Suarez said in Spanish, and Mr Kuyt misheard what Mr Suarez said in Dutch.
303. There are a number of other surprising aspects to what Mr Dalglish and Mr Comolli told the referee. We accept that the referee's report accurately records what they told him. Its accuracy was not challenged by Mr Suarez.
304. Mr Dalglish told the referee that Mr Suarez responded with "you are black" having first been taunted with "you are South American". Mr Comolli is not recorded as using the word "taunted", but said that Mr Evra said "you are South American" to Mr Suarez who responded with "Tues negro" which translates "you are Black". There is no suggestion here that Mr Evra had said "Don't touch me", yet this seems now to be an essential part of Mr Suarez's evidence. We were not given any explanation as to why the referee was not told that Mr Evra had said "Don't touch me, South American", as opposed to "you are South American". Secondly, at least as expressly reported by Mr Dalglish, Mr Suarez's remark was a riposte to being taunted by Mr Evra. If that is correct, it would suggest that Mr Dalglish understood Mr Suarez's comment to be in the nature of retaliation for having been called "South American". But that would suggest that the riposte "You are black" was used in a derogatory sense, which is contrary to Mr Suarez's case. In fact, Mr Suarez told us that he did not consider being described as South American to be derogatory, so it is difficult to understand why this was referred to as a "taunt".
305. These unanswered questions may all be explained by the fact that events moved quickly, and Mr Dalglish and Mr Comolli did not fully understand what Mr Suarez said to them before speaking to the referee. Mr Kuyt's initial evidence to the FA might also be attributable to his own misunderstanding of what Mr Suarez said to him.
306. An alternative explanation is that Mr Suarez was aware that he had said to Mr Evra "Porque tu eres negro", and that this might have been overheard or caught on camera.

When he was questioned about it in the aftermath of the game, he did say that he had said "Porque tu es/eres negro", as both Mr Comolli and Mr Kuyt understood at the time but he sought to cast it in a different and better light. Subsequently, he changed that account to explain that he used the word in a friendly and conciliatory way that was common in Uruguay.

307. The discrepancies between what Mr Dalglish and Mr Comolli reported to the referee on the one hand, and Mr Suarez's evidence as to what he said on the other hand, have not been satisfactorily explained. At the very least, they demonstrate a confusion in Mr Suarez's initial account of what he said, and an apparent inconsistency between that account and the case that he advanced before us.

*Mr Suarez's account in his interview*

308. By the time that Mr Suarez was interviewed by the FA on 2 November, he had watched footage of the game. This only came to light as a result of questioning by the Commission. Mr McCormick told us that he had watched the Sky footage. He had done so, we understand, with representatives of Liverpool. He did so because he was aware that the FA wanted to interview him. So, in anticipation of that interview, he watched the recording and, it is reasonable to infer, did so in order to identify the moments in the game which would be relevant to the FA interview and to help prepare himself to answer the FA's questions about his exchanges with Mr Evra. However, he had not by that time seen the detailed footage that was before us at the hearing.
309. At the interview, Mr Suarez was accompanied by Ms Ward, the Liverpool FC Secretary, Ms Wignall, the Liverpool FC General Counsel, and Mr McGrath, the interpreter representative at Liverpool FC.
310. In the interview, Mr Suarez said that when the corner was awarded, Mr Evra had asked him why he had kicked him. Mr Suarez said that he shrugged his shoulders and said it was like a normal foul. He said that they did not say anything else until they moved around a bit. They were called by the referee who talked to them. Mr Suarez did not understand what the referee said but thought he was trying to tell them to shake hands and apologise to each other. Mr Suarez then said sorry to Mr Evra, and touched him on

the back of the neck. Mr Evra told him "Don't touch me, sudamericano " and Mr Suarez said "Por que, negro?", using black like when he talked to Glen Johnson. He then ran away from Mr Evra and did not speak to him anymore during the match.

311. Later in the interview, Mr Suarez was told that the footage showed him touching Mr Evra's arm. Mr Suarez had not said anything about touching Mr Evra's arm when he had given his account of what happened earlier in the interview. He was asked if he could remember what he said. His response was "Perhaps I said to him three times "It was a foul"."
312. Mr Suarez referred in the interview to his conversation with Mr Kuyt after the game, and also that he explained what had happened in Spanish to three other Liverpool players, Maxi Rodriguez, Lucas Leiva and Sebastian Coates. We did not have any evidence from those three players.
313. Mr Greaney submitted that this account was subtly but significantly different from the report of his account given by Mr Dalglish and Mr Comolli to the referee. This was because it was no longer suggested that Mr Suarez said "you are black" in response to Mr Evra's taunt "you are South American", but rather that he said "por que, negro?" ("why, black?") in response to Mr Evra's comment "Don't touch me, sudamericano/South American".

*Mr Suarez's account in his witness statement*

314. In his witness statement, Mr Suarez gave details about his exchanges with Mr Evra which he had not previously given. After Mr Evra asked why he had kicked him and Mr Suarez had replied that it was a normal foul, Mr Evra said "Ok, you kicked me, I'm going to kick you." Mr Suarez told him to shut up and made a brief gesture with his left hand like a "quacking" motion as if to say he was talking too much and should be quiet. He then referred to the pinching of Mr Evra's arm and said that he was trying to defuse the situation and trying to intimate to Mr Evra that he was not untouchable by reference to his question about the foul. These details had not previously been provided by Mr Suarez to the FA.

315. Mr Suarez also changed some of the detail of his account of the incident when he used the word "negro". He now said that it was simultaneously with the blowing of the whistle that Mr Evra spoke to him and said "Don't touch me, South American" (in English). Mr Suarez took this to be a reference to his touching of Mr Evra's arm on the goal line a few moments earlier.

316. There were, thus, three changes in this account from what Mr Suarez had said in his 2 November interview: (1) Previously he had said that this exchange took place when they were walking away after the referee had spoken to them, whereas now it was said to have occurred simultaneously with the referee blowing his whistle and before he spoke to them. (2) Previously he had said that the exchange took place in the context of Mr Suarez saying sorry to Mr Evra as required by the referee, whereas now nothing was said about Mr Suarez apologising. (3) Previously Mr Suarez said that he believed that Mr Evra's comment that Mr Suarez should not touch him was a reference to Mr Suarez putting his hand on the back of Mr Evra's head, whereas now it was said to be a reference to the pinching on the goal line.

317. Mr Suarez touched on these changes in his account of events in his witness statement when he said:

"I should point out that, in interview with the FA, I had thought that the conversation in paragraph 32 [it should be 30] above took place after the Referee spoke to myself and PE. On viewing the clips, however (which I was not shown during the interview), I now realise that the conversation took place immediately before the Referee spoke to us."

318. In the course of the hearing, it became apparent that Mr Evra was not aware of Mr Suarez pinching him at the time it happened and only became aware of it when watching the footage subsequently. This posed a problem for Mr Suarez in that any comment by Mr Evra along the lines of "Don't touch me" could not have been referring to the pinching, of which Mr Evra was unaware at the time. Mr Suarez's case on this point changed again so that, as put by Mr McCormick in closing, it was said that the touching which prompted Mr Evra's comment "Don't touch me" was the foul in the 58th minute. In Mr Suarez's several accounts, the touching being referred to by Mr Evra was (1) Mr Suarez's hand on

the back of his head, then (2) Mr Suarez pinching Mr Evra on the goal-line, then (3) Mr Suarez fouling Mr Evra in the 58th minute.

### Conclusions on inconsistency

319. There were clearly a number of changes in Mr Suarez's account, both of the incident in the goalmouth and the incident where Mr Suarez admitted to using the word "negro" between his initial account as reported by Mr Dalglish and Mr Comolli, his interview on 2 November, his witness statement, and his case as presented at the hearing.
320. It is true to say that Mr Suarez had not seen all the video clips when he was interviewed, and that it is not easy to piece together a detailed sequence of events which took place in a brief period of time in a high-pressured match. On the other hand, a serious allegation had been made against Mr Suarez. Mr Comolli took care after the match to find out what had happened in view of the seriousness of the allegation. Mr Suarez had watched a recording of the game with a view to preparing for his FA interview. It is a reasonable inference that he had thought very carefully about what had happened at the key moments in the penalty area, with the benefit of some recording to refresh his memory, in order to be able to give a clear account in his interview and his witness statement.
321. The impression created by these inconsistencies was that Mr Suarez's evidence was not, on the whole, reliable. He had put forward an interpretation of events which was inconsistent with the contemporaneous video evidence. He had changed his account in a number of important respects without satisfactory explanation. As a result, we were hesitant about accepting Mr Suarez's account of events where it was disputed by other credible witnesses unless there was solid evidence to support it.

