

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
Standards Institute
ADR Competent Authority

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IFO COMPLAINT REF: 21/03

ALLEGED FAILURES AT THE FOOTBALL ASSOCIATION

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) 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 the FA. The IFO's jurisdiction does not cover the actions or decisions of County FAs (CFAs). Mention of such bodies during this report is to

put in context the actions of the FA, which are the subject of the complaint. The IFO's jurisdiction does not cover any decision of an Appeal Board, but does cover the administrative actions and arrangements involved in the setting up of a Board.

The complaint

3. A man complained that the FA had mishandled an appeal against a ban imposed on his son by his local CFA. He contended that the FA's failure to follow their Regulation 10 had led to the denial of a fair hearing and responses to his subsequent correspondence had been subject to lengthy delays.

Regulation 10 of the FA's Disciplinary Regulations

4. The Regulation states that "The Appeal Board shall hear new evidence only where it has been given leave that it may be presented. Such application must set out the nature and the relevance of the new evidence, and why it was not presented at the original hearing. Save in exceptional circumstances, the Appeal Board shall not grant leave to present new evidence unless satisfied with the reason given as to why it was not, or could not have been, presented at the original hearing and that such evidence is relevant. The Appeal Board's decision shall be final. Where leave to present new evidence is granted, in all cases the other party will be given the opportunity to respond."

Regulation 26 of the FA's Disciplinary Regulations

5. The Regulation states that an appellant or respondent seeking written reasons for an Appeal Board's decision must expressly make such a request within three days of that decision.

Appeal Board decisions

6. Decisions of Appeal Boards are final and binding and there is no right to further challenge except in relation to appeals pursuant to anti-doping regulations, or concerning the amount of any costs any party is ordered to pay.

The facts of the case

7. Following an incident in a youth friendly match on 20 July 2019, the referee reported the complainant's son for racial abuse directed at an opposing player. The local CFA charged the son with an aggravated breach of FA Rules and at a hearing on 24 September a Disciplinary Panel found the son guilty on the balance of probability, ordered him to serve a six match ban and to pay £75. He was also ordered to attend a face to face educational course within four months. (The sanctions were set aside during the appeal process; subsequently, the pandemic restrictions have prevented arrangements for the course from being made.)

8. On 26 September the complainant, on behalf of his son, appealed to the FA that the Panel had not given his son a fair hearing, that they had misinterpreted

or failed to comply with the Regulations, that they had come to a decision to which no such reasonable body could have come and that the sanctions were excessive. On 30 September the FA acknowledged receipt of the appeal. On 18 October the complainant submitted detailed reasons for the appeal together with an application under Regulation 10 for the right to submit new evidence from a 14 years' old teammate (witness L) who had not given evidence at the disciplinary hearing. He explained why that had been. He enclosed witness L's statement. On 20 October he submitted a further Notice of Appeal for inclusion of a statement from witness J, which he attached. He hoped that both notices would be treated as one appeal.

9. On 21 October the FA sent the Notice of Appeal containing information about witness L to the CFA asking for the relevant papers and observations on the appeal no later than 4 November. The complainant was copied into the email and queried why the second Notice of Appeal had not also been sent. On 29 October the complainant emailed the FA. He was confused as to why the statement from witness J had not been sent to the CFA for comment, whereas the one regarding the statement from witness L had been. The FA replied that the **two** statements were new evidence as they were not included in the original case papers. They could be included in the appeal process only if the Appeal Board approved the application. The complainant responded saying that he was still confused as the notice regarding witness L's statement had been sent to the CFA for comment, whereas that concerning witness J had not. The FA replied that neither statement had been sent to the CFA, just the original Notice of Appeal. The statements would be sent to all parties if the Appeal Board deemed the application to be sufficient. The FA confirmed that they had received witness J's statement on 20 October.

10. On 8 November the complainant telephoned the FA expressing concern that he had not received the CFA's comments on the appeal. On 18 November the complainant emailed the FA asking for an update. The FA apologised to the complainant that he had not been given a response within an acceptable timeframe. The officer dealing with his case had left the FA, but they had everything necessary for the appeal to go ahead. They would be in contact as soon as the Appeal Board Chairman had determined whether to allow the new evidence. That same day the complainant received the CFA's observations on the appeal. (The deadline for such had been 4 November.) The CFA said that they were neutral on whether witness L's statement should be allowed as new evidence.

11. On 20 November the complainant emailed the FA asking about how to obtain withdrawal of the CFA's observations on the appeal because he had not been copied in, and why witness J's statement had not been passed to the CFA for comment. The FA replied that if the complainant submitted a withdrawal application, they would pass it to the Chairman for determination. They said that

once the FA had resolved outstanding issues, the new evidence would be sent to the CFA with a short deadline for reply and it would then be sent to the Appeal Board for determination.

12. On 25 November the complainant submitted a formal complaint to the FA's Head of Judicial Services about the way in which the appeal was being handled.

