

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
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IFO COMPLAINT REF: 19/20

A TWO YEAR BAN AT HULL CITY

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.

The complaint

2. A Hull City supporter who has learning difficulties and mental health problems complained that the Club had imposed a ban on him. There was considerable delay between the receipt of this complaint on 3 July and the completion of the IFO investigation. Primarily because of holidays, the IFO did not receive the Club's comments on the case until 2 August. The IFO then asked

to meet with relevant Club officials, but this was not achieved until 7 October, after the EFL had helpfully reminded the Club of the requirement to engage properly with the IFO.

The facts of the case

3. On 28 December 2018 the KCOM's Stadium Management Company (SMC) Safety Officer wrote to the complainant saying that they were banning him from the stadium for a period of two years with immediate effect because he had been heard shouting racist and homophobic language during the match against Swansea City on 22 December. The complainant asked the Football Supporters Association (FSA) for assistance in January. On 9 January the FSA emailed the Club a letter of apology from the complainant, receipt of which the Supporter Liaison Officer confirmed. The FSA emailed the Club giving details of the complainant's difficulties and asking if they had made any reasonable adjustments both in their processes and in imposing the sanction to take account of them. They asked whether the Club would consider an appeal and a face to face meeting with the complainant if he took part in an educational session with the FSA's Lead on Diversity and Inclusion and their Diversity Campaigns Officer (a former detective constable, accustomed to dealing with vulnerable adults). The Club said that once that session had taken place and they had received a report they would get back in touch with the FSA. On 11 February the Safety Officer wrote to the FSA giving specific details of the offensive language used by the complainant at the Swansea match.

4. On 12 February the FSA officials, met with the complainant at his home town. On 14 February the FSA submitted their report to the Club together with details of a lady, who had previously sent a letter of support for the complainant, who was prepared to attend matches with him as his carer. They said that the complainant had shown them a professional assessment of his cognitive and learning issues which affect his ability to understand some complex matters; the assessment suggested that he needs significant support to assist him with sensitive or personal issues. It appeared to the officials that the complainant was unaware of the significance of the references he was alleged to have made at the Swansea match. The officials classed the complainant as "vulnerable" and as someone who might be easily led and caught up in group situations, although that did not remove all responsibility from him for his behaviour. The officials viewed the complainant as easily confused and likely to become agitated and perhaps difficult in stressful situations. The officials said that the complainant was apologetic and the ban had made him anxious and depressed. The officials said that the complainant would like to sit in a different stand, accompanied by someone to support him, and he would be prepared to sign up to a code of conduct. The officials expressed the hope that, subject to suitable measures being put in place to prevent any future problems, the Club would allow him to attend matches again, an arrangement which the FSA deemed as a reasonable adjustment under the Equality Act.

5. Meanwhile, on 29 December the complainant had been ejected from the Club's match at Leeds although he was not by then aware of the ban and, in any event, the ban was for the KCOM stadium and not away matches.

6. On 14 March, after several reminders from the FSA, the Club replied saying that after a review, the original decision would stand. They said that the incident at the Swansea match was not isolated as they had historic issues with the complainant. The FSA replied asking whether the ban was for the recent issue or the historical ones, and what reasonable adjustments they had put in place during the review. On 15 March the SMC replied simply saying that after consultation with the Club the ban would not be overturned. On 27 March the FSA wrote to the SMC asking whether the Club would consider meeting the complainant, something which the FSA were under the impression was going to happen, to see if a mutually agreeable outcome could be found, such as suspending the ban with effect from the start of the 2019/20 season. Neither the SMC nor the Club replied.

Investigation

7. The IFO carefully reviewed the documentation submitted by the FSA and a report provided by the Club. The Club's Safety Officer said that on 29 November he had received a complaint alleging that the complainant was engaged in online social media bullying and homophobic language in the stadium towards a specific individual. Rather than impose a sanction based on that information, the Safety Officer decided to deploy a steward, dressed as a supporter, to sit in the area where the complainant was. During the match against Swansea on 22 December the covert steward reported by mobile phone to the Safety Officer that the complainant was using homophobic language. (The letter sent to the FSA outlined the precise language used.) The Safety Officer decided that immediate action should be taken and the complainant was ejected at half-time.

