

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
Standards Institute
ADR Competent Authority

The Independent Football Ombudsman is approved by Government under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

IFO COMPLAINT REF: 19/30

EJECTION AT FULHAM

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. In investigating this complaint the IFO confirms that he has received full cooperation from Fulham FC.

The complaint

3. A Charlton supporter complained that his son had been unjustly ejected at the Club's away match at Fulham. He further complained about the way in which the Club had handled his complaint and his subsequent enquiries.

The facts of the case

4. On 6 October 2019 the complainant emailed Fulham complaining about the treatment he and his 16 years' old son had received at the previous day's match. He said that when Charlton had scored someone near them had let off a red flare/smoke bomb. At half time several stewards had demanded that his son follow them and he was accused of letting off the flare. As the complainant knew that his son had not been involved, he asked to see CCTV evidence, but that was refused. The complainant said that a steward had asked the Safety Officer to reconsider and to check the CCTV, as he and his son were being polite and reasonable; the answer was that although the evidence was inconclusive, the son would be ejected as the Club had a zero tolerance policy. The complainant had been told that his son had looked down at his feet in a suspicious manner. After instructing police to search the son, and finding nothing, the son was ejected and the complainant went with him. According to the Safety Officer both father and son were removed in what is recorded as a double ejection. The complainant said that he and his son had visited many grounds and had never been in trouble. He asked the Club either to provide evidence of the son's involvement, which he knew it could not, or to offer reasonable compensation for the cost of their tickets and incidental expenses.

5. The complainant received an immediate acknowledgement from the Club. On 10 October the complainant sent a subject access request to the Club asking for the CCTV footage and steward's report of the incident. On the following day the Club said that it was investigating the issues he had raised and would be in touch. On 29 October the complainant emailed the Club complaining of delay. On 7 November the Club told the complainant that it was sending him a USB containing the CCTV footage and relevant correspondence. This included the ejecting steward's report which showed that the son was wearing a maroon top and scarf. The complainant replied saying that the "Excerpt of Arrest/Ejection record spreadsheet" clearly stated that there was no evidence to arrest. He said that he had not been given the CCTV evidence; all he had received was a still photograph from which it was impossible to identify the subjects, let alone what they were doing. The Club dispute this and claim that the video evidence was on the memory stick and suggested that his computer might have lacked the relevant software to open the attachment. On 15 November the Club emailed the complainant apologising for the delay in responding to his initial query. It said that, as a club, it has a duty of care for everyone inside the stadium and while a police search had been inconclusive, the Club had reason to believe that his son may have been involved in the incident; as a result the Club had had grounds for ejection in accordance with the Ground Regulations, which it quoted. The Club was satisfied that the stewards had followed the correct process and

had had just cause for the ejection. The complainant remained dissatisfied and on 19 November asked the IFO to investigate his complaint.

Investigation

6. The IFO carefully considered the submission by the complainant and a report from Fulham. The Club said that although the Safety Officer had found that he could not be 100% certain from CCTV who had detonated the red smoke bomb, he was satisfied that on the balance of probability the son and/or his father had been involved. The Club had reason to suspect that they were the source of the incident and that their ejection was justified. The Club explained that there had been a misunderstanding over what correspondence the Club's Legal Team was issuing in response to the subject access request had led to a delay in dealing with the complaint.

7. On 12 December the IFO and Deputy visited Fulham's Training Centre at Motspur Park. They met with the Safety Officer, Legal Counsel, Communications Director, the Supporter Liaison Officer and the Administrative Assistant. The Safety Officer explained that Fulham had few pyrotechnic incidents, but there had been four flares ignited at the Charlton game. (The first when the teams had entered the ground, the second when Charlton had scored just before half time, and the other two when Charlton had scored again.) The Club provided full CCTV evidence which purported to identify the complainant and his son when the second flare was set off. At the time of viewing the CCTV record the IFO drew attention to an apparent contradiction; the complainant told the IFO that they had been singled out because his son was wearing a red jacket, whereas the visual record shown to the IFO showed the "father" (the elder of the two males) wearing a red shirt and the "son" wearing a grey sweater. The footage showed the "father" moving his right hand down his side towards his pocket and the red smoke then appearing in front of them immediately after Charlton had scored, just before half time. Within minutes of the incident the Safety Officer had reviewed the CCTV record alongside the Match Commander and the Local Authority Inspector. They agreed that it was highly probable that the two supporters identified in the CCTV record had been involved and should be removed. The actual ejection was carried out in a professional manner and there was no altercation. The Safety Officer conceded that the evidence was insufficient to justify a police arrest and the complainant had been told this; the Club had acted on the balance of probability. However, the Safety Officer was responsible for the overall safety of all in the stadium and he had made the safety assessment to eject the supporters whom he had reason to believe had been involved. The Legal Counsel confirmed that the Subject Access Request had been dealt with within the required time period. For data protection reasons the Club had been unable to release the full footage of the incident which the IFO was able to see, so the complainant had received only keyhole footage of himself and his son. The Club admitted that the final response on 15 November had been delayed until the access request had been completed.

