

# IFO

THE INDEPENDENT  
FOOTBALL OMBUDSMAN



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## **IFO COMPLAINT REF: 22/03**

### **A BAN AT WEST HAM UNITED**

#### **The Role of the Independent Football Ombudsman (IFO)**

1. The office of the IFO has been established by the three English football authorities (The Football Association [FA], The Premier League and The English Football League [EFL]) with the agreement of Government. The IFO has been designated as the final stage for the adjudication of complaints which have not been resolved within football's complaints procedure. The IFO is an Approved Alternative Dispute Resolution Body and its findings are non-binding. IFO Adjudications will normally comprise two parts: an impartial assessment of the substantive complaint and a review of the procedure by which the complaint was handled. The IFO's role is to investigate the complaint and judge whether it was dealt with properly and whether the outcomes were reasonable for all parties concerned. Under the procedure agreed by the Football Governing Bodies, the adjudication of the IFO is final and there is no right of appeal against IFO findings.

2. The IFO must make clear that in investigating this complaint he has received full cooperation from West Ham United FC.

### **The complaint**

3. A West Ham supporter complained that he had been unjustly banned by the Club after having been convicted of an offence, following a guilty plea, in Croatia even though he asserts that he was innocent. He further complained that his subsequent appeal against the ban had not been given due consideration.

### **The complainant's account**

4. On 18 October 2021 the Club wrote to the complainant informing him of their decision to ban him from the London Stadium, and from all away matches and Club events, for the rest of the season, following events in Zagreb on 15 September when, before the match, he had been arrested for fighting. On 27 October the complainant replied appealing against the decision. He stressed that, although he had been arrested by the Croatian police, he was not found guilty of fighting. However, due to extenuating circumstances, he had pleaded guilty (in accordance with a plan laid out by his lawyer overseas) to a charge of which he was entirely innocent. He explained that he had travelled to Zagreb with several friends and at the time of the incident that led to his arrest and subsequent detention he was drinking in a bar with those friends. There were a lot of West Ham supporters in the bar, the atmosphere was great and there was no hint of any trouble whatsoever while they watched a Champions League game on the screens in the bar. There was a commotion outside and police holding batons and with guns drawn entered the bar. They ordered everyone to put their hands up, while they looked around. It was clear that they were looking for specific individuals and arrested a few. Things settled down, but when he went to the bar to get drinks a police officer tapped him on the shoulder and said he was to go with him; the complainant did not argue and was fully co-operative. He was held for about an hour, was searched and then transported to a local police station. The complainant was confident he would soon be released as he had done nothing to warrant police attention; he assumed it was a case of mistaken identity. He said that he could not have been more wrong as he was not released until ten days later, having been through the worst experiences of his life, and costing him £12,000. He was put in a cell and told nothing until about 3am when he was advised that he would be questioned and examined for both forensic evidence and DNA. It was confirmed that there had been an incident between travelling supporters and locals, the result of which a Croatian man had been seriously hurt. The complainant was taken to court later that morning and introduced to a lawyer the court had appointed for him. The lawyer said that the complainant was facing three years in prison for the crime he was supposed to have committed. The complainant was denied bail and was ordered to be detained in prison for 30 days. He was strip searched and put into a quarantine cell with other

people for four days. A couple of days later his lawyer said that he was working on a plan to get him released, which would mean him having to enter a guilty plea and paying a large fine, plus fees. The alternative was to await trial, be remanded in custody and there was no guarantee that he would be found not guilty. The complainant said that it was a gamble he could not face taking. A few days later his lawyer told him that he had reached a settlement fee with the judge. He was released on 24 September. The IFO assumes that because of the plea that was entered, and in the absence of a trial, the complainant did not present any mitigating evidence (such as mistaken identity) to the court.