### Probability

322. A third test for assessing the credibility of a witness, and the reliability of his evidence, is probability. This involves asking which of two divergent accounts is probably correct. Motive is one aspect of probability. It may be helpful to ask: if Mr Suarez's account is correct, why did Mr Evra make the allegations and pursue them through to this hearing? How probable is it that he would do that? It may also be helpful to ask: if Mr Evra's

account is correct, why did Mr Suarez act in the way Mr Evra said he did? How probable is that? We shall consider these questions in turn.

If Mr Suarez is correct, what is Mr Evra's motivation?

323. The question of Mr Evra's motivation, if Mr Suarez's account is correct, was addressed at the hearing in the context of one of Mr Evra's factual allegations.

324. It was the FA's case that the second use of the word "negro" by Mr Suarez in the goalmouth was when he said "No hablo con los negros" ("I don't speak to blacks"). It was the unchallenged evidence of four Manchester United players that Mr Evra told them immediately after the game that Mr Suarez had said that to him. It was also the unchallenged evidence of Mr Marriner, the referee, that Mr Evra had told him straight after the game that Mr Suarez had said this to him. It is, therefore, an accepted fact that Mr Evra reported these comments to those individuals straight after the game.

325. This gives rise to the question of what inferences, if any, were to be drawn from the fact that Mr Evra reported Mr Suarez's comment in this way straight after the game. We put to Mr McCormick that there were a number of possible inferences that we might draw: (1) that Mr Evra was telling the truth and Mr Suarez had made this comment during the game; (2) that Mr Evra made it up, in which case one would have to ask why he had made it up, and how he had done so as soon as the game had finished; (3) that Mr Evra had misheard or misunderstood something that Mr Suarez said, in which case one would have to ask what Mr Suarez had said and how Mr Evra had misheard or misunderstood it; (4) that there was some other reasonable inference that we should draw, which was not immediately apparent to us. We asked Mr McCormick what inference he submitted we should draw from the fact that Mr Evra had reported this comment immediately after the game.

326. Mr McCormick submitted that Mr Evra had invented this comment, and that we should draw inference (2), ie that he had made it up. Mr McCormick accepted that it followed from this submission that Mr Evra was inventing something, the consequence of which, if it was pursued and upheld, would be extremely damaging to a fellow professional. He also submitted that this was something that Mr Evra appreciated at the time and

nevertheless he carried it through. He submitted that Mr Evra knew when he went into the referee's room that he was setting in train the potential motion that ended with the hearing before us, and he had pursued it. We asked Mr McCormick what factors we should take into account in assessing whether Mr Evra was likely to act in this way. His submission was as follows:

"I suggest you take into account the evidence that was put to him of his behaviour earlier in the game, and the frame of mind he was in. The fact that he had been kicked in a foul on the knee that had already been damaged, that clearly upset him, the fact that he said he was in shock and upset about that incident, even six minutes after it had occurred. The fact that he was so upset that he began a conversation with Mr Suarez with a highly offensive remark which illustrates his animus in my respectful submission.

Then the fact that Mr Suarez doesn't react to him as he would have wished. One assumes that the "Why did you kick me?" pursued six minutes after it had occurred with an insult to begin the conversation, is in some way meant to produce from Mr Suarez an unrestricted unequivocal apology about what happened, and instead of getting that reaction, he gets the reaction "What are you complaining about, it was just a normal foul?" and then sadly matters escalate after that into a conversation, brief though it was, "Don't touch me, South American", "Por que, negro?" "Right, that's it. I have now exploded. I now want vengeance.""

327. Mr McCormick's submission, therefore, appeared to come to this. Mr Evra was in shock having been kicked on a knee that had already been damaged. Five minutes later, Mr Evra confronted Mr Suarez about the foul looking for an unrestricted unequivocal apology. When that was not forthcoming, Mr Evra wanted vengeance. A few moments later, in the 64th minute of the game, Mr Evra said "Don't touch me, South American" and Mr Suarez replied "Por que, negro?" ("Why, black?"). At some point before entering the dressing room about 30 minutes later, during which time two goals were scored, Mr Evra invented the allegation that Mr Suarez had said "I don't speak to blacks". He did this knowing it was untrue and knowing that if his allegation were upheld it would be extremely damaging to Mr Suarez, a fellow professional. He maintained that false allegation all the way to this hearing and has done so in order to exact vengeance for Mr Suarez's foul and failure to offer an unrestricted unequivocal apology.
328. In his submission set out in paragraph 326 above, Mr McCormick referred to evidence of Mr Evra's behaviour earlier in the game, and the frame of mind he was in. We should say

something about that evidence at this stage. Mr McCormick showed the Commission and some of the witnesses certain video footage of four incidents which occurred in the game before Mr Suarez's foul.

329. The first of these was the coin toss. Mr Evra was seen to dispute the outcome of the coin toss with the referee. Mr Marriner explained that he used a FIFA coin which is blue on one side and yellow on the other. He asked Mr Evra, as the visiting captain, to call the colour. Mr Marriner tossed the coin, it came down yellow, and he awarded it to Steven Gerrard who elected to stay in their current ends. Manchester United had kick off. Mr Evra remonstrated that he had called correctly but, Mr Marriner said, he had not. Mr Evra then spoke to Ryan Giggs about it, and Mr Marriner walked over to Mr Evra to assure him that he (Mr Marriner) had got it right. Mr Evra's evidence was that when such a coin was used, he always called yellow given that the alternative, blue, is a Manchester City colour, which he would never call. The toss came down yellow and so Mr Evra knew that he had won it. He particularly wanted to change ends at the start, he explained to the referee that he had called yellow, and why he had done so. Mr Evra was angry but the referee did not change his mind.
330. The second incident occurred in the 12th minute. Stewart Downing went past Mr Evra on the wing and fell over. The assistant referee told Mr Marriner that Downing had just fallen, and no free kick was awarded. Mr Evra claimed that Downing had dived, and he gestured for a yellow card to be shown to Downing. Mr Marriner agreed in evidence that to call for a caution could, in itself, have been a bookable offence, although he did not caution Mr Evra.
331. Thirdly, in the 13th minute, Mr Evra was taking a throw-in when, according to Mr Marriner, he responded to something that might have been said to him from the crowd in the seats behind him. Mr Marriner said that Mr Evra shrugged his shoulders which he thought was inflaming the situation. Mr Marriner had a word with Mr Evra and asked him to keep a level head.
332. Fourthly, in the 47th minute at the end of the first half, following a challenge between Mr Evra and Mr Kuyt, the referee awarded a free kick against Mr Evra. Mr Marriner said that

Mr Evra was uncomfortable with the decision which Mr Marriner thought was the normal response to not agreeing with a free kick awarded against him.

333. Mr McCormick relied on this evidence for two distinct purposes. First, as seen above, in relation to Mr Evra's alleged motivation of vengeance, Mr McCormick submitted, if we understood his argument correctly, that Mr Evra was wound up throughout the game and the foul plus the refusal to apologise by Mr Suarez tipped Mr Evra over the edge and he decided to seek vengeance. We rejected that submission. In cross-examination, Mr Marriner said that there was nothing in relation to Mr Evra that caused him concern up until the 63rd minute of the game. Effectively, Mr Marriner was saying that in none of the incidents to which Mr McCormick referred did Mr Evra's behaviour cause the referee any concern. That accords with our assessment of the evidence. Mr Giggs described the Liverpool v Manchester United game as *the* biggest match. He did not consider that Mr Evra was wound up save in so far as everyone was wound up to a certain extent given the fixture. We reject the submission that Mr Evra was unduly wound up such that he was tipped over the edge to pursue vengeance against Mr Suarez.
334. Mr McCormick's second purpose in showing the evidence of these four incidents was to suggest that Mr Evra reacted outwardly far more to those incidents than he did in the goalmouth when he claimed that Mr Suarez used the word "negro" five times. Had that really been the case, submitted Mr McCormick, we would have seen a stronger reaction from Mr Evra given how he reacted at other times during the match.
335. Mr Evra said that when the team were preparing for the match in training, the manager told them to be careful not to get sent off in the game. He told us that he was proud of how he reacted to Mr Suarez on the pitch. He knew that he had to stay disciplined. He was careful not to lash out at Mr Suarez lest he be sent off and his reputation damaged. In addition, during the encounter between Mr Evra and Mr Suarez in the goalmouth, the corner was about to be taken. Mr Evra's job was to mark Mr Suarez at corners and he had to stay focussed. On each of the four occasions when it was suggested by Mr McCormick that Mr Evra visibly reacted to adverse circumstances, the ball was out of play. Similarly, when the referee blew his whistle to stop play at the corner, Mr Evra remonstrated with the referee about what Mr Suarez had said to him until the referee took control of the

situation and told the players to calm down. We rejected the submission that Mr Evra's visible reaction to other incidents in contrast to his reaction to Mr Suarez's alleged comments in the goalmouth undermined his claim that Mr Suarez made those comments.

