

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



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IFO COMPLAINT REF: 18/32

AN INDEFINITE BAN AT LIVERPOOL FOR INAPPROPRIATE BEHAVIOUR

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 at the outset that he has received full cooperation from Liverpool FC.

The complaint

3. A Liverpool season ticket holder complained that the Club had unjustly imposed an indefinite ban on him. He claimed that he was not given the relevant information about his alleged offence and that he was completely innocent.

The facts of the case according to Liverpool FC

4. The background to these allegations is that the Club allows female stewards to search male supporters, which seems to the IFO to be a policy fraught with potential difficulties and risk, though in line with national professional body guidelines. On 22 September 2018 at the Southampton match an experienced female steward at Gate D reported that a male described as "mixed race" asked to be searched by a female and that during the search he "was moving his body towards me trying to push me back". While searching his right leg, "that was when he tried to put his clutch (*sic*) near me". No report on the incident was submitted at the time and the steward commented "I just carried on doing my job". The incident assumed significance only in the light subsequent events.

5. A few days later on 26 September Liverpool played Chelsea in the Carabao Cup. A young female steward still in training was deployed at Gate D and was engaged in searching a party of three males, one of whom "proceeded to open his arms and push me against the wall". She reported that he then "turned round, bent over in front of me laughing" and when searching his ankles "he thrust his crotch in my face". She gave no description of the man in the original Incident Report Card and this was supplied by the male steward working with her, as "black...wearing a black zip jacket and black baseball cap". The steward was clearly distressed by the incident and requested deployment to another zone. At the next home game, against Manchester City, the Ticketing Investigation Manager met with her in the company of the Club's Safeguarding Officer and she gave further details. The person was now described as "mixed race, possibly of African origins...no facial hair and his head was partially covered with a sports cap...wearing a dark hoody top and jeans". A police officer was summoned to the meeting, who advised that a potential crime had been committed and a crime incident number was recorded. The steward later decided not to pursue police action, preferring the Club to deal with the incident.

6. At this stage the Club did not know the identity of the man involved. The Manager surmised that, since the two incidents had occurred at the same gate, the person was likely to be a season ticket holder and so, after meeting with the steward, he positioned himself at Gate D, accompanied by the male steward who had witnessed both incidents. In fact, the complainant approached the Manager to thank him for some previous assistance with a ticketing problem and after this conversation the steward confirmed that the complainant was indeed the man who had been involved in both incidents. Armed with a positive identification, the Club convened an internal panel which decided

Due to the serious nature of your alleged conduct, the Club has no alternative other than to suspend your season ticket account with immediate effect and will not allow you access to Anfield Stadium for an indefinite period.

This was communicated to the complainant in a letter dated 16 October, which also advised him of his right to appeal within 10 days. In his letter of appeal, he denied any knowledge of anything untoward at the Chelsea game, but did recall

being surprised at being searched by a female steward at the Southampton game, the first time it had happened to him. He admitted,

I was in a joking manner and dancing in front of her and making light hearted that she had to search me...It was totally intended as a bit of light hearted fun which I believed the female steward could see and I made this clear to the male steward...[who] did not see any reason to intervene...I have not made any physical contact with anybody.

He enclosed a letter of apology to the steward in which he said, "there was no intention to offend disrespect or belittle".

7. The Appeal Panel concluded that "he is clearly aware of what he is accused of" and had supplied minimal detail to refute the fact that he was positively identified by the male steward who had witnessed both incidents. The appeal was rejected and this outcome was relayed to the complainant on 24 October. It had been found on investigating the case that the complainant had a membership ticket as well as his season ticket, which was in breach of the regulations. It was confirmed that both accounts had been terminated, but that he would be entitled to a refund for the unused portion of the season ticket. The complainant was advised that he could refer his case to the IFO and submit a Data Access Request to the Club. The complainant took up both options.

