



THE INDEPENDENT
FOOTBALL OMBUDSMAN

IFO COMPLAINT REF: 12/12

EJECTION AT BIRMINGHAM CITY 6 OCTOBER 2012

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 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 operates a system of non-binding arbitration. In exercising its jurisdiction, the IFO does not seek to question the merits of judgements made by properly constituted Regulatory Commissions and Appeal Boards, unless there were shortcomings in the administrative processes which led to those judgements. It is not the role of the IFO to retry cases, but it is its role to explore and review the procedures under which complaints have been decided 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 Birmingham City FC (the Club) and the Football League.

The complaint

3. A Huddersfield Town fan complained that on Saturday 6 October 2012 he had been unjustifiably ejected immediately after he had passed through the turnstiles at St Andrew's stadium, and that he had subsequently been the subject of mistaken identity.

The events in question

4. On 8 October the complainant's friend, who had gone to the match with him, emailed the Club saying that after going through the turnstiles he and the complainant had been stopped and searched. The friend had gone through but the complainant was forcefully ejected by stewards on the grounds that he was "too drunk". The friend admitted that they had had a few drinks but denied that the complainant had been drunk. He explained that the complainant had a blue parking "disability badge" as he had mild autism and other conditions that could make him "come across as a bit over the top at the best of times". The friend said that the complainant was prone to tripping up and as he was being searched he had stumbled into one of the stewards, whereupon two stewards had dragged him by the arms backwards, even though the complainant had not resisted. The friend had pleaded with the stewards to let the complainant back in; one steward had tried, without success, and to compound the matter the other steward had come back in laughing. The friend had protested that stewards should know the difference between a disabled young man and a drunk. The friend sent a copy of his email to the Football Supporters' Federation (FSF).

5. On 9 October the friend emailed the FSF saying that he, the complainant and the complainant's mother had been in contact with the Club's Deputy Safety Officer, who was reviewing the matter. The friend said that he hoped that something would come from the examination of CCTV footage. On 12 October the Club's Customer Service Manager emailed the friend saying that she was concerned at the contents of his message. The Club had undertaken extensive investigations but could not disclose the outcome to anyone but the complainant.

6. On 16 October, at the complainant's request, the Customer Service Manager sent him the results of the Club's investigation. She explained that it was an offence for anyone to enter the ground drunk. She said that as the Club prided itself on having helpful and

efficient stewards, they were saddened to receive such a serious allegation. The first thing they had done was to examine their CCTV footage. Based on the description given by his friend and mother they had had sight of him from the Club's cameras and he had been clearly visible at the gates to the visitors' car park, vomiting into the bushes, and later lying on the car park entrance ramp, where two police officers had assisted him to his feet. Some five minutes later he was seen being escorted to a police van. The police had confirmed that a discussion had taken place regarding drunk and disorderly behaviour, but no caution or charge had been made. Training footwear matching the complainant's could be seen from behind the car park wall for the remainder of the game. The Manager said "It is assumed that this was you". She contended that it had been police officers, not stewards, who had escorted the complainant from the premises. The car park supervisor had been seen on CCTV talking to the complainant; he had said that he was checking that the complainant was ok as he was very drunk. The Club's Disability Liaison Officer had also described the complainant as very drunk when he saw him at the entry point. Huddersfield Town had no record of the complainant having bought a ticket for the match. After reviewing all the material the Club had concluded that, on the basis of the complainant's behaviour at the entry point, it had been right to refuse him entry.

7. The complainant passed that email on to his friend who, that same day, emailed the Club and the FSF. He said that the Club were quite wrong and that the allegations were libellous and defamatory. He denied that the complainant had been sick or lying down at any time of the day; it had definitely been stewards who had taken the complainant out of the ground and the complainant had gone to the city centre after his ejection. The friend said that the assumptions made by the Club were one hundred per cent incorrect and must apply to some other person. The friend had bought both tickets under his season ticket login. The complainant's mother also emailed the Customer Service Manager saying that the Club must have been looking at the wrong person, as her son said "he did not vomit or was escorted to a police van it was a car and did not enter the car park at all". She asked the Club to preserve the CCTV footage, a request which she repeated the following day. She offered to travel to Birmingham to resolve the matter as it was causing her son huge upset.