336. We return to Mr McCormick's submission that Mr Evra told his team-mates (and the referee) straight after the game that Mr Suarez had said "No hablo con los negros" ("I don't speak with blacks") knowing that this was invention, and that he did so in order to exact vengeance for Mr Suarez's refusal to apologise for the foul. We considered the submission to be unrealistic and we rejected it. It did not accord with our assessment of Mr Evra, as a clear, calm, and consistent witness. We considered it improbable that Mr Evra would act in such a dishonest way in order to damage the reputation of a fellow professional whose footballing skills he admires, with whom he had had no previous run-ins, and who he does not think is a racist.

337. We did not receive any submissions or assistance from the parties as to which of the other inferences we might draw from this evidence (see paragraph 325 above). Mr McCormick stood by his submission that Mr Evra's evidence with regard to what happened in the goalmouth was untrue and should be rejected. Mr Greaney submitted that it was true and should be accepted.

#### Would Mr Suarez have acted in the way alleged by Mr Evra?

338. Even though we rejected the submission that Mr Evra knowingly invented the allegations to exact vengeance for Mr Suarez's refusal to apologise for the foul, we asked ourselves whether it was probable that Mr Suarez would act in the way alleged by Mr Evra in the goalmouth. Given the other evidence about Mr Suarez, how likely was it that he would say the things that Mr Evra alleged?

339. Mr Suarez was born in Salto, Uruguay as one of seven children. His grandfather was black. He moved to Montevideo when he was seven years old. There were many black people living where he grew up and he had many black friends. He moved to Ajax for the 2007/8 season, played for them for four years, was made club captain for the 2009/10 season and Dutch footballer of the year in the same year. The Ajax team and squad featured a number of black players, with whom he used to socialise, became good friends

with some of them, and never had any problems. He told us that if he had displayed any racist tendencies towards them, there was not the slightest chance that he would have been made club captain. The Dutch league has many black players.

340. Mr Suarez plays with black players in the Uruguay national team and has no problems with them. When they are on international duty, the families are together. When Mr Suarez was in South Africa for the 2010 World Cup, he became involved in a charity in conjunction with the black Cameroon goalkeeper, Carlos Kameni, and Andres Iniesta, the Spain and Barcelona player. Each of them was filmed meeting a young South African who played football as part of a project with young black and white children to encourage solidarity and stamp out racism. The central theme of the film, which the Commission watched, is that the colour of a person's skin does not matter, they can all play together as a team. It shows Mr Suarez meeting one of the young footballers. The DVD of the film is advertised on Mr Suarez's Facebook page, via which it can be bought with all the money going to help the charity.
341. Mr Suarez told us that he has never had any allegation of this nature made against him by any fellow professional or official associated with football whether on or off the pitch. He is saddened by Mr Evra's allegations and deeply concerned as to the implications of these allegations on his playing career, personal relationships and his charity work.
342. We asked ourselves whether a player with this background would make the comments that Mr Evra alleged. We took all these points fully on board and thought long and hard about them before finding the Charge proved. We dealt with them in the following way.
343. Mr Suarez's background as described by him in his statement raised doubts in our minds, in the first instance, as to whether he would ever make the alleged comments. We recognised that Mr Suarez's background together with the seriousness of the Charge, meant that a greater burden of evidence was required to prove the Charge. We formed the view that, overall, the preponderance of the evidence favoured the FA's case.
344. We took into account the fact that it is a real albeit unattractive trait of human nature that we all act from time to time, to greater or lesser degrees, in ways which may be out of character. This is especially so when we feel under pressure, or challenged, or provoked,

or pushed into a corner. We do and say things that we are not proud of and regret, and that we might try and deny, sometimes even to ourselves. We occasionally do or say things that we would be embarrassed to admit to family or friends. It is not inconsistent to have black colleagues and friends and relatives, and yet say things to strangers or acquaintances about race or colour that we would not say directly to those closer to us.

345. Bearing these considerations in mind, whilst we were initially doubtful that Mr Suarez would make the comments alleged by Mr Evra, we proceeded on the basis that the factors relied on in relation to Mr Suarez's background and experiences did not mean that he could not or would not act in this way. We weighed these considerations together with all the evidence when asking ourselves whose account was more probable.

#### **Our conclusions on the main factual disputes**

346. Having set out our approach to resolving the main factual disputes by reference to the demeanour of witnesses, and the inconsistencies and probability of the competing accounts, we now turn to state our conclusions on those main factual disputes.

347. Mr McCormick submitted that it was open to us to conclude that Mr Suarez's evidence was probably correct. He submitted further that, even if we did not reach that conclusion, we could still conclude that the FA had not discharged the burden of proof, which is on the FA, to the necessary standard that Mr Evra's evidence was correct. We shall deal with matters in that order.

#### **Mr Suarez's case.**

348. To recap, Mr Suarez's case was that he had used the word "negro" once only when Mr Evra said "Don't touch me, South American" and Mr Suarez replied "Por que, negro?", meaning "Why black?". Mr Suarez said that this exchange took place when the referee blew his whistle to stop the corner being taken, and that the touching to which Mr Evra was referring was Mr Suarez's foul on him five minutes previously. Mr Suarez further said that his use of the word "negro" was conciliatory and friendly and was commonly used in this way in Uruguay. It was not intended to be offensive or racially offensive.

349. We reminded ourselves of key aspects of the evidence of the Spanish language experts. The Spanish word "negro", meaning "black", is used in Uruguay and other areas of Latin America not only as an adjective but also as a noun. An example of its use as a noun is to refer to a person who has black skin or dark skin or even black hair as "a black". Some people in Uruguay and Latin America, who identify themselves as black, object to the use of the word "negro" as a term of address, as they say it highlights skin colour when that should be irrelevant. For those who do not so object, the use of the word "negro" to refer to a person may be inoffensive or it may be offensive and racially offensive. It depends on the context.
350. The word can be used to address relatives, friends or even passers-by in an inoffensive way. For example, a group of friends waiting for another friend might exclaim "mira, ahí viene el negro", meaning "look, here comes the black one/blackie". Or, an individual might call out to a passer-by "ay, negro, ¿quieres jugar con nosotros?", meaning "hey, blackie, do you want to play with us?". This generally would be inoffensive in Uruguay.
351. However, the use of the word "negro" to describe a person can have pejorative connotations in Uruguay and Latin America, such as the use of the term "los negros" to refer to the lower classes. It can be used offensively and racially offensively in other ways. Sometimes another word will be added to increase the offence, such as "negro de mierda", meaning "shitty black".
352. In all cases where "negro" is used inoffensively to address a person it implies a sense of rapport or the attempt to create such rapport. If the term were used with a sneer, then it might carry negative connotations.
353. On occasions, Mr Suarez has used the word "negro" to address people with black skin without any intention to offend and in a way that would be seen as inoffensive in Uruguay. He is familiar with this use of the word from his upbringing in Uruguay. He said he uses it in this way when speaking to other black players in England, such as when he says "Just pass the ball, negro" to Glen Johnson. He also referred to a match against Manchester City last season when he gave his hand to Yaya Toure and said "Dale, negro", meaning "Come on, negro". A Mexican footballer, Omar Esparza, is widely known in

Mexico as "el Negrito". Hernandez, the Manchester United player, has been a close friend of Omar Esparza for many years and refers to him as "el Negrito" in an affectionate way. Hernandez admitted that terms such as "Negrito" can be used with close friends and in certain situations without it being offensive.