The complainant's account

8. The complainant is a teacher who is understandably concerned about the potential impact these events might have on his professional career and standing. He is of previously unblemished record with both the Club and all public agencies, having no criminal record. He has been heavily involved in charitable work and has been active in Liverpool's community programme, regularly bringing parties of school children to Anfield and other grounds in the north west. Indeed, on the night of the Chelsea game he had arranged for 15 pupils and two Deputy Heads to attend the match and he ensured they had entered safely, before walking to his entrance in another part of the stadium. He was deeply shocked to receive the Club's banning letter and he was mystified by the accusations. He made efforts to contact the Club to obtain further information without success and when he first approached the IFO his main complaint was that the Club refused to tell him the specific details of the accusations against him. Eventually he made a Data Access Request and on receiving the Club documentation, he informed the IFO that "it has only taken minutes to clear up what is going on. There are many inaccuracies in the data sent to me. There is... mistaken identity."

9. When he submitted his appeal in response to the letter of 16 October, he could only recall some jocular verbal exchanges with a female steward at the Southampton game and his letter has already been referred to. Once he had read the steward's report, he claimed that the details did not correspond to what he had been involved in, since the search was conducted "away from the turnstile...I walked backwards from the turnstile and was searched out in the open". He described his lower attire as "tight fitting nylon track suit bottoms and it was quite clear by the tightness of my trousers I was not concealing anything". He therefore concluded that the search of his leg area was "the joke she had played back on me".

10. The complainant has raised many concerns about the inaccuracies in the descriptions given of him. He claims that he has never worn a baseball cap at a match, nor does he wear jeans, preferring track suit trousers. He is described as having no facial hair, but suffers from a skin condition which means he cannot shave, so always has facial hair. He claims that the timings of entry derived from the Club's Fortress system prove that the incident could not have involved him, as he was not present at the time it was reported to have taken place. When he was first charged, he was confident that CCTV would prove his innocence and was dismayed when the Club informed him that not only were the two incidents unrecorded, but that he was not seen on CCTV at any other location. He is deeply sceptical about this and cited contradictions in the Club documentation which suggested that there had been a visual record, since discarded. He informed the IFO that he was aware of another supporter of similar ethnic appearance to himself who does wear a black baseball cap at matches and this, along with the other discrepancies, convinces him that this is a case of mistaken identity. The stress of the case has led him to seek medical help and he has been forced to take sick leave from his job. Proclaiming his total innocence of the charges against him, he has concluded that for reasons he cannot fathom the Club has conspired against him in a racially discriminatory manner.

11. His account of his movements at the Chelsea game are that, as discussed above, he liaised with his school party to help them enter the stadium in another part of the ground and he then walked round the ground to reach his normal entry gate. He was delayed from actually entering the stadium because he was awaiting the arrival of a party of three (two adults and a child) from Nottingham, for whom he had obtained tickets. He cites the steward's report that the perpetrator was in a party of three males who were regular attenders, whereas in fact his companions had never been to Anfield before and were accompanied by a child, not mentioned. The visitors parked some distance from the ground and, unfamiliar with the geography, had to be guided by the complainant who was on the phone to them almost continuously from 19.30 onwards. He said that he was seeking records from his phone company which would verify this. Because of the delay, he did not enter the stadium until 19.57 (as per the Fortress data) and the party had to rush in together as the gates were about to close. There were no stewards present and nobody was searched. The two adults have supplied witness statements to the IFO which confirm the account given by the complainant. The complainant has submitted to the IFO a 13-page dossier which collates all the evidence and arguments, which, he states, proves his innocence. He subsequently submitted a copy of his telephone records, which he had obtained from his supplier, showing that on 26 September he had made calls at 19.25 hours, 19.27, 19.29, 19.45, 19.47, 19.48, 19.49, 19.51, and 19.52. There were no further calls until 21.47 hours.