13. On 9 December the FA emailed the complainant and the CFA saying that the Chairman of the Appeal Board had issued the following determination: - "Having considered the representations of both parties, the response to the Notice of Appeal by (the Chairman of the CFA Disciplinary Panel) and the observations of (the Secretary of the CFA) are to be admitted to the appeal bundle. All other applications in respect of new evidence are to be dealt with as a preliminary matter at Thursday's hearing (12 December)." The complainant pointed out to the FA that the bundle for the hearing did not contain witness J's statement.

14. On 10 December the complainant emailed the FA saying that he really needed to find out what had happened to witness J's statement. On 11 December the FA emailed the Appeal Board Chair referring to a document he had rejected (witness L's statement). They said that there was one outstanding document which was the subject of a preliminary application as new evidence, which would be issued shortly. An hour later the FA sent witness J's statement to the Appeal Board Members saying that the complainant would like to make an application for it to be admitted as new evidence; they had told the complainant that it would be dealt with as a preliminary issue. The FA also emailed the CFA and the Chairman of the Disciplinary Panel in similar vein. The complainant pointed out to the FA that the application was not late; it had been omitted from the FA's previous communications.

15. The FA's "Appeal Board Cover Sheet" recorded that an application for new evidence had been submitted, but the nature of the evidence was not specified. The appeal hearing was held on 12 December. On 30 December the FA issued the decision of the Appeal Board dismissing the appeal in its entirety, a decision which was final and binding. No reason was given for the decision and no mention was made of any consideration of the complainant's new evidence. On 6 January 2020 the complainant emailed the FA asking for the reasons for the Board's decision and whether he had a right of reply. He also asked when the process of investigating his formal complaint would start. On 30 January, in response to a reminder from the complainant, the FA told him that they were aware that his complaint was outstanding; it would be addressed in due course. On 3 April the Head of Judicial Services emailed the complainant apologising unreservedly for the delay in responding to his complaint. He had reviewed the handling of both the Disciplinary hearing and the Appeal hearing and could see no failing in either decision making process. He outlined issues which had arisen relating to the CFA and the local league but saw nothing which required FA

involvement. The Head said that, in light of concerns surrounding the pressures on youngsters attending hearings in person, the FA were introducing amendments to the process for the following season, recognising that they are children first and footballers second. The complainant replied expressing his unhappiness with the findings. He pointed out that there was no mention of the failure of the CFA to get appeal documents to him on time and why witness J's statement had not been in the bundle, having been issued only on the afternoon before the hearing.

16. Following telephone conversations with Head of Judicial Services in April, June and September, in February 2021 the complainant took up with the FA's Head of Operations the fact that several FA staff knew that witness J's statement was missing and did nothing about it despite his regular communications on the matter. However, the FA position was that the case had been concluded at the appeal stage; it was, therefore, a closed case and could not be reopened. The complainant continued to assert that his son had not had a fair hearing and that FA Regulation 10 had not been followed properly. On 15 February the Head of Operations replied that he could not enter into detailed discussion about elements of the case as the Board had arrived at a decision and had produced their written reasons to explain the decision and their thinking. The FA would not be entering into further correspondence. On the following day the complainant emailed the Chief Executive's Executive Assistant outlining events and his complaint, but the response was similar to that from the Head of Operations. The complainant remained dissatisfied and on 23 February asked the IFO to investigate his complaints.

The investigation

17. The complainant told the IFO that the Chairman of the Appeal Board had rejected witness L's statement without giving a reason. The members of the Board had not been aware of witness J's statement. When the complainant had asked about it, the Chairman of the CFA Disciplinary Panel (an independent legal panel member) had referred to it as "hearsay", a reference to evidence given by witness J's father at the original hearing, totally ignoring the fact that witness J's own statement had been sent to him the previous day. The complainant said that the Board had not passed judgement on witness J's statement as it had not been in their possession. The complainant said that he had expended enormous time and effort trying to ensure that the Board had all the necessary information and he felt terribly let down by the FA.

18. In their comments to the IFO the FA said that both witness statements had been considered by the Appeal Board as a preliminary matter; they had been dismissed and not admitted as new evidence to the appeal. That decision had not, however, been included in the final result letter and no reasons were given for the Appeal Board decisions.

Findings

19. The IFO must make clear at the outset that his jurisdiction does not cover the actions and decisions of CFAs nor any decision of a properly constituted Appeal Board. This investigation has focussed on the administrative actions of the FA. Much of the complaint surrounds whether the complainant's son was denied a fair hearing by delays, omissions and/or confusion in the FA's handling of the appeal.