8. The complainant's mother emailed the FSF. She said that the complainant's ticket had been bought by his friend, through Huddersfield Town. The pair had travelled to Birmingham by train, where they had had two small bottles of beer. They had had two pints of beer in a pub before going to the ground. When being searched, Daniel had toppled over which was not uncommon behaviour for him because of his disability. Stewards had escorted him to a police car; a policeman had told him to get back to the station. The complainant had had difficulty getting his bearings and had ended up in a housing estate. He had gone into a pub called The Garrison where he had had a pint and saw that Huddersfield had just scored to lead 1-0. Unable to find his way and feeling quite frightened, the complainant had taken a taxi to the station where he had waited for his friend. The complainant's mother explained that he had been born with bi lateral talipes and had had seven operations which had left him with an unsteady gait and problems with balance. On 1 November the FSF emailed the Football League with copies of the earlier correspondence. The FSF had spoken with a sergeant from the police football unit who confirmed that they had dealt with one man who was so drunk that he had urinated himself. The police had escorted him to the coach park where he was later seen slumped against a coach. None of the police recalled the incident as described by the complainant and his friend. The FSF said that the complainant's desired outcome was an apology and an assurance that the stewards would be spoken to about how they manage ejections. On 6 November the FSF received a call from the Club's Safety Officer who said that CCTV footage was kept for only fourteen days. He agreed that a meeting of all parties would be the best way forward to resolve the complaint.

9. On 13 November the Customer Service manager emailed the complainant's mother, apologising for the delay in doing so. The Club noted her request to see the CCTV footage but said it was not available because it was automatically wiped after approximately seven days. The Manager said that there had been only two refusals at the visitors' turnstiles; one was a man in his fifties, the other fitted the description of the complainant. The Manager said that as a gesture of goodwill the Club would forward to the complainant a cheque for £100 to cover the cost of his ticket and travel. If the complainant's mother wished to have a meeting with the Club's Safety Officer, she should let the Manager know and the necessary arrangements would be made.

10. On 14 November the complainant's mother replied. She said that on 16 and again on 17 October she had asked the Club to preserve the CCTV footage, and that, according to the FSF, the Safety Officer had said that the system kept footage for 14 days. Good practice would have ensured that footage was kept where a complaint had been made. She pointed out discrepancies over the complainant's footwear and clothing, in particular that her son did not possess a shirt with lettering on it, as described by the police. She wondered why, if the complainant was the drunk, no-one had mentioned his most distinctive feature of red hair. She maintained that the Club were simply making assumptions, which were wrong. She pointed out that although the Safety Officer had suggested a meeting, nothing had been offered. That same day the complainant emailed the Customer Service manager asking for the release of all information held about his ejection, regardless of the format in which it was held.

11. On 15 November the Club's Senior Finance Officer replied to the complainant saying that the Club would not be releasing any information on the subject, except in relation to the dialogue with his mother. The officer also replied to the complainant's mother. He said that CCTV footage was for internal use only. With only two people refused entry it was a fair assumption that the younger one was the complainant, particularly as the description matched. He contended that the complainant had not been ejected, but was refused access to the turnstile by the police. While the Club could not be 100% sure that that person was the complainant, all the information suggested with reasonable belief that it was the complainant. The Officer said that as disabled fans receive extra help on match days, he was surprised to learn that the complainant was not registered as disabled with Huddersfield Town. The complainant's friend responded quickly maintaining that the complainant had passed through the turnstile and was ejected by stewards. The complainant's mother also replied saying how upset the family were that a son who has mild learning difficulties, who had spent several years in a wheelchair, yet wanted to be treated like other adults, could be labelled as a drunk and disorderly football hooligan.

12. On 10 December agreed that the matter should be referred to the IFO. On 18 December the FSF, acting on behalf of the complainant, asked the IFO to investigate the complaint.