The investigation

12. The IFO carefully reviewed the extensive documentation supplied by the Club, along with the complainant's dossier and telephone log. The complainant also submitted around 20 emails in support of his case. On 6 December the IFO visited Anfield and met with the Ticketing Investigation Manager and members of his team. They explained how their investigation had been conducted, how seriously they had taken the case and the critical importance of the positive identification made by the male steward who had witnessed both incidents and

in whom they had complete confidence. On the same day the IFO met with the complainant, who made an impassioned assertion of his innocence and took the IFO through what he saw as the contradictions, inaccuracies and shortcomings in the Club's case against him.

Findings

13. The IFO has found this complaint extremely difficult to adjudicate, given the direct contradiction between the Club's claim of positive identification of the complainant and his robust assertion of his complete innocence. The requirement for justice to be done is compounded by the potentially serious impact the case could have on the complainant's professional career, though the Club argues that details of the case would not be disclosed to his employer. The processing of the case has revealed something of a flaw in the Club's otherwise sound disciplinary process. Natural justice suggests that an accused person should know clearly what he is accused of, akin to the legal process where the prosecution is required to disclose its evidence to the defence. When the complainant submitted his appeal, he was unaware of the specifics of what "Inappropriate Behaviour" he was alleged to have committed. He made several attempts to obtain such information but was rebuffed by the Club. Only when he made his Data Access Request was the basis of the accusation and the allegedly incriminating evidence revealed to him, long after his right of appeal had lapsed. The IFO accepts the Club's explanation of why the banning letter only stated the high-level offence and not the details (because of the uncertainty of whether a family member might open the letter). The IFO believes that such a letter should include an offer to supply further details to the accused, through direct personal access. In the light of this aspect of the complaint, **the IFO recommends that the Club reviews its procedure, to ensure that accused persons can be apprised of the specifics of their alleged offence before the appeal stage.** [The IFO has been informed that the Club will implement this recommendation, while making the point that the complainant could have asked for further information prior to making his appeal]

14. The Club maintains that the Southampton incident was important and there was clear evidence of inappropriate behaviour, in connection with which the complainant sent in a letter of apology. Yet it is noteworthy that the event was not deemed worthy of a report at the time by the steward who said that she just got on with her job and that the male steward who witnessed it did not feel the need to intervene. In discussion with the IFO, Club officials agreed that had the Southampton incident been reported to them as a single event, it is likely that it would have yielded no more than a warning letter. Hence it is the incident at the Chelsea match which is the basis of the severe sanction which has been imposed. The IFO entirely agrees that the incident was demeaning and distressing for the steward and merited the ban imposed for such unacceptable behaviour. The question at issue is whether the perpetrator was indeed the complainant. The male steward has made a positive identification and he is the only one to have done so. Thus, the case rests on the male steward's account against that of the complainant.

15. In the IFO's view the complainant has raised a number of issues which give rise to the possibility that there may have been a miscarriage of justice. These comprise the following:

- **The lack of CCTV evidence:** The Club stated that there was no CCTV of either incident because cameras at the entrances are trained on the surrounding area not the turnstiles themselves. The IFO advised the Club that there ought to be a search of the CCTV record for the walkways and environs of the Club to identify the complainant. This was done, but the IFO was informed that no relevant footage could be found. The complainant was both surprised and disappointed at the outcome and most sceptical, considering the plethora of cameras at the stadium. He has supplied the IFO with photographs of cameras installed near his seat and expressed disbelief that he could not be found on a single image at either match or in the concourse with his two companions and a child at the Chelsea match. There is also a puzzling statement which suggests that the complainant was identified. In the papers for the internal panel it is stated that "CCTV images ...show him arriving on the stadium concourse in the company of one other person". The Club has explained to the IFO that this was inconclusive in the context of the case and thus of no evidential value. The Club denies that it has deliberately discarded visual evidence and maintains that it has operated within the requirements of data protection regulations
- **The description of the accused:** Both witnesses to the Chelsea incident state that the man wore a baseball cap and one of them says he wore jeans. The complainant denies that he ever wears either to a match and always wears a track suit (which was his garb when he met with the IFO). The complainant challenges the Club to find an image of him wearing a baseball cap at any match he has ever attended. The complainant also queries the report of the steward at the Chelsea match who describes him as "male season ticket holder" who was often a late arrival. The complainant asks how the steward knew these things, when at the time the complainant had not yet been identified.
- **The timings:** The complainant asserts that the timings prove his innocence, a claim disputed by the Club. The IFO understands that searches take place adjacent to the turnstiles and immediately prior to entering the stadium. Supporters would normally move from the search directly into the stadium and the steward reports that the man who accosted her then "made his way to the turnstile". The incident is recorded as happening at 19.48 and if the person then immediately went to the turnstile, he could have entered at about 19.50. There is a handwritten entry which records (presumably from CCTV) "1953 hrs male from D turnstile Block 306". If the person so identified was the perpetrator then the timings would fit - entering at 19.50 and hurrying to the Kop because the match had started and reaching his seat three minutes later. Yet in the Club's own data report the complainant did not enter till 19.57. The female steward confirmed that the perpetrator immediately went to the turnstile, but the complainant did not enter until 9 minutes after the incident, because he was waiting for his visitors (see below).
- **The witness statements:** When the complainant explained that there were visitors who could verify his story, the IFO requested that they should submit witness statements to the IFO, which they have done. Witness A confirmed that they were late and were in regular contact with the complainant by phone and when they arrived, the complainant "took my lad in I ask him for a bit of help as I didn't know what to do with the card, and they waited for me...there was NO stewards, then we ran up

stairs". Witness B reported that the complainant "was calling us to see where we was as we was ten minutes late the game had already kicked off before we got in he was waiting for us outside the ground, we went in with no search". The record of the complainant's telephone calls corroborates both his and the witnesses' accounts; he was clearly making calls immediately before, during, and for four minutes after the time of the incident with the steward. There were no calls between 19.52, which suggests that by then his friends were either at or close to the stadium, and 21.47. These statements and evidence support the complainant's contention that he entered the ground at 19.57 and hence could not have been the person who accosted the steward at 19.48 and then went straight through the turnstile.

16. The complainant admits that he was involved in what he deemed an unusual search at the Southampton match. It is possible to surmise that the male steward who was nearby got a close view of the complainant in daylight and retained a strong visual image of him. It is equally possible to surmise that at night with less light and seeing the man involved only at the last stage of the Chelsea incident, he saw a man of similar build and ethnic appearance and in good faith, but possibly mistakenly, linked the two incidents together. The complainant asserts that he was not the person involved at the Chelsea match. The IFO has found it difficult to reconcile the Club's account of the assailant entering the turnstile immediately after the incident at 19.48 with the complainant's version, supported by his telephone records, which has him on the phone, waiting for his visitors (confirmed by the witnesses) and not entering the ground until 19.57. It follows from the comments in Paragraph 13 that the IFO believes that the complainant is entitled to a further appeal. The Appeal Panel must consider the new evidence submitted by the complainant and if it agrees with the IFO's view that there are reasonable doubts about the justice of the ban and that mistaken identity is a credible explanation, then the fair and reasonable outcome would be that the ban is lifted and the complainant re-instated.

The IFO recommends that the case be referred back to the Appeal Panel, to consider new evidence presented by the complainant in his dossier.

Conclusion

17. The IFO strongly supports the Club's wish to take severe action against the perpetrator of the distasteful and distressing experience the female steward suffered at the Chelsea match and believes that a ban is justified. The problem is that for the complainant to be so punished, the Club needs to be 100% certain that the complainant was indeed the perpetrator. The IFO's evaluation of the complainant's evidence and the inconsistencies and queries discussed in the report lead to the conclusion that there exists more than a reasonable doubt that the complainant was the guilty party. Since the IFO had access to evidence not seen by the Appeal Panel, it is only right that the complainant be given a further right of appeal.

Professor Derek Fraser, Ombudsman

16 January 2019

Alan Watson CBE, Deputy Ombudsman