

# IFO

THE INDEPENDENT  
FOOTBALL OMBUDSMAN



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## **IFO COMPLAINT REF: 20/09**

### **EJECTION THROUGH ALLEGED MISTAKEN IDENTITY AT THE 2019 FA CUP FINAL AT WEMBLEY**

#### **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 the FA.

### **The complaint**

3. A Manchester City supporter complained that he had been ejected from the FA cup final through having been wrongly identified as the person who had set off a pyrotechnic flare.

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

4. On 18 May 2019 the complainant, together with family and friends, attended the FA cup final. They occupied seats in the East stand, Area 11, Row 10 seats 265 – 270 and Row 11 seats 265 -270. Some 26 minutes into the game Manchester City scored and someone in the block set off a blue pyrotechnic flare. The smoke was unpleasant and badly affected the complainant's 72 years old friend, who has COPD, who was sitting next to him. At half time, because the smoke had left a bad taste, the complainant and a friend went to the concourse to buy a round of drinks. The complainant first went to the toilet but was surrounded by around six stadium staff, including numbers RT347 and RT545, who asked him to accompany them. They roughly escorted him past the concession counter, where his friend saw what was happening and followed. The stadium staff took him to an area away from the public and accused him of being the perpetrator of the flare. He protested his innocence and said that it was a case of mistaken identity, but his protest fell on deaf ears. After a wait of about 20 minutes, two policemen (PC F and PC J) turned up; they said that stadium staff were reviewing CCTV footage and the complainant should remain with the security staff until the investigation was complete. After the third goal had been scored, in the expectation that the complainant was going to be exonerated, the friend returned to her seat. She was able to reassure his friends and family, who had all been concerned that he was missing, that he would soon return.

5. Some 20 minutes into the second half of the match, the police told the complainant that, despite there being no evidence supporting the allegation against him, the stadium staff had decided that he was to be removed from the stadium. The police said that, despite their best efforts, they had been unable to locate the steward who had allegedly identified the complainant as the culprit. The complainant said that the police were as dumbfounded by the situation as he was. After the fourth goal, as the complainant had not returned, three of his party left their seats and learned from the police that the complainant had been ejected. They, and a fourth member, then left the stadium to find the complainant. As the complainant returned to his hotel, he was faced with hundreds of disappointed Watford supporters leaving the match early, some of whom subjected him to abuse and threw plastic bottles at him. That was particularly stressful for him in light of his medical history, evidence of which he supplied to the IFO. When his family and friends discovered his removal some of them left the stadium to join him, thereby missing the last two goals and the presentation of the trophy.

### **The facts of the case**

6. On 22 May the complainant emailed PC J asking for his advice and support in making a complaint against the FA. PC J replied that the police were waiting for Wembley to supply statements from the stewards who had witnessed the incident, and for CCTV footage. The complainant continued to seek news of developments from PCs J and F. PC F advised the complainant to hold off making a formal complaint to the FA while the matter was still under investigation. In view of the circumstances, the complainant, family and friends had all decided not to attend the Community Shield match at Wembley on 6 August. On 16 August PC J told the complainant that the incident was not being investigated by the police. He said, "Despite numerous requests Wembley have not provided police with any evidence for that particular incident." [*The FA deny that any such request was ever made. See Para 21*]

7. On 12 September, having had trouble trying to locate the FA's complaints procedure, the complainant managed to speak to someone in the FA's General Enquiries Team, who advised him to set up an online account which would act as a portal for his complaint. He submitted his complaint to the FA that same day. On 4 October the complainant emailed PC J saying that he had submitted a formal complaint to the FA but had heard nothing back. He had been trying to call them, but either nobody answered, or he was transferred to another number which rang for ten seconds then cut off. He asked if the police could supply a different number. PC J was unable to provide a number. The complainant sent reminder to the FA on 17 October.

8. On 1 November the FA's Customer Engagement Team replied. They said that event staff had acted with the best intentions, but accepted that there may have been a case of mistaken identity, as they had no footage of the incident. As a gesture of goodwill, they offered him two complimentary tickets for Manchester City's next visit to Wembley. On 18 November the complainant replied saying that he had not received the response for which he was hoping. He had received no apology, nor acknowledgement that the occasion had been spoiled for the whole party. He said that he could not accept such a half-hearted gesture as redress, and acceptance would require a substantial amount of expenditure. He asked for advice on how he could pursue his complaint further. On 9 December Wembley advised him to take up the matter with STAR (The Society of Ticket Agents and Retailers). On 16 December, after the complainant had rejected that approach as being totally inappropriate, Wembley pointed him in the direction of the IFO.