8. The IFO and Deputy visited the Club and met with the Safety Officer, the Operations Manager and the Human Resources and Office Manager. They explained that the complainant had formerly been used as a steward at the stadium, but after incidents involving what they were satisfied was foul and abusive language towards a female colleague at a concert event in July 2017 they had stopped using him; that explained their reference to "historical issues" (see paragraph 6). The officials said that during his ejection at the Swansea match, the complainant had been obnoxious both towards stewards and afterwards in the reception area; the ban related to the incidents at the Swansea match rather than anything historical. The Club had not known of the complainant's apparent mental health problems until the FSA raised the matter; he is not registered with them as disabled or needing a carer. The complainant's appeal had been decided by the Club's Vice Chairman in his role as the holder of the stadium's safety certificate. The officials said that since being banned by the Club, the complainant has continued to make offensive postings on social media, which have been drawn to the attention of the Club. As things stand, the complainant remains banned until December 2020, at which point the Club will review his situation. The officials pointed out that, since the original offensive remarks had been directed towards the owner personally, they were doubtful whether an earlier review would be entertained without compelling evidence.

9. The Operations Manager said that he had no knowledge of the FSA's email of 27 March, which was addressed to him. The complainant is not allowed to purchase away tickets from Hull, but his ban does not apply to away matches. His attendance at such matches is at the discretion of the home club. The complainant's ejection at the match at Leeds had been a decision by the Leeds Safety Officer, based on intelligence which is shared by clubs before matches.

Findings

10. It is important at the outset to stress that offensive behaviour such as the complainant exhibited at the Swansea match cannot be condoned and the IFO believes that the two year ban was justified, in the absence of direct knowledge of the complainant's mental health issues. However, given what the FSA have said about the complainant's mental health, his vulnerability and tendency to be easily led, there could well be a case for making "reasonable adjustments" and allowing the complainant to return to the stadium in an area where there is less temptation for misbehaviour and where he is supported by a friend or carer. The Club is sceptical about what they see as newly identified special needs, given that they were not aware of them while he was acting as a steward. Hence the Club cannot reasonably be expected to review the case without sight and evaluation of the medical/psychological evidence. For possible reinstatement to be considered, the IFO would suggest that the complainant should submit to the Club a plea of mitigation, should provide suitable medical evidence of his condition and its effects and should desist from any action which would find further disfavour with the Club. If the complainant takes those steps, signs a "good behaviour agreement", and makes suitable arrangements to be accompanied at matches, then **the IFO recommends that the Club give serious consideration to suspending the ban. [The Club has indicated that so long as the complainant takes the suggested action as above, the IFO recommendation will be accepted]** The ban could, of course, be reinstated, or even increased, should there be further transgressions. In reconsidering the case it would be helpful for the Club to seek advice from Level Playing Field on the application of the "reasonable adjustment" provision for those with mental health problems.

11. The FSA complained to the IFO that their repeated attempts properly to engage the Club in the process, and their questions about reasonable adjustments, had not been properly addressed and that whatever replies they had received had been terse. The IFO is satisfied that there were indeed shortcomings in the administrative handling of the case.

Conclusion

12. The IFO finds that in the absence of knowledge about the complainant's special needs the Club was justified in imposing the ban for what were offensive and unacceptable remarks. The FSA is to be commended for identifying and then alerting the Club to the complainant's mental health issues which justify a reconsideration of the case. The IFO has identified the actions the complainant is advised to take and the Club has expressed a willingness to review the ban if the suggested steps are taken. The IFO welcomes the fact that there is now the prospect of this long running complaint being resolved.

Professor Derek Fraser, Ombudsman
Alan Watson CBE, Deputy Ombudsman

31 October 2019