The investigation

13. The IFO obtained the Club's documents relating to the complaint. On 7 November the Club's Supporters' Liaison Officer recorded that a Huddersfield fan, aged around 20 and wearing a white t-shirt, appeared very drunk and was leaning against a coach. Two police officers walked with him to the car park exit and the Supporters' Liaison Officer had heard them tell the fan to go away for two hours and to return at 5pm. At the gate the fan was sick, almost over a police officer. On 9 November the Club's Disability Liaison Officer recorded that a Huddersfield fan had staggered towards the turnstiles in what appeared to be a drunken state. Stewards had not allowed him into the ground. On 15 November the Police Liaison Officer recorded that a man of about 20, wearing a white t-shirt with a large square distinctive pattern, and possibly the words "San Francisco" on it (similar to one owned by his son), was escorted out by two police officers. Later on he saw the youth leaning against a coach. It looked as if he had urinated himself and the coach driver appeared to be telling him he would not be allowed on board. The Car Park Supervisor recorded that he had reported to police that a Huddersfield fan was staggering around the worse for drink. The police took him out of the car park and left him leaning against a fence. At 4.35pm the Supervisor saw the fan asleep against a coach wheel. According to the Supervisor, at the end of the game the fan got onto his coach and left.

14. The IFO and his Deputy met with the complainant and his friend. They have been to several away matches and normally have a couple of pints of beer beforehand. They have not previously encountered any problems. They had gone to a pub called The Old Wellington, which had been recommended by other fans on the train. Their accounts were consistent with what they had told the Club and the FSF. The complainant had been wearing a plain white t-shirt, covered by a long black coat. They were adamant that they had passed through the turnstile and the complainant had been ejected by stewards who were conducting searches. They had spoken to each other by phone immediately afterwards; at the complainant's insistence the friend had stayed to watch the match and they agreed to meet at the station afterwards. While in the ground his friend had recounted the incident on twitter. When the complainant had had trouble finding his way back to the city centre, he had telephoned his father from the Garrison. After leaving the pub he had found himself in a very rundown area and was quite frightened. He had called

at another pub (without having a drink) where he was given the number of a taxi firm. He had called a cab which took him to the city centre.

15. Although a blue parking badge holder, the complainant is not registered as disabled with Social Services or with Huddersfield Town. He tries to fit in as much as possible, preferring to be regarded as the same as a non-disabled person and to live as normal a life as possible. The complainant has very distinctive red hair. The complainant said that if the Club had said "We are sorry we seem to have got it wrong" when they offered him £100, that would have been the end of the matter; the important thing for him was an admission of fault, rather than compensation.

16. The Deputy IFO discussed the events with a sergeant from the West Midlands Police Football Unit, who explained that police tactics were not to intervene in situations at the turnstiles unless there was aggression. She had consulted the officers on duty at the match and confirmed what she had told the FSF (paragraph 8). None of the officers had mentioned that the drunken youth had red hair. The sergeant confirmed that there is a pub called The Garrison in a rundown housing area not too far from the ground.

17. The Deputy IFO visited the Club and met with the Senior Finance Officer, the Customer Service Manager, the Deputy Safety Officer, the Disability Liaison Officer, and the Police Liaison Officer. The Police Liaison Officer, the Deputy Safety Officer and the Disability Liaison Officer all confirmed what they had told the Club (paragraph 13). The Police Liaison Officer explained that the fan he saw was very drunk; his name had not been taken as he had not entered the ground. He was certain that the fan's t-shirt was as he had described. Neither he nor the other witnesses remembered the fan having had ginger hair. The Club explained that although their CCTV footage is in colour, it would not have been possible from the footage they viewed to identify such a feature, because of the distance from the camera. Footage is automatically deleted after seven days (the Safety Officer apparently got this wrong – paragraph 8). The Club normally retain footage in the event of a complaint, but had inadvertently deleted it in this case. The officials confirmed that there is a pub called The Old Wellington (paragraph 14), not far from New Street station. The Garrison pub is in the opposite direction to the station. The easiest way for anyone to get to the station is to use the bus stop opposite the entrance to the ground.

18. The Club officials were adamant that their assumptions about the complainant having been the drunken fan were justified, and that no apology was necessary. If the complainant's account was correct, it would mean that stewards had not conducted an ejection correctly. Ejections are reported and recorded for the safety of all concerned. The Club had made the £100 gesture of goodwill not because they thought they had done anything wrong, but were sorry that a young man had missed the game, and hoped that he would not be deterred from returning in the future.