9. On 2 January 2020 the complainant contacted the IFO. On 20 January the IFO notified the complainant that FA Customer Services were looking into the matter. On 11 February, after the complainant had reported that he had heard nothing further, the IFO asked the FA to expedite the matter. On 20 February the FA's Head of Customer Engagement wrote to the complainant. He

appreciated that any process which takes so long to resolve was draining and said that the FA were seeking to draw a line under the situation. They were, therefore, inviting him and his family to the 2020 FA cup final as hospitality guests; if that was not convenient, the offer could be extended to any FA run event, including concerts.

10. On 2 March the complainant replied saying that he was still aggrieved not to have received a formal apology, and from what the IFO had been told, there remained an assertion from the FA that his removal from the stadium had been justified, despite there having been no evidence of his involvement in the incident. He had simply been an innocent bystander who had co-operated fully in an extremely poorly executed exercise by Wembley security staff. With regard to the goodwill gesture, he said that he had no appetite to return to the stadium; a momentous occasion utterly ruined for all of them was a memory that could not be forgotten. In addition, acceptance would involve a substantial outlay in attending a future event. He repeated his wish for a full and frank apology and was seeking a full refund for the whole of his party for the cost of tickets, travel and accommodation.

11. As the complainant remained dissatisfied, he asked the IFO to intervene. He supplied a 33 page dossier outlining the events in question, and supplying supporting documents and copies of tickets and invoices totalling £1342.25.

### **Investigation**

12. Prior to the FA offering its goodwill gesture, the IFO spoke with the Customer Engagement Manager. He said that the FA was backing the judgment of the stewarding team on the day. He believed that in the light of the evidence available, the ejection had been justified. Subsequent to the complainant's rejection of the FA's goodwill offer, the IFO received a report and evidence from the FA on the complaint. They said that they had no record of a complaint from the complainant prior to 4 October. They supplied a copy of the contemporaneous Incident/Ejection report completed by the Response Team Supervisor stated that in block 112 rows 9/10 seats 265 – 270, "I observed a group of Man City fans celebrating their goal and the customer in question was holding a blue/black smoke flare in his right hand. I believe it extinguished on the floor. I recorded on body cam [Number]. Incident reported to control."

13. In an account dated 16 March, the Supervisor said that about 10 minutes before kick off his attention was drawn to the behaviour of a group of male City supporters aged roughly 25 – 40 years old, who were sitting in bay 110. He kept the group in view as he had been abused by them when he asked them to take their allocated seats and he was concerned about their subsequent behaviour. When the flare ignited, he witnessed, from no more than five metres away, the customer in question holding it; he was confident that he had identified the correct perpetrator.

15. Another supervisor recorded that he had called the control room when the flare ignited in block 110/111 and gave a description of the male "I believe to have let off the device; I believe CCTV was monitoring the male". He said "Unfortunately, I was unable to complete an incident report on the day as it was very busy."

16. The Stadium Safety Officer recorded that the control room had received a call about a smoke device in block 111; response team personnel had identified the male perpetrator. The evidence for the police had not been enough to effect an arrest. The Supervisor who identified the male had mentioned that there were two witnesses and they had "captured body worn footage". The Safety Officer said that he supported the staff who were in the honest held belief that they had identified the correct male to eject.

17. The Safety Officer recognised that there were lessons to take from the incident and has taken steps to increase the potential for collecting evidence. Such measures include:

- Awareness sessions taken by the police for staff on the importance of evidence.
- Statement writing.
- New cameras to increase the ability to capture quality evidential footage.
- Enhanced training in the use of cameras.
- Review of the control room operations to best support the capture of evidence.
- Review of resources in the stadium.

The IFO welcomes the improvements which the Safety Officer has put in place.

18. At the request of the IFO, the complainant provided photographs of himself and other group members taken before they entered the stadium. The complainant said that he and three other men are in their forties, the other men are 67, 72 and 73 and the lady is 56.

## **Findings**

19. The complaint naturally comprises two separate elements; the ejection itself and the way in which the subsequent complaint was handled. The Wembley authorities were fully entitled to take prompt and decisive action on supporters who discharge pyrotechnic devices. They are potentially dangerous, pose health risks and are illegal. The central question is whether the complainant was the guilty party. The IFO is aware from a previous case (IFO 19/30) how difficult it is, even with sharp CCTV images, to be precise about who actually discharges a flare, because the offending smoke envelopes the surrounding supporters. The IFO finds that the FA's case against the complainant is less than compelling. It

is little wonder that the FA was unable to supply to the police the evidence that would justify a prosecution.