354. Mr Suarez sought to persuade us that when he used the word "negro" to speak to Mr Evra he was acting in a conciliatory and friendly way, without intent to offend and in a way that would not be seen as offensive in Uruguay. He also said that when he pinched Mr Evra's skin he was trying to defuse the situation.
355. We rejected the evidence of Mr Suarez on these points. The pinching of the skin, and Mr Suarez's admitted use of the word "negro" when speaking to Mr Evra, took place in the context of heated exchanges between the players. Mr Suarez had fouled Mr Evra in the 58th minute. Mr Evra confronted Mr Suarez in the 63rd minute and complained forcefully about the foul. Their facial expressions, gesturing and physical movement showed their mutual animosity throughout these exchanges.
356. Mr Suarez's pinching of Mr Evra's skin was not an attempt to defuse the situation. On the contrary, it was an attempt to aggravate Mr Evra and to inflame the situation. Mr Suarez's admitted use of the word "negro" when speaking to Mr Evra was not conciliatory and friendly. It was unfriendly and was used as part of Mr Suarez's attempt to wind up Mr Evra. The whole tenor of the exchanges was confrontational and argumentative. Adopting the words used by the Spanish language experts, Mr Suarez did not use "negro" with any sense of rapport or in an attempt to create such rapport.
357. Not only did we reject this evidence of Mr Suarez, but we found it remarkable that he sought to advance a case that was so clearly inconsistent with any sensible appreciation of what happened. Even Mr McCormick accepted in his closing submissions that the pinching could not reasonably be described as an attempt to defuse the situation. To suggest otherwise, as Mr Suarez did, was unarguable. Mr Suarez's evidence on these topics, which was shown to be flawed, profoundly undermined our confidence in the reliability of his evidence.

358. Mr Suarez's account of his admitted use of the word "negro" changed several times. He seemed unsure of when the admitted use took place and what triggered it. His account seemed to change in an attempt to fit in with the video evidence.
359. In our judgment, the occasion when Mr Suarez admitted using the word "negro" probably occurred in this way. After the referee had spoken to the players and told them to calm down, Mr Suarez put his hand on the back of Mr Evra's head as they walked away. This was designed to further aggravate Mr Evra. The referee spoke to them again. Mr Evra said that he did not want Mr Suarez to touch him. We bear in mind that Mr Suarez said that he understood Mr Evra when he said in English "Don't touch me". This is consistent with the fact that Mr Evra spoke to the referee in English. It is probable that Mr Suarez heard Mr Evra saying to the referee in English that he did not want Mr Suarez to touch him. As they walked away from the referee for this second time, Mr Evra probably said to Mr Suarez again in English "Don't touch me" or words to that effect, and Mr Suarez said "por que, negro?", meaning "why, black".
360. This finding is in line with Mr Suarez's original recollection that he made this comment after touching Mr Evra's head. However, what remained troubling was the way in which Mr Suarez was prepared to change his account having apparently formed the view that it was contradicted in this respect by the video evidence.
361. Mr Suarez told us that he said "por que, negro?" in response to Mr Evra saying "Don't touch me, South American". At one point in his interview with the FA, Mr Suarez said that Mr Evra used the words "Don't touch me, sudamericano". In his evidence to us, he said that Mr Evra's words were "Don't touch me, South American", all in English.
362. The Spanish language experts said that they were not familiar with either "sudamericano" or "South American" being used as an insult, although if used with a sneer it might well be understood as such. A more derogatory insult along these lines would be the term "sudaca", a term most frequently used in Spain to label South American immigrants.
363. Mr Evra denied using the words "South American" when speaking to Mr Suarez. When it was put to him that he had done so, he seemed genuinely bemused. He said to address someone as "South American" in this way is not something he would do. He said "What's

the sense? What's the point?". There was no evidence of Mr Evra using this phrase on any other occasions.

364. We found that Mr Evra did not use the words "South American" when speaking to Mr Suarez. The language experts were not familiar with its use as an insult, Mr Evra's denial of his alleged use of it was plausible, we found Mr Suarez's evidence unreliable in many respects, and we found Mr Evra generally to be a credible witness.

365. The video evidence clearly showed Mr Evra reacting to a comment made by Mr Suarez when the referee blew his whistle to stop the corner being taken. This reaction was shown in Mr Evra's face, his walking towards the referee and pointing back at Mr Suarez. Mr Evra then said "ref, ref, he just called me a fucking black". We found that Mr Suarez probably did use the word "negro" to Mr Evra on this occasion also, although it is not clear what else he said.

366. Therefore, there were two occasions when the players were in the penalty area and not in the goalmouth when Mr Suarez used the word "negro" in speaking to Mr Evra. The first use was before the referee spoke to them for the first time. The second use was after the referee had spoken to them for the second time.

#### The FA's case

367. Thus far, we have rejected Mr Suarez's case that he used the word "negro" once only and that when he used it he did so in a conciliatory and friendly way that was common and inoffensive in Uruguay. We have found so far that there were two uses and neither was conciliatory nor friendly.

368. This does not mean that we necessarily accept the FA's case as to what happened in the goalmouth. We turn to that now. In doing so, we remind ourselves that the burden of proof is on the FA, to the required standard that reflects the seriousness of the Charge.

369. In evaluating the evidence of the goalmouth exchanges, it is nevertheless important to keep in mind the findings that we have made so far. In particular, we have found Mr Suarez's evidence to be unreliable in a number of critical respects. We have found Mr Evra

generally to be a credible witness. We have also found that Mr Suarez used the word "negro" twice to refer to Mr Evra in the penalty area just after the goalmouth exchanges.

370. Before examining the alleged goalmouth comments individually, we looked at the two accounts of the exchanges as a whole.
371. According to the FA, Mr Evra asked Mr Suarez why he had kicked him, to which he replied "Because you are black". Mr Evra then said "Say it to me again, I'm going to punch you" and Mr Suarez replied "I don't speak to blacks". Mr Evra said "Okay, now I think I'm going to punch you", and Mr Suarez responded "okay, blackie, blackie, blackie".
372. According to Mr Suarez, in reply to the question "Why did you kick me?", he said "It was a normal foul". Mr Evra then said "Ok, you kicked me, I'm going to kick you". Mr Suarez then told Mr Evra to shut up, and made a "quacking" motion with his left hand. He pinched Mr Evra's skin to try and intimate to him that he was not untouchable.
373. We make a number of observations on these accounts of the conversation viewed as a whole. Mr Evra's account is more detailed, Mr Suarez's account is shorter. Having viewed the video evidence, it is clear that there was enough time for these exchanges to take place, including the greater number of exchanges suggested by Mr Evra. Mr Suarez's version does not seem to account for all of the comments that we see being made on the video footage, but we appreciate it is difficult for both players to recall every word or phrase that was uttered. For Mr Suarez to say to Mr Evra that he kicked him "because you're black" is initially surprising. We found the "quacking" motion to be a puzzling gesture, which was not really explained or explored further in the evidence.
374. We now turn to consider the exchanges individually. We remind ourselves that Mr Evra started the conversation with an offensive phrase. Although the literal translation is particularly offensive, Mr Evra's use of the phrase should be understood in the sense of "fucking hell" or "you son of a bitch", as the Spanish language experts suggest.
375. Mr Evra then asked "Why did you kick me". According to Mr Evra, Mr Suarez replied "porque tu eres negro" ("because you're black"). According to Mr Suarez, he replied "It was

a normal foul". We think that the shrugging of the shoulders by Mr Suarez is consistent with both answers.

376. It is to be remembered that Mr Comolli's initial understanding was that Mr Suarez had said to Mr Evra "Porque tu eres negro". This is what Mr Comolli said to Mr Marriner and what Mr Dowd noted down (save for what was perhaps some linguistic variation or confusion between "eres" and "es"). Mr Kuyt also understood Mr Suarez to have used Dutch words which translated as "Because you're black". This was said, on Mr Comolli's and Mr Kuyt's accounts, in the context of Mr Suarez replying to Mr Evra's "Don't touch me" comment rather than any exchange in the goalmouth. Both Mr Comolli and Mr Kuyt told us that they had misunderstood what Mr Suarez initially told them. We were sceptical about this explanation, although the point is probably most relevant as showing the confusion and inconsistency in Mr Suarez's account of events.

377. The second exchange alleged by Mr Evra was that he said "say it to me again, I'm going to punch you", to which Mr Suarez replied "I don't speak to blacks". Mr Evra told his four team-mates and the referee straight after the match that Mr Suarez had said this. Their evidence was accepted in full by Mr Suarez. We asked ourselves whether Mr Evra told them this because it was true or whether there was some other explanation for what Mr Evra said. Mr McCormick submitted that it was invented by Mr Evra to exact vengeance on Mr Suarez for having refused to apologise for fouling him. For the reasons we gave in paragraph 336 above, we rejected that explanation. That left the alternative that Mr Evra misunderstood what Mr Suarez had said, ie that he said something else but Mr Evra heard it as "No hablo con los negros". But, if we were to reach that conclusion, there would have to be a good reason for doing so. We would have to identify what Mr Suarez had said, and conclude that it was plausible that Mr Evra had misunderstood it as the phrase he said was used. We could not simply speculate that this had happened. However, neither party suggested to us that this is what happened and, it follows, neither party explained to us how it could have happened.