Findings

8. In the aftermath of the Club visit the IFO accepted that, while the ejection was not based on wholly conclusive visual evidence, the Safety Officer and his colleagues had acted in good faith in ejecting those believed on the balance of probability to have let off the flare. Even at that stage the IFO raised the possibility that the complainant and his son may have been victims of a miscarriage of justice, but at the time the IFO did not have the evidence to conclude that this was the case. The IFO accepted that the Safety Officer, in consultation with the Match Commander and the Local Authority Inspector, made his assessment in good faith based on the evidence as he adjudged it at the time. Having viewed the CCTV footage, the IFO can well understand why, for the safety of all in the stadium, the Safety Officer decided to eject and the IFO found that his actions were not unreasonable in the light of what the CCTV evidence appeared to show. The draft report concluded that this was a case which had to be deemed "not proven".

9. As is normal IFO practice the draft report was shared with both parties for comment. The response of the complainant dramatically changed the IFO view of the complaint. He submitted photographs of himself and his son (wearing a maroon jacket, as recorded in the steward's report) at the Fulham match. The complainant had also employed a company using specialist software to enhance the keyhole photograph the Club had sent him. It was immediately apparent that the complainant and his son were not the people identified by the Club in the meeting with the IFO as the probable perpetrators. The IFO had drawn attention to the discrepancy in the apparel worn by the son (above para 7), but the Club officials assured the IFO that the two identified in the CCTV record were indeed the supporters nearest to the red smoke and who, therefore, were justifiably ejected. However, the photographic evidence submitted by the complainant demonstrated clearly that the two people in the CCTV record were in fact not the ones who were ejected. **It follows that the complainant and his son were the victims of mistaken identity and subject to a miscarriage of justice.**

10. There are many worrying features of the case. In the long meeting with the Club the IFO took it on trust that the Club would have satisfied itself that the people on the visual record were not only the perpetrators, but also the actual people ejected. The whole meeting was based on whether the evidence was sufficient to justify ejection and at no point was any doubt expressed that the people identified were actually the complainant and his son. The IFO finds that it was a major shortcoming in the Club's handling of the complaint that neither at the time nor subsequently did any Club official compare the visual record with the steward's report, which clearly stated that the son was "wearing a maroon

jacket". Neither of those identified in the CCTV record was so clothed. [In complying with the Subject Access Request the Legal Department also failed to identify the correct individuals, though that is a matter for the Information Commissioner and not the IFO]. Moreover, the Club prided itself on the detailed visual record which identified the seats the perpetrators were sitting in, yet the complainant and his son were in different seats on a different row. It follows that what the Safety Officer termed a "model ejection" turned out to have ejected the wrong people. **The IFO recommends that the ejection procedures are reviewed to ensure that where the ejection is based on CCTV evidence, those ejected are indeed the ones who had been so identified.** Having been alerted to the injustice it was disappointing that the Club did not take immediate action to rectify the situation.

11. The IFO upholds the complaint and finds that the complainant and his son were wrongfully ejected. **The IFO makes a three-fold recommendation:**

- 1. The Club should issue an unreserved apology to the complainant and his son**
- 2. The Club should refund the cost of the two tickets for the match**
- 3. In recognition of the distress caused to the complainant and his son, the damage to their reputations and the delay in dealing with the complaint, the Club should make a goodwill compensation payment of £500.**

The recommendations should be implemented without delay.

Conclusion

12. Taking on trust that the correct visual information had been supplied, the IFO initially found that the Club had acted reasonably in ejecting those deemed responsible for the flare, even though, as admitted, the evidence was not sufficiently conclusive to justify a police prosecution. However, the evidence subsequently submitted by the complainant proved conclusively that an egregious error had been committed by the Club in ejecting the wrong people. The complainant and his son were subject to unwarranted and prolonged distress which entitles them to significant recompense.

Professor Derek Fraser, Ombudsman

10 January 2020

Alan Watson CBE, Deputy Ombudsman