20. There is no relevant CCTV record, though in his incident report, the response supervisor said that he had recorded the perpetrator on his body camera. The Safety Officer informed the IFO that in fact the body camera footage referred to a different incident. The FA informed the IFO that the complainant had been positively identified by two separate stewards, but the evidence submitted shows that this was not quite the case. The pitch supervisor did not in fact write up the incident on the day. His later statement identified the block as 110/11. The response supervisor (who did submit a written report on the day) identified the block as 112. In a report written some 10 months after the incident, the supervisor recollected that there was a group of males crowded together in block 110 (not 112 as previously stated) who seemed likely to cause trouble and it was within this group "aged roughly 25 - 40 years" that the perpetrator was identified. This description hardly accords with the composition of the complainant's party; there were four men in their forties (not even close to 25), three male OAPs and one woman. The IFO notes that the supervisor who identified the complainant was not involved in the actual ejection, which was managed by a response team. There must be a strong possibility that, while the supervisor acted in good faith, the wrong person was ejected. A customer services officer admitted in November 2018 that "it may have been a case of mistaken identity as there is no video footage available". While the IFO cannot be wholly certain, on the balance of probability it seems highly likely that the complainant was mis-identified and hence was unfairly ejected.

21. There are several factual disputes between the parties. First, when asked to explain to the IFO why the complainant waited some months before submitting his complaint to the FA, he said that he was advised to do so by the police who were waiting for evidence from Wembley. Indeed, part of his complaint was that the FA had been dilatory in responding to the police request. Conversely, the FA deny any such request was made. The FA informed the IFO that "the request was never made to us in relation to that incident, and this was confirmed by our Police Liaison." The IFO is in no position to resolve this factual conflict. Whatever the reason, it remains the case that the complainant was for some time under the threat of prosecution on very doubtful grounds. Second is the matter of CCTV. The complainant was dismayed to learn from the IFO draft report that there may have been bodycam evidence, which was never disclosed to him "while actively seeking to be exonerated". In fact, the Safety Officer confirmed that such evidence related to a different incident and it was even more galling for the complainant that the key witness admitted 10 months later that the visual evidence did "not clearly show the individual involved". Since this was known to the FA at the time, it casts even greater doubt on the justification for the ejection. The third disagreement concerns when the complainant submitted his complaint. He maintained that it was in early September while

the FA say there is no record of the complaint until a month later. The FA argue that the initial delay in responding was caused by having to check the issue of the police request.

22. Despite the mitigation offered by the FA, the IFO has little doubt that the complaint was badly handled. In making the goodwill offer the FA admitted that the case had been “draining”, something of an understatement. The complainant was for three months under a threat of prosecution when in fact it was admitted on the day that there was no real evidence which led to the case being dropped. The complainant experienced delays in getting a substantive response from the FA. The first factual response was dated 1 November 2019, yet it was not until 20 February 2020 that the complainant received a considered substantive reply from the FA. The complainant approached the IFO at the beginning of 2020. Under the agreed procedure the IFO may act only when the FA has completed its stage of the complaints process. In mid-January the IFO was assured that the case was being actively investigated. Over a further month elapsed before the FA finally contacted the complainant with its proposed resolution offer.

23. As was his right, the complainant rejected the goodwill offer which the IFO considered a reasonable gesture, given its cost and exclusivity (in that the hospitality seats were not available for sale). The complainant has submitted details of costings for the whole party which amount to over £1300. The IFO does not believe that such a reimbursement is justified. However, the complainant is entitled to recompense. What should have been a memorable day was ruined, particularly for the complainant but to some extent also the rest of his party, his health was impaired, his reputation was sullied by the threat of prosecution and he received poor customer service in the FA’s handling of his legitimate complaint. **The IFO recommends that he be given a goodwill payment based on the monetary cost of the offer of hospitality tickets at the 2020 FA Cup Final (which the IFO expects to be not less than £1000).**

24. In response to the IFO draft report the FA has confirmed that “on the event day we must stand by the decision of our staff”. The FA believes the substantial goodwill offer is “a fair and reasonable apology in the light of the experience he described and a desire from both sides to draw the matter to a conclusion.” The FA is reminded that, under the procedure agreed by all three football authorities, if the IFO recommendations are not implemented the football body is required to make a public statement of the reasons.

## **Conclusion**

25. The IFO is persuaded that on the balance of probability the complainant was wrongly ejected. He has endured a long period of distress during which the complaint was not well handled by the FA. The IFO accepts that the goodwill

offer is a substantial hospitality package, but confirms that it is the right of the complainant to reject it. Given his appalling experience at the 2019 FA Cup Final, and the substantial outlay involved for the complainant if he was to take up the offer, it is understandable that he should have no desire to return to the stadium. The IFO hopes that the IFO will agree to make a comparable monetary payment to draw this sorry tale to a close.

**Professor Derek Fraser, Ombudsman**

**14 April 2020**

**Alan Watson CBE, Deputy Ombudsman**