5. The complainant outlined what he described as horrific conditions while in prison, not helped by the language barrier. He was allowed out of his cell only for two hours a day and for the rest of the time stared at four walls wondering how he could possibly prove his innocence. The complainant said that he trusted that the Club would understand why he had pleaded guilty in order to end his nightmare. He said that in order to pay the fine, he had had to borrow money from family and friends, as well use savings that he was hoping to put towards the purchase of a house. The complainant said that it was unfortunate that the Club's Football Liaison Officer had not been able to travel to Zagreb as he would confirm that the complainant was not previously known to him in any capacity. The complainant said that following the Club home and away has been his life for as long as he could remember and, as a result of what had happened, his mental health was at an all-time low. He said that he is a person of good character who has never given the police or stewards any reason to speak to him at football matches and has never been in any sort of trouble at or away from football. He said that he would be happy to attend a meeting to discuss his situation and to sign a behavioural contract if it was to give the Club any reassurance necessary.

6. On 3 December the independent person appointed by the stadium management (West Ham are tenants at the stadium) to consider the stadium management (West appeal wrote to the complainant saying that he had reviewed the details of the case and noted that:

- \* The complainant had been arrested for committing a serious assault.
- \* He had been detained in prison and taken to court where he had pleaded guilty to the offence and had received a fine.
- \* By his own account he had been treated very poorly throughout the detention.

The Reviewer said that he believed that the police in Croatia had had grounds to arrest the complainant and, as he had been convicted of a criminal offence while travelling abroad, the Club had taken the correct

action in imposing a ban. Normally a ban for such behaviour would be three or more years but, in light of the treatment he had received, the Reviewer believed such a timescale would not be justified and the ban should continue only until the end of the season.

7. On receipt of the outcome of his appeal, the complainant wrote to the Club saying that he wondered what the point was of appealing as the Reviewer clearly had not considered a single aspect of his letter. He asked if it was worth appealing again or if he should take the matter to the IFO. On 21 December the Club replied that they would discuss the matter with the Club's Head of Operations. On 12 January 2022, after a reminder from the complainant, the Club told him that the Club's appeals process had concluded and the seasonal ban was upheld; he had the right to refer his complaint to the IFO, which he did on 14 January, through the Football Supporters' Association (FSA).

8. The complainant told the IFO that he did not consider that his appeal had been given proper consideration or that the Club's appeal process was in any way meaningful. He enquired as to what information the Reviewer had been privy to in allowing him to reach the conclusion that the police had been justified in arresting him, especially since Metropolitan Police Officers had not been in Croatia with the fans, and the complainant was not entirely sure that the Croatian Police would have shared any details or evidence about him. He said that it was clear that the Reviewer had simply disregarded his version of events, did not find them credible and had not given any consideration to the reasons why he had pleaded guilty. He said that he had no idea who the Reviewer was, as the Club charter simply said that any appeal would be considered by a "panel".

### **The investigation**

9. The FSA told the IFO that over the years, domestically they had helped numerous supporters who had pleaded guilty even though they were innocent of charges brought against them. Their reasons for pleading guilty were common: they could not afford a lawyer or time off work for trips back and forth to court, they thought they'd get a lesser sentence, they didn't think anybody would believe them. By far the most common was that they wanted "to get it over with and to get back home after being in police custody". The FSA considered the complainant's situation entirely believable. The FSA also obtained the view of the Chief Executive of Football Supporters Europe. Although he obviously could not comment specifically on the complainant's case, he said that the circumstances did resonate with him and that he's aware of, and has been directly involved

in, numerous similar incidents over the years. He said: "Sadly [the complainant's] account of his arrest, detention and experience through the criminal justice system in Croatia is all too familiar with me. Faced with the choice of potentially many years in detention in a foreign country when he could be back home within hours of pleading guilty and paying a fine, even a large one, is one that I know many football fans in his situation have made over the years. This is especially the case where a country's legal system is perhaps not favourably comparable to yours in the UK".

10. In their comments to the IFO on the complaint, the Club said that if the complainant could supply evidence from the authorities to support that his was a case of mistaken identity, there would be grounds to review his appeal again. The Club told the IFO that they are in the process of reviewing their offences and sanctions policy and have committed to discussing this with the West Ham United Supporters' Trust and the FSA ahead of publication on their channels before the start of the 2023/24 season. The review will include the appeals process, which is being conducted by an independent party this season.