20. The IFO considers first the issues surrounding witness J's statement. As well as submitting detailed reasons for the appeal, the complainant made two separate Regulation 10 applications for new evidence to be considered. When the FA asked the CFA for observations on the Notice of Appeal, witness L's statement was included and the CFA actually commented on it. The complainant immediately queried why witness J's statement had not also been sent for comment. The FA told him that the statements were new evidence which would be considered by the Board as a preliminary matter prior to the hearing, and that they would be sent to the CFA if the Board deemed them "sufficient". That was in compliance with Regulation 10. However, it is clear that the complainant was quite unnecessarily confused by what was happening and felt it necessary to make efforts to press his case, particularly in light of the absence of witness J's statement from the appeal bundle. Action on the statements should have been taken in tandem. Witness J's statement was not, in fact, sent to the CFA and the Disciplinary Board Chairman until the day before the hearing. That was late in the process, but was the appellant disadvantaged by that? The IFO is satisfied that that was not the case. First, had the CFA commented on the statement, the IFO considers they most likely would have regarded it as neutral, as they had with that of witness L. Secondly, the decision on whether to allow new evidence was not for the CFA, but for **the Appeal Board** to make and, although the complainant does not appear to have been aware that the FA had sent witness J's statement to the Board Members on the afternoon before the hearing for consideration as a preliminary matter, the IFO has seen evidence that that was the case. The FA have informed the IFO that, in advance of the hearing, both statements were considered by the Board, who refused the application for them to be allowed as new evidence. However, the IFO has seen no documentary evidence of that, and it seems from the FA's email of 11 December to the Appeal Board Chair that the statements were not considered at the same time. In the opinion of the IFO, there should be written records of the decisions on the statements, which should also have been communicated to the complainant. Had that been the case, much of the subsequent correspondence on the case might well have been avoided.

21. Although under Regulation 26 (paragraph 5) the onus is put on the appellant to ask for the reasons for Appeal Board decisions, it would have been helpful if the complainant had been given reasons for why the appeal failed, rather than simply being told that each element of the appeal had been dismissed. In that

context, the IFO notes that the FA told the complainant that the Board had produced written reasons to explain their decision and their thinking. The IFO has seen nothing to suggest that that statement was correct, and the complainant has confirmed to the IFO that he has never been given the reasons, despite having asked for them. That may be because he made his request on 6 January, four working days after having received the Board's written decision and, therefore, outside the three day period required by Regulation 26. If that was the reason, it was a particularly harsh decision given that the period spanned the New Year holiday. **The IFO recommends that in the true spirit of transparency, the FA should give serious consideration to making it an automatic requirement that reasons are included in decision letters.**

22. The IFO now considers how the FA handled the complainant's correspondence and formal complaint. He appealed on 26 September and by 21 October had submitted his Regulation 10 and the two witness statements. There was then some delay caused by the confusion over the statements and the departure of the officer dealing with the appeal, for which the FA have already apologised to the complainant (on 18 November 2019). The appeal was heard on 12 December.

23. In the meantime, on 25 November the complainant had submitted a formal complaint to the Head of Judicial Services about the way in which the appeal was being handled. On 20 January 2020, after a reminder from the complainant, the FA said that they were aware that his complaint was outstanding; it would be addressed in due course. However, it was not until 3 April that the FA responded, again offering sincere apologies for delay, but making no mention of those elements of the complaint concerning the delay in getting the CFA comments, and the absence of witness J's statement from the appeal bundle. Thereafter, the complainant had telephone conversations with the Head of Judicial Services in April, June and September, but the content of the calls does not appear to be on record. The complainant then exchanged correspondence with the Head of Operations and the Chief Executive's office, but remained dissatisfied with the outcomes.

24. The complainant's basic grievance is that his son has on two separate occasions been found guilty of an offence which he vehemently denies, without having been given a fair hearing. The Head of Judicial Services has reviewed the handling of both hearings and found no fault in either process and, despite the administrative failures surrounding the witness statements which have been highlighted in this report, the IFO has seen no evidence to suggest that the appeal hearing was unfair.

25. The IFO's conclusion is that if the FA had not actioned the statements separately so that one was missing from the appeal bundle, and the other was not issued for consideration until the day before the hearing, much of the

subsequent activity on this case would not have been necessary. Equally, that might well have been the case had the complainant been informed of the Appeal Board's consideration of the statements and the reasoning behind their decisions on the various aspects of the appeal.

26. Although the complainant's determination to get what he regarded as a fair hearing for his son was always likely to generate a certain amount of activity on his part, the IFO finds that the shortcomings identified in this report, and the failure of the FA to communicate effectively on occasions, combined to elongate the process considerably and cause the complainant to expend a great deal of unnecessary time and effort frustratingly trying to obtain answers to his questions and complaints. It was only during the IFO investigation that it was revealed that witness J's statement **had**, in fact, been sent to the Appeal Board, albeit only on the day before the hearing. **The IFO recommended that the FA make the complainant a goodwill payment of £150 in recognition of the time and effort spent unnecessarily pursuing enquiries of the FA and the consequential frustration which he endured.**

Conclusion

27. Although the IFO has not found fault in the Appeal Board hearing itself, there were procedural shortcomings in the process leading to the hearing, in the absence of which much of the complainant's subsequent communication might have been unnecessary. The IFO welcomes the FA's agreement to the recommendation to make the complainant a goodwill payment of £150.

Professor Derek Fraser, Ombudsman

14 June 2021

Alan Watson CBE, Deputy Ombudsman