19. On the matter of not offering to meet the complainant's mother (paragraph 10), the Customer Service Manager explained that she had done so in her email of 13 November, but the mother had not taken up that offer. The Club said that their Safety Officer, whose home is in Blackburn, was still prepared to visit the family in Huddersfield. On the matter of CCTV footage being for internal use only, the Club were concerned that they would be disclosing footage of everyone in shot. The Club said that they had made enquiries about the complainant's ticket, and his disabled status in order to get as full as possible a picture of the events surrounding the complaint.

20. Accompanied by Club officials, the Deputy IFO viewed the away turnstiles which are accessed through a gate into a car park, about 100 yards long, which can hold 21 coaches and two minibuses on match days. The officials had pointed out that there was conflict between what the complainant and his friend had said, and what his mother had said that the complainant "did not enter the car park at all" (paragraph 7), given that access to the turnstiles was only through the car park. On match days there is a line of response stewards in front of the turnstiles, who will turn away anyone not fit to enter the ground. About five yards after the turnstiles there are stewards who conduct searches. If someone is to be ejected a spot camera is activated.

21. After meeting the Club the Deputy IFO contacted the complainant's mother to establish what Daniel meant by "did not enter the car park at all". Apparently Daniel had meant that the police car to which he had been taken was on the road outside the car park entrance, rather than in the car park. The complainant's mother also supplied a copy of the train booking which the friend had made. It was for two young persons'

return tickets from Huddersfield to Birmingham on Saturday 6 October, travelling with Cross Country and Trans Pennine trains.

Findings

22. The IFO considers first the incident itself, of which there are very conflicting accounts, given first hand by the complainant and his friend, but without other substantiation, while the Club have readily admitted that they are making assumptions and cannot be 100% sure that the drunken fan was the complainant, albeit acting with what they described as "reasonable belief". There is no doubt that a young Huddersfield fan was refused entry because he was drunk; all four witness statements obtained by the Club confirmed that, and the incident was recorded by the Club. Because the fan had not accessed the ground, his name was not taken. The question for the IFO to consider is whether on the balance of probabilities that fan was the complainant.

23. If the complainant's account that he travelled by train and made his way back to the station via the Garrison pub is to be believed, then the drunken fan was not the complainant. The IFO has found plenty of corroborative evidence for that. First, the IFO has a copy of the payment receipt for the couple's return tickets from Huddersfield to Birmingham. Secondly, the Car Park Supervisor stated that at the end of the game the drunken fan, having apparently been in the vicinity of the ground throughout the game, had got onto his coach and left (paragraph 13). Thirdly, the Supporters' Liaison Officer stated that he had heard police tell the fan to go away for two hours and return at 5pm. That is consistent with the need to return to his coach. Fourthly, the complainant described a visit to the Old Wellington, not far from the station, before going to the ground. Fifthly, the complainant's description of the area around the Garrison places him well away from the ground during the match, confirmed by the telephone call to his father, who advised him to get a taxi to the station. In addition, the complainant and his mother both deny that he had a t-shirt matching the description given by the Police Liaison Officer. Finally, none of the witnesses, nor the police who were involved with the drunken fan, remembered him as having had vivid ginger hair. Although the Club have pointed out that in giving a description of her son, the mother had not mentioned his hair colour, it was the first thing that the IFO and Deputy noticed when they met the complainant, and it seems inconceivable that none of the witnesses mentioned it if, indeed, the drunk was the complainant. The IFO and his Deputy also found the

complainant and his friend to be credible witnesses. That is not to say that the IFO doubts the accounts given by the Club's witnesses. On the contrary, the IFO sets great store by them, in particular that the drunken fan was wearing a distinctive t-shirt, that he slept in the car park during the match and that he left by coach.

24. If the drunk was not the complainant, and his account of having accessed the turnstiles is correct, then that means that the stewards failed to report and record the ejection. Although the Club were very sceptical that that would have been the case, and prided themselves on the efficiency of their stewards, it must remain a possibility.