378. The third exchange alleged by Mr Evra was that he said "okay, now I think I'm going to punch you", to which Mr Suarez replied "Dale, negro, negro, negro", meaning "okay, blackie, blackie, blackie". This involves a use of the word "negro" as a form of address. It is

the same phrase, "Dale, negro", that Mr Suarez said he used to Yaya Toure in the Manchester City game the previous season. That suggests that it is a recognised phrase, and one that Mr Suarez had used on another occasion. Of course, the same phrase or words, whether in Spanish or English, can be used in a friendly way on one occasion and in an unfriendly way on another. It depends on all the circumstances, including context and tone.

379. We accepted Mr Evra's account of these exchanges. The principal reasons for doing so were the following. First, Mr Evra was a credible witness whose evidence was not seriously undermined in any material respect, as explained above. Secondly, we found Mr Suarez, in contrast, to be an unreliable witness on critical parts of his evidence. His evidence was inconsistent with contemporaneous evidence in the form of video footage, especially with regard to his claims of pinching as an attempt to defuse the situation, and using the word "negro" in a conciliatory and friendly way. He changed his account over time in a number of respects. This all combined to cast grave doubt on the reliability of the remainder of his evidence on the main factual disputes.

380. Thirdly, the phrase "dale, negro" involved a use of the word "negro" as a form of address which was common in Uruguay. "Dale, negro" was also a phrase that Mr Suarez admitted using to an opposing player in another match. That Mr Evra heard and recalled that particular phrase being used in the goalmouth is credible, and also lends weight to his evidence about other comments in the goalmouth.

381. Fourthly, we found that Mr Evra did not invent the allegation that Mr Suarez said "I don't speak with blacks", whether to exact vengeance for Mr Suarez refusing to apologise for fouling him or for any other reason. Neither is there any basis for saying that Mr Suarez said something else that Mr Evra misheard as "No hablo con los negros."

382. In all the circumstances, we preferred the evidence of Mr Evra. His account was clear and consistent in all material respects. There is no basis for saying that he lied or was mistaken in what he heard. We found that Mr Evra's account is probably what happened. The conversation was all in Spanish. The words which follow (below) were either Mr Evra's exact words or close approximations to them. Mr Evra said to Mr Suarez "Concha de tu

hermana, porque me diste un golpe?", meaning "fucking hell, why did you kick me?". Mr Suarez replied "Porque tu eres negro", meaning "Because you're black". Mr Evra then said "Habla otra vez asi, te voy a dar una porrada", which means "Say it to me again, I'm going to kick you". Mr Suarez responded "No hablo con los negros", meaning "I don't speak to blacks". Mr Evra then said "Ahora te voy a dar realmente una porrada", meaning "Okay, now I think I'm going to punch you". Mr Suarez responded "Dale, negro, negro, negro", meaning "Okay, blackie, blackie, blackie." This meant that Mr Suarez used the word "negro" five times in the goalmouth. This was the number that Sir Alex Ferguson reported to the referee after the game, and which Sir Alex probably learned from Mr Evra. The "five times" reported to the referee straight after the game corroborates Mr Evra's evidence that the word was used five times in the goalmouth.

383. We make the following important additional findings about the exchanges in the goalmouth. Whilst it was Mr Suarez who fouled Mr Evra in the 58th minute, it was Mr Evra who started the confrontation in the goalmouth in the 63rd minute. Mr Evra was in a state of shock because of the foul which involved a kick on his knee, with which he had had problems previously. He approached Mr Suarez and used an offensive phrase, albeit not one that Mr Suarez heard and not one involving any racial element. Mr Evra forced Mr Suarez back and eventually behind the goal-line. Mr Suarez responded to Mr Evra's advance by making the comments that we have set out in paragraph 382 above. We do not believe that Mr Suarez meant it when he said that he had kicked Mr Evra because he was black or that he did not speak with blacks. The comments were made in the heat of the moment. They were not said with the deliberate intention of getting Mr Evra sent off. When provoked, Mr Suarez overstepped the mark and responded in a way which is unacceptable. His actions are not excused by the fact that it was Mr Evra who started this particular confrontation, although this was the context in which Mr Suarez made the objectionable comments.

384. The remaining aspect of the goalmouth incident concerned Mr Suarez pinching Mr Evra's skin. It was part of the FA's case that this was racially insulting. We were not persuaded that this is so, and rejected this part of the FA's case. Mr Evra was not aware of the pinching when it happened. He only became aware of it when reviewing the video

footage later. Mr Suarez said that he touched Mr Evra's arm in this way to show that he was not untouchable by reference to the foul. We did not find that to be a credible explanation for his actions. Rather, we found that the pinching was simply an attempt by Mr Suarez to aggravate Mr Evra. It had no particular connotation related to Mr Evra's ethnic origin, colour or race.

## **VII The Charge**

385. Having made our findings on the background facts and the main factual disputes, we now turn to consider whether the Charge is proved.

### **Rule E3(1)**

386. Particular one of the Charge is as follows:

"It is alleged that in or around the 63rd minute of the ... fixture you used abusive and/or insulting words and/or behaviour towards an opponent Mr Patrice Evra contrary to Rule E3(1)."

387. We have set out Rule E3(1) in full at paragraph 49 above. The relevant part provides that a Participant shall not use any one, or a combination of, abusive or threatening words or behaviour.

388. Our findings of fact which are directly relevant to the Charge are as follows:

- (1) In response to Mr Evra's question "Concha de tu hermana, porque me diste in golpe" ("Fucking hell, why did you kick me"), Mr Suarez said "Porque tu eres negro" ("Because you are black").
- (2) In response to Mr Evra's comment "Habla otra vez asi, te voy a dar una porrada" ("say it to me again, I'm going to punch you"), Mr Suarez said "No hablo con los negros" ("I don't speak to blacks").
- (3) In response to Mr Evra's comment "Ahora te voy a dar realmente una porrada" ("okay, now I think I'm going to punch you"), Mr Suarez said "Dale, negro, negro, negro" ("okay, blackie, blackie, blackie").

- (4) When the referee blew his whistle to stop the corner being taken, Mr Suarez used the word "negro" to Mr Evra.
- (5) After the referee had spoken to the players for a second time, and Mr Evra had said that he did not want Mr Suarez to touch him, Mr Suarez said "Por que, negro?".

389. We remind ourselves that the test for a breach of Rule E3(1) is an objective test. That means that it is for us to form our own view as to whether Mr Suarez's words or behaviour were abusive or insulting. It is not necessary for the FA to prove that Mr Suarez intended his words or behaviour to be abusive or insulting. We are concerned with whether the words or behaviour were abusive or insulting when used in a football match played in England under the FA Rules. Mr McCormick accepted that we should apply standards that we consider should be applicable to games played under the jurisdiction of the FA. We are not deciding whether the words or behaviour would have been abusive or insulting if used in a match in Uruguay. Nevertheless, we have taken account of the fact that the words were said in Spanish by a Uruguayan player to a French player who speaks Spanish. We have also had regard to the Spanish language expert evidence about how particular uses of "negro" and comments using "negro" would or might be understood in Uruguay. However, ultimately our task is to decide whether in our view the words or behaviour were abusive or insulting in the circumstances in which they took place in this match played in England under the FA Rules.

390. Mr Suarez used the word "negro" in his comments to Mr Evra because Mr Evra's skin colour is black. In our judgment, Mr Suarez's words were insulting when he used the word "negro" in each of the comments to Mr Evra which we have identified in paragraph 388 above.

391. Taking each of these comments in turn, and referring to the English translation only in this paragraph (the full Spanish comment being set out in paragraph 388 above):

- (1) Mr Suarez used insulting words in telling Mr Evra that he kicked him because he was black. We do not believe this requires any elaboration. The Spanish language experts, whose evidence was accepted by Mr Suarez, said that this comment

would be interpreted in Uruguay and other regions of Latin America as racially offensive.

- (2) Mr Suarez used insulting words in telling Mr Evra that he did not speak to blacks. Again, this requires no elaboration. The Spanish language experts said effectively the same about this comment as they did about the previous comment.
- (3) Mr Suarez used insulting words in saying to Mr Evra "okay, blackie, blackie, blackie". Here, Mr Suarez was using the word "negro" as part of their argument in which he was trying to wind up Mr Evra. The Spanish language experts said that in the context of the previous usages of "negro" and "negros", this usage would retain its provocative and offensive connotations, even though, in a different context, the phrase "Dale, negro" could easily be inoffensive in Uruguay.
- (4) Mr Suarez used insulting words when he used the word "negro" when speaking to Mr Evra just before they were spoken to by the referee for the first time. We do not know what Mr Suarez said to which he attached the word "negro". However, given that it was said as part of the continuing confrontation and argument between the two players, and following the three previous comments when the word was used in an insulting way, we find that it was also insulting on this fourth occasion. For a Uruguayan to address a black opponent who understands Spanish as "negro" in a football match in England, in the context in which the word was used, is insulting.
- (5) Mr Suarez used insulting words when he said to Mr Evra "Why, black?" after the referee had spoken to them for the second time and Mr Evra had said that he did not want Mr Suarez to touch him. Again, given that this was said as part of the continuing confrontation and argument between the two players, it followed the four previous comments using the word "negro" and, furthermore, given that Mr Evra had made clear that he did not want Mr Suarez to touch him, in all the circumstances the use of the word was insulting on this occasion also.