11. The IFO and Deputy held a virtual meeting with the Club's Head of Operations, the Head of Supporter Services and the Supporter Services Manager. The IFO explained to the officials that, because the complainant had pleaded guilty, there would have been no trial and, hence, no record of evidence considered by the authorities (such as the Court overseas). The Club duly agreed that, if the complainant was able to submit any corroboration of his account, the Club would arrange for the appeal to be re-heard. The Club's view was that to allow the appeal without suitable evidence would set an unwelcome precedent for them for any such cases which might arise in future, which the IFO agreed with and understood. For UK police to attend matches abroad there has to be an invitation from the foreign police – none was received from Croatia. Normally the Club's dedicated Police Liaison Officer would have attended.

12. The IFO expressed concerns about the appeals process, which the Club acknowledged is simply desk top consideration of information provided by all the parties. In the complainant's case, the Croatian police report, which the Metropolitan Police had shared with the Club, was paramount in the Reviewer's consideration of the appeal. The Club have no direct relationship with the independent Reviewer, who is hired by the stadium operator. The IFO welcomed the fact that the Club are to hold a comprehensive review of their offences and sanctions policy, including the appeals process in the future.

13. As part of an inquisitorial approach to this investigation, the IFO remained in touch with the FSA who have been assisting the complainant

excellently throughout this process. The IFO recommended that the complainant ought to seek witness statements from any companions that could attest for his whereabouts in Zagreb and evidence that the complainant acted in accordance with his lawyer's advice (in entering a guilty plea despite his innocence).

### **Findings**

14. The IFO has found this a difficult case on which to adjudicate, and has sympathy for both parties. On the one hand, the complainant's account is plausible and he obviously had much to endure in Croatia but, on the other hand, he has produced no substantive evidence to support his account.

15. The outcome of all cases that the IFO investigates should be dependent on the evidence and information provided by both parties. In accordance with the burden of proof required in civil cases, it is for the person who asserts their claim to prove the facts in issue. In this case, to uphold this complaint in the supporter's favour, the IFO must be satisfied on the balance of probabilities that their evidence carries more weight than that of the Club. In other words, the strength of the complainant's evidence must tip the scales in their favour.

16. Owing to the particular circumstances, the IFO recognises how challenging it might be for the complainant to obtain the kind of evidence that he would be required to provide to help prove his case and have the ban set aside. Often individuals are obstructed from gathering the type of information or evidence that could help to substantiate their case, especially where a flashpoint or a stressful situation is involved. However difficult this might be for the complainant to accept, the Club's evidence to the IFO at this point, is objectively stronger than his.

17. It follows, therefore, that the IFO is unable to recommend that the Club rescind the ban as things stand. The IFO nevertheless welcomes the fact that the Club are prepared to arrange for the appeal to be re-heard if the complainant can produce suitable corroboration to support his account, such as that referred to in paragraph 13 above. The IFO is also aware that in imposing a ban of relatively short duration, the Club have taken into account the complainant's experience in custody, which although they are not responsible for, is to their credit.

18. Although the IFO does not challenge the outcome of the appeal in this case, it does perceive that there are limitations with that process more generally which should be borne in mind by the Club for future cases involving bans. Given the impact that an exclusion can have on a supporter, not least the financial implication of paying for a service that is not received, the appeal should extend beyond a desktop exercise and where reasonable other alternative sanctions should be expressly

considered. Face to face meetings with fans should be considered to see whether a risk might be posed to other fans or Club staff if bans were not to be imposed. The IFO welcomes the Club's future review of its appeal process and hopes that revised, more satisfactory, arrangements can be put in place as soon as is practicable.

### **Conclusion**

19. As things stand a lack of supporting evidence means that the IFO is unable to recommend that the ban be rescinded, but the Club are prepared to arrange a re-hearing of the appeal if the complainant can produce suitable corroboration to support his account. The IFO hopes that the review of the appeal process will result in more satisfactory arrangements.

**Kevin Grix, Ombudsman**

**19 April 2022**

**Alan Watson CBE, Deputy Ombudsman**