25. The Club told the complainant's mother that the Club would not be releasing any information on the subject and that CCTV footage was for internal use only. Although the matter of CCTV is somewhat academic, given that the relevant footage had been destroyed, the Club were wrong in that respect. Images of people are covered by the Data Protection Act. **The IFO recommends** that the Club study the comprehensive guidance contained on The Information Commissioner's website.

26. The IFO also considers how the Club dealt with the complaint. The initial response was prompt and courteous and the Club apparently investigated the matter quickly, including viewing the CCTV footage of the drunken fan. Unfortunately the CCTV footage was deleted. That should not have been allowed to happen and **the IFO recommends** that relevant footage is always kept while resolution of a complaint remains outstanding. There was also some confusion over the offer of a meeting to the complainant's mother. On 13 November (paragraph 9) the Customer Service Manager offered to make the necessary arrangements if the mother let her know that she wanted a meeting. On the following day (paragraph 10) the mother replied complaining that although the Safety Officer had suggested a meeting, nothing had been offered to her. Although clearly that was not a specific reply to what the Customer Service Manager had said, it should have been obvious that the mother wanted a meeting. The IFO welcomed the fact that the Safety Officer is still prepared to meet the family (paragraph 19).

27. Thereafter, the Club stuck doggedly to their belief that the complainant was the drunken fan they had identified. Although the IFO accepts that the Club believed in good faith that they were right, they should have been alerted by the marked differences in

the respective accounts, and the factors identified in paragraph 22, particularly the fact that the Car Park Supervisor stated that the drunk had left by coach. The IFO was also impressed by the lengths to which the complainant has gone to try to get the Club to accept that he was wronged, even to the extent of rejecting the goodwill gesture in favour of an apology in recognition of what had happened. On the balance of probabilities, and having had the benefit on interviewing the complainant and his friend, the IFO finds that the complainant was ejected. Having said that, the IFO does have some sympathy with the Club in that the complainant's condition may well have made him appear drunk. For safety and security reasons stewards are rightly empowered to refuse entry to, or eject, drunken persons and they appear to have genuinely thought that the complainant was drunk. In this case, however, the stewards should have paid more heed to what the friend was telling them and should have reviewed their decision in the light of that. Since he is not registered as disabled, the complainant does not possess documentary evidence of a disability, and the IFO respects the complainant's wish to lead as normal a life as possible. In that context, it was also wrong for the Club to have expressed "surprise" that the complainant was not registered with Huddersfield Town (paragraph 15). How a disability is managed is up to the individual. **The IFO recommends** that the Club apologise to the complainant, ensure that their stewards properly understand their responsibilities and renew their goodwill gesture. In that context, the IFO acknowledges that that offer was a genuine gesture of goodwill, rather than any admission of guilt, given that they believed the complainant to have been drunk. It was made on the basis that, for whatever reason, a supporter had not got to see the game and had not had an enjoyable visit to St Andrew's. The IFO accepts that such an offer reflects an organisation that shows regard to the welfare of paying fans.

28. In response to the IFO's recommendations the Club said that, although they did not agree with the IFO's interpretation of many of the points set out in this report, they wished without any admission of liability to apologise to the complainant for any inconvenience, upset or distress that he experienced when visiting St Andrew's on 6 October; and they repeated their original offer to reimburse the complainant £100 as a goodwill gesture to cover his travelling expenses. The Club accepted entirely that there was a problem with CCTV footage not having been retained for a sufficient amount of time. They have dealt with the matter to ensure that such a situation does not recur. With regard to the IFO's recommendation on stewarding, the Club said that they will

consider how they could deal with a repeat of such a situation. The Club also wished to place on record that at no point had they labelled, or insinuated that, the complainant was a hooligan. The IFO accepts that.

Conclusion

29. As in many previous IFO investigations, there is a basic conflict in the interpretation of the facts of the complaint, compounded by the lack of CCTV evidence. It is accepted that neither the IFO nor the Club can be wholly certain as to what transpired. However, the IFO is persuaded that on the balance of probability, the complainant was the subject of mistaken identity, while recognising that the Club has acted in good faith in dealing with what it believed was a drunken fan refused entry. The IFO welcomes