392. In total, Mr Suarez used the word "negro" or "negros" seven times in the penalty area. On each occasion, the words were insulting. On each occasion, Mr Suarez breached Rule E3(1). Accordingly, the Charge is proved.
393. Having found the Charge proved in that Mr Suarez's use of the word "negro" or "negros" was insulting, we did not find it necessary to consider whether they were also abusive.
394. We make clear that the Charge was not proved in respect of Mr Suarez pinching Mr Evra's skin. Whilst we considered that action to be reprehensible, we were not persuaded that it amounted to abusive or insulting behaviour within the meaning of those words in Rule E3(1). Accordingly, no issue arose as to whether any breach of Rule E3(1) by pinching included a reference to Mr Evra's ethnic origin, colour or race. In the event, this decision made no difference to our finding that the Charge was proved. It might conceivably have made a difference to penalty had we found a breach of Rule E3(1) by pinching and that this included a reference to Mr Evra's ethnic origin, colour or race. However, that situation did not arise.

### **Rule E3(2)**

395. Particular two of the Charge is as follows:

"It is further alleged that your breach of Rule E3(1) included a reference to the ethnic origin and/or colour and/or race of Mr Patrice Evra within the meaning of Rule E3(2)."

396. We have set out Rule E3(2) in full at paragraph 49 above. The relevant part provides that in the event of any breach of Rule E3(1) including a reference to any one or more of a person's ethnic origin, colour, race, a Regulatory Commission shall consider the imposition of an increased sanction.
397. It seems to us that it is difficult on the facts of this case to see how the question under Rule E3(2), ie whether the insulting words included a reference to colour etc, could be separated from the question under Rule E3(1), ie whether the words used were insulting. We have found that the words were insulting *because* they included a reference to Mr Evra's colour. The two questions are inextricably linked.

398. Nevertheless, for completeness we address this second question separately. In our judgment, the breach of Rule E3(1) includes a reference to Mr Evra's colour. Mr Suarez used the words "negro" and "negros", meaning black or blacks, because Mr Evra's colour is black. It follows from the terms of Rule E3(2) that we should consider the imposition of an increased sanction. We deal with this in the following section on penalty.

399. Had we decided that the test for a breach of Rule E3(1) included a subjective element, we would still have found the Charge proved. In our judgment, not only were the words used by Mr Suarez insulting for the reasons explained above, he also intended them to be insulting. This was so, both with regard to his first two comments in the goalmouth ("Porque tu eres negro" and "No hablo con los negros"), but also with regard to his use of "negro" to address Mr Evra where the word was used in the context of the confrontation which we have described.

## **VIII The Penalty**

400. We now turn to consider penalty. We do so on the basis of the facts as we have found them to be, the breaches of Rule E3(1) which we have found to be proved and the terms of Rule E3(2) which require us to consider an increased sanction.

### **Relevant Rules**

401. The following provisions are relevant to our decision on penalty.

#### **Rule E3(2)**

402. We have set out Rule E3(2) in full in paragraph 49 above. The part that is relevant to penalty in the present case provides as follows:

"In the event of any breach of Rule E3(1) including a reference to...a person's...colour (an "aggravating factor"), a Regulatory Commission shall consider the imposition of an increased sanction, taking into account the following entry points:

For a first offence, a sanction that is double that which the Regulatory Commission would have applied had the aggravating factor not been present.

...

These entry points are intended to guide the Regulatory Commission and are not mandatory.

The Regulatory Commission shall have the discretion to impose a sanction greater or less than the entry point, according to the aggravating or mitigating factors present in each case."

### Regulation 8

403. Penalties are governed by Regulation 8 of the Disciplinary Regulations. Regulation 8.1 provides, so far as relevant, as follows:

"The Regulatory Commission shall have the power to impose any one or more of the following penalties on the Alleged Offender:

(a) a reprimand and/or warning as to future conduct;

(b) a fine;

(c) suspension from all or any specified football activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of matches;

...

(h) such further or other penalty or order as it considers appropriate."

### Paragraph 8(d)

404. Paragraph 8(d) of the FA Disciplinary Procedures provides for an automatic two-game suspension where a player is sent off for insulting language. It provides as follows:

"A Player who is dismissed from the Field of Play for using offensive or insulting or abusive language/gestures, whether he has previously been cautioned in the match or not, will be suspended automatically from FTCM [First Team Competitive Matches] commencing forthwith, and until such time as his Club's First Team has completed its next two FTCM."

### The submissions for the FA on penalty

405. The FA made the following submissions on penalty.

406. The correct approach is to consider the imposition of an increased sanction, taking into account the fact that the entry point is double that which the Commission would have

applied had the aggravating factor not been present (bearing in mind that this would be the first offence of Mr Suarez). The Commission might well conclude that, had the aggravating factor not been present, a two match ban would, in accordance with Paragraph 8(d), have been applied. If so, that makes the entry point a four match ban. The Commission should then consider whether to impose a sanction greater or less than this entry point, having regard to the aggravating and mitigating factors that are present.

407. Having dealt with the approach to be taken, the FA then made submissions as to the particular factors which we should take into account.
408. The FA submitted that an increased sanction was required both to punish Mr Suarez and also to ensure that it is widely understood that the FA deprecates and will not accept racist behaviour. In other words, a deterrent sanction is called for.
409. Furthermore, the FA submitted, a number of aggravating factors justifying a further increase in the sanction are present.
410. First, Mr Suarez is an international footballer of exceptional ability, playing for one of the best-known clubs in the world. His position carries with it a particular degree of responsibility. His conduct amounts to a serious breach of that responsibility. The conduct of Mr Suarez also undermines FA-supported programmes such as the anti-racism "Kick It Out" campaign by suggesting to the young, naive and ignorant that racially offensive language and behaviour is acceptable.
411. Secondly, the FA submitted that the nature and extent of the misconduct of Mr Suarez was an obviously relevant factor. Given the number of times that Mr Suarez used the word "negro", his conduct is significantly more serious than a one-off use of a racially offensive term and amounts to an aggravating factor.
412. Thirdly, it was submitted by the FA that the conduct of Mr Suarez has damaged the image of English football around the world, given that the conduct occurred during the course of one of the most famous games in English football, watched by a huge number of people around the world.

413. Fourthly, the FA submitted that the impact of the conduct of Mr Suarez on Mr Evra is a factor tending to aggravate the seriousness of the misconduct. He had been badly affected by the incident, and had been the subject of adverse comments in the media and on social networking sites.

414. Finally, the FA invited the Commission to consider Mr Suarez's motivation. The FA confirmed that it has not contended that Mr Suarez acted as he did out of deep-seated racial prejudice, ie because he is a racist. The FA submitted that the likelihood was that Mr Suarez was seeking to provoke Mr Evra, so as to cause him to be sent off, thereby gaining a competitive advantage in the game. It was submitted that such behaviour is to be deplored.

#### **The submissions for Mr Suarez on penalty**

415. Mr McCormick emphasised that we have a discretion as to whether to increase or reduce the penalty from the entry point. He accepted that if Mr Suarez had been sent off for insulting language, he would be automatically suspended for the next two first team competitive matches. He suggested that he could not take issue with a two match suspension as the entry point.

416. Mr McCormick then responded to the FA's submissions on mitigation. As for the notion of deterrence, Mr McCormick submitted that our penalty would be known fairly promptly by people interested in football. The deterrence for others would lie in the knowledge that if they used inappropriate words then they would end up before a Commission and be punished.

417. So far as Mr Suarez's international status is concerned, Mr McCormick submitted that because of this the damage to his reputation would be all the greater, which would amount to a punishment for him without the need for an increased sanction to reflect that status.

418. Mr McCormick submitted that we should decide on the penalty that we considered appropriate, having regard to any mitigating factors, and not be concerned with how that

penalty might be interpreted by the wider public in terms of the message sent out as to the importance attached by the FA to anti-racism campaigns.

419. Mr McCormick did not accept that the fact that this was a match between Liverpool and Manchester United should affect the penalty. He submitted that those watching the match would not have understood that Mr Suarez had used insulting words referring to Mr Evra's colour, and that it was Mr Evra's interview on Canal+ and his reference to "ten times" that had brought matters into the public domain. Mr McCormick did not accept that criticism of Mr Evra in the media and on social networking sites could be laid at the door of Mr Suarez.
420. Mr McCormick then advanced a number of points of mitigation on behalf of Mr Suarez. First, he pointed to the fact that the conversation and aggression in the goalmouth was started by Mr Evra.
421. Secondly, Mr McCormick pointed to a number of factors in Mr Suarez's experience. These had been deployed by him in support of Mr Suarez's denial of the Charge. He now relied on them for mitigation. Mr Suarez is from a mixed race family background, and his grandfather was black. That showed, Mr McCormick submitted, that the potential consequences of our decision are all the worse for him. He grew up in a town and then a city where there were lots of black people. He had no problems with them and had many black friends. It was important to emphasise this point lest Mr Suarez be unfairly and unjustifiably portrayed as a racist as a result of our decision.
422. Mr McCormick submitted that when Mr Suarez played for Ajax, the squad featured a number of black players. He never had any problems with them, used to socialise with a number of them and they became good friends. He was made Club captain. This would not have happened had he displayed any racist tendencies. Mr Suarez plays alongside black players in the Uruguay national team and has no problems with them. They and their families mix together when on international duty.
423. Mr McCormick referred to Mr Suarez's involvement in the charitable enterprise following the World Cup in South Africa to which we have already referred in paragraph 340 above. The central theme of the film that was made is that the colour of a person's skin does not

matter, they can all play together as a team. The allegations made by Mr Evra had distressed Mr Suarez as evidenced by his postings on Twitter, Facebook and his website soon after the allegations became public.

424. Mr McCormick placed reliance on the fact that there was nothing presented to us to suggest any history of racist behaviour by Mr Suarez. Mr McCormick said that Mr Suarez felt shame and embarrassment not only in terms of his family but also the Uruguayan people, whom he felt he had let down. Mr McCormick stressed that Mr Suarez did not mean the word "negro" in the way that Mr Evra took it.

425. In the light of all these circumstances, Mr McCormick submitted that we could not be justifiably criticised if we took the view that Mr Suarez will undoubtedly have learned his lesson, that he will speak very carefully to people in future, certainly on the pitch in a game of football in England, and that we did not see the need for an increased sanction above the entry point of two games.

#### **Discussion and conclusions on penalty**

426. We approached the issue of penalty in the following way.

##### **The entry point**

427. In accordance with Rule E3(2), we considered the imposition of an increased sanction. Rule E3(2) directs us to take into account as an entry point, this being Mr Suarez's first offence, a sanction that is double that which the Commission would have applied had that aggravating factor of colour not been present.

428. In considering what sanction the Commission would have applied had the aggravating factor of colour not been present, we note Paragraph 8(d) of the Disciplinary Procedures which provides for an automatic two-match suspension if a player is sent off for insulting language. Thus, a player who used insulting language, which did not include any reference to ethnic origin, colour or race, would receive an automatic two-match suspension.

429. Rule E3(2) then directs us to consider, as an entry point, a sanction that is double the automatic two match suspension for insulting behaviour on account of the presence of the aggravating factor of a reference to colour. Doubling the automatic two-match suspension would result in a four-match suspension. We decided that an entry point of a four-match suspension was appropriate in this case in line with the guidance in Rule E3(2).

#### Aggravating factors

430. We then considered the factors that supported a greater penalty than the entry point of a four-match suspension ("aggravating factors").

431. The first aggravating factor was the number of times Mr Suarez used the word "negro" or "negros". The entry point of a four-match suspension could apply in a case where the alleged offender had used insulting words including a reference to colour once only during a match. We have found that Mr Suarez used the word "negro" or "negros" seven times in his exchanges with Mr Evra. It happened, also, in a number of phases. First, there were the exchanges in the goalmouth. Secondly, there was the exchange just before the referee spoke to the players. Thirdly, there was the exchange just after the referee had spoken to the players. Whilst we recognised that the exchanges occurred over only a two-minute spell in the second half of the match, there were multiple uses of the insulting words by Mr Suarez.

432. The second aggravating factor was what Mr Suarez said when using the insulting words. He did not simply use the word "negro" to address Mr Evra. He did that, but he also said that he had kicked Mr Evra because he was black, and that he did not talk to blacks. Even if Mr Suarez said these things in the heat of the moment without really meaning them, nevertheless this was more than just calling Mr Evra "negro". According to the Spanish language experts, the uses would have been regarded as racially offensive in Uruguay.

433. The third aggravating factor was the context in which Mr Suarez used the insulting words. The context was of an acrimonious exchange, which included Mr Suarez pinching Mr Evra's skin and putting his hand on the back of his head, both of which we found were an attempt by Mr Suarez to wind up Mr Evra. Although we have found that the pinching itself was not insulting behaviour nor did it refer to Mr Evra's colour, such physical

contact as part of a confrontation in which the insulting words were used served to aggravate the misconduct.

434. The fourth aggravating factor was the fact that the FA has promoted campaigns to root out all forms of unacceptable behaviour related to a person's ethnic origin, colour or race in football, such as the "Kick It Out" campaign. Mr Suarez knew or ought to have known that his behaviour was contrary to the message of those campaigns and unacceptable.

435. The fifth aggravating factor was that the insulting words were targeted by Mr Suarez at one particular black player, Mr Evra, who Mr Suarez intended should hear the words. It was not a case of a comment or comments directed at no-one in particular. Rather the words were directed at Mr Evra in the context of an argument in which Mr Suarez was attempting to wind up Mr Evra. We accept that Mr Evra was angry and upset during the remainder of the game and at the end of it as a result of Mr Suarez using the insulting words.

#### Mitigating factors

436. We also considered the mitigating factors. The first mitigating factor was that Mr Suarez had a clean record in relation to charges of this type.

437. The second mitigating factor was that Mr Evra started the confrontation in the goalmouth and Mr Suarez reacted to it. It is important to point out that Mr Evra's conduct in starting the confrontation was in response to being fouled, which involved being kicked on a knee which had caused him trouble in the past. Mr Evra did not touch Mr Suarez and, whilst he used an offensive phrase which Mr Suarez did not hear, Mr Evra did not use any words which referred to Mr Suarez's ethnic origin, colour, race or nationality. Nevertheless, he was the initiator of the confrontation at this moment.

438. The third mitigating factor concerns Mr Suarez's personal situation in terms of his family, friends and those who look up to him, especially in Uruguay. We recognise that his behaviour during the match is likely to become widely known as a result of our decision with the consequent embarrassment and personal difficulty for him.

439. The fourth mitigating factor is Mr Suarez's charitable work, especially through the South Africa football project. We recognise that Mr Suarez has made a valuable contribution through that project, although a player who does so should be especially careful not to undermine the principle underlying such a project by his own behaviour on a football pitch.

440. The fifth mitigating factor is that we believe that Mr Suarez has learned a lesson through the experience of these proceedings. He told us that he would not use the word "negro" on a football pitch in England in the future and it would be highly surprising if he did so.

#### Conclusions on penalty

441. The use by a footballer of insulting words, which include reference to another player's colour, is wholly unacceptable. It is wrong in principle. It is also wrong because footballers, such as Mr Suarez, are looked up to and admired by a great many football fans, especially young fans. If professional footballers use racially insulting language on a football pitch, this is likely to have a corrosive effect on young football fans, some of whom are the professional footballers of the future. It also has a potentially damaging effect on the wider football community and society generally. Every professional footballer should be able to play competitive football in the knowledge that references to the colour of his skin will not be tolerated. The same goes for all levels of football. Those who are victims of misconduct of this nature should know that, if they complain and their complaint is upheld, the FA will impose an appropriate penalty which reflects the gravity of this type of misconduct.

442. There is no tariff set down for penalty in such cases. There is the guidance in Rule E3(2) to which we have referred. Having heard the evidence over several days and made our detailed findings, we have weighed the aggravating and mitigating factors against each other. Having done so, in our judgment an appropriate and proportionate penalty is an eight-match suspension, a fine of £40,000 and a warning as to future conduct.

443. As for the length of the suspension, we concluded that a four-match ban, which was the entry point under Rule E3(2), would be too low and would not reflect the gravity of the misconduct. Mr Suarez's behaviour was far more serious than a single use of the word

"negro" to address Mr Evra in a way which would be considered inoffensive in Uruguay. If that was all that Mr Suarez had done, and we had found the Charge proved, the penalty would have been less than we have imposed.

444. Ultimately, this is not a matter of mathematical calculation, but a matter for the exercise of our discretion in the light of all the circumstances. We considered a lower suspension; we considered a greater suspension. We concluded that an eight-match suspension was appropriate and proportionate, reflecting the seriousness of the misconduct, balanced against the mitigation that was urged on us.

445. We also fined Mr Suarez £40,000. In doing so, we took account of the information that was placed before us about his weekly salary. We considered this to be appropriate and proportionate in the light of Mr Suarez's misconduct.

446. We also warned Mr Suarez as to his future conduct. This is customary where misconduct charges are upheld, although we did not impose it simply as a matter of course. We considered it appropriate and proportionate to warn him not to repeat this misconduct.

#### **Stay of the eight-match suspension**

447. Regulation 8.9 of the Disciplinary Regulations provides that unless the Commission determines otherwise, a penalty shall come into effect immediately at the date of the announcement of the decision.

448. Once we had announced our decision on penalty, Mr McCormick applied for a stay of the eight-match suspension. He pointed out that Mr Suarez has until 14 days after the date of the written reasons for the decision in which to appeal. He would not be in a position properly to decide whether to appeal until he received the Commission's reasons for its decision. However, if Mr Suarez served his suspension immediately, that would be unfair in the event of a successful appeal.

449. We could see the force of this submission. Accordingly, we ordered a stay of the eight-match suspension pursuant to Regulation 8.11 of the Disciplinary Regulations until

- (1) the expiry of the 14-day period from receipt of our written reasons in which Mr Suarez has a right of appeal against this decision, if no appeal is lodged during this period,
- (2) the outcome of any appeal lodged by Mr Suarez against this decision, if an appeal is lodged during the period for appealing, or
- (3) written notification to the Football Association of any decision by Mr Suarez not to appeal, if served prior to the expiry of the period for appealing.

450. We also deemed Mr McCormick's application for a stay of the suspension pending any appeal following receipt of our reasons to be an application for written reasons pursuant to Regulation 9.3 of the Disciplinary Regulations. In the absence of a request for written reasons from either party, written reasons are not required and are not usually provided to the parties.

### **Costs**

451. We have power under regulation 8.8 of the Disciplinary Regulations to order Mr Suarez to pay the costs incurred in relation to the holding of a Commission in full or part. Given that Mr Suarez had denied the Charge and it had been proved, it seemed to us appropriate that he should pay in full the costs as described in the formal record of our decision.

### **IX Summary**

452. The length of these Reasons reflects the complexity of this case, the detailed arguments that have been put before us, and the entitlement of those involved to know why we reached the decision that we did.

453. It may be helpful if we summarise our Reasons, which we do as follows:

- (1) Whether a player has used abusive or insulting words or behaviour is a matter for us to decide as a Regulatory Commission, having regard to all the circumstances of the case. These circumstances include the fact that many players playing in England come from overseas, with a different language and culture.

However, we apply the standards that we consider appropriate to games played in England under the FA Rules. Whether the words or behaviour are abusive or insulting is an objective matter; it does not depend on whether the alleged offender intended his words to be abusive or insulting (paragraphs 50 to 73 above).

- (2) The burden of proof in this case is on the FA. The standard of proof is the flexible civil standard of the balance of probability. The more serious the allegation, taking into account the nature of the misconduct alleged and the content of the case, the greater the burden of evidence required to prove the matter. The FA accepted that the allegation against Mr Suarez was serious, as do we (paragraphs 74 to 80 above).
- (3) We received expert evidence as to the use of the word "negro" in Uruguay and other areas of Latin America. It is often used as a noun to address people, whether family, friends or passers-by, and is widely seen as inoffensive. However, its use can also be offensive. It depends on the context. It is inoffensive when its use implies a sense of rapport or the attempt to create such rapport. However, if it were used, for example, with a sneer, then it might carry negative connotations. The Spanish language experts told us that if Mr Suarez said the things that Mr Evra alleged, they would be considered racially offensive in Uruguay and other regions of Latin America (paragraphs 162 to 202 above).
- (4) Mr Evra was a credible witness. He gave his evidence in a calm, composed and clear way. It was, for the most part, consistent, although both he and Mr Suarez were understandably unable to remember every detail of the exchanges between them (paragraphs 229 to 234 above).
- (5) Mr Suarez's evidence was unreliable in relation to matters of critical importance. It was, in part, inconsistent with the contemporaneous evidence, especially the video footage. For example, Mr Suarez said that he pinched Mr Evra's skin in an attempt to defuse the situation. He also said that his use of the word "negro" to address Mr Evra was conciliatory and friendly. We rejected that evidence. To

describe his own behaviour in that way was unsustainable and simply incredible given that the players were engaged in an acrimonious argument. That this was put forward by Mr Suarez was surprising and seriously undermined the reliability of his evidence on other matters (paragraphs 235 to 267 above). There were also inconsistencies between his accounts given at different times as to what happened (paragraphs 282 to 318).

- (6) It was argued for Mr Suarez that Mr Evra invented the allegations to exact vengeance for Mr Suarez's refusal to apologise for the foul on Mr Evra; that he did so knowing that the allegations were false and that the complaint, if upheld, would be damaging to a fellow professional, who Mr Evra did not think was a racist. We rejected this argument as implausible and inconsistent with our assessment of Mr Evra as a witness. No alternative explanation was suggested to us as to why Mr Evra would make the allegations if untrue (paragraphs 323 to 337).
- (7) Mr Suarez fouled Mr Evra in the 58th minute of the game. In the 63rd minute, Mr Evra challenged Mr Suarez about the foul. Mr Evra used an offensive phrase, which did not have any racial element and which Mr Suarez did not hear. An acrimonious argument ensued in which both players had a go at each other. In the course of this confrontation, Mr Suarez used the words "negro" or "negros" seven times. He did so both before and after the referee had spoken to them and told them to calm down. Mr Suarez addressed Mr Evra as "negro". He also made other derogatory comments using the word. In the course of the argument, Mr Suarez also pinched Mr Evra's skin (which was not in itself insulting behaviour nor did it refer to Mr Evra's colour) and put his hand on the back of his head, which were part of Mr Suarez's attempts to wind up Mr Evra (paragraphs 346 to 384 above).
- (8) Mr Suarez's comments were made in the heat of the moment in response to being confronted by Mr Evra about the foul. He did not use the word "negro" in a way that could reasonably be translated as "nigger". He used the word "negro" because Mr Evra is black (paragraphs 383, 274 above).

- (9) Mr Suarez's words, which included a reference to Mr Evra's colour, were insulting. The use of insulting words which include a reference to another person's colour on a football pitch are wholly unacceptable (paragraphs 385 to 399 above).
- (10) Had Mr Suarez been sent off for using insulting words (not including reference to a person's colour), he would have received an automatic two-match suspension. The guidance in the FA Rules suggested that our starting-point should be to double that sanction, ie a four-match suspension. However, we were entitled to increase or reduce the penalty further. We took account of various aggravating and mitigating factors. As for the aggravating factors, Mr Suarez used the word "negro" or "negros" seven times, in the course of an acrimonious argument, and went beyond simply addressing Mr Evra as "negro". Mr Suarez knew or ought to have known that these words were unacceptable, particularly in view of the FA-supported campaigns against all forms of racism in football. The words were targeted directly at Mr Evra, as part of Mr Suarez's attempts to wind him up. As for the mitigating factors, Mr Suarez had a clean record in relations to charges of this type. Mr Evra started the confrontation in the goalmouth, in response to which Mr Suarez used the insulting words. Mr Suarez is likely to suffer personal embarrassment as a result of his behaviour coming to light through this decision. He has in the past supported, and continues to support, a charitable project in South Africa designed to promote multi-racial football. He is likely to have learned a lesson through the experience of these proceedings, and said that he would not use the word "negro" on a football pitch in England in the future (paragraphs 401 to 440 above).
- (11) Balancing all these factors, we imposed an eight-match ban, a £40,000 fine and gave Mr Suarez a warning as to his future conduct. We considered this to be an appropriate and proportionate penalty in all the circumstances (paragraphs 441 to 446 above).

**X Conclusion**

454. We conclude these Reasons with the following comment. The Charge against Mr Suarez was that he used insulting words which included a reference to Mr Evra's colour. We have found that Charge proved on the evidence and arguments put before us. The FA made clear that it did not contend that Mr Suarez acted as he did because he is a racist. Mr Evra said in his evidence that he did not think Mr Suarez is a racist. Mr Suarez said in evidence that he will not use the word "negro" on a football pitch in England in the future, and we believe that is his genuine and firm intention.

**PAUL GOULDING QC, Chairman**

**BRIAN JONES**

**DENIS SMITH**

**30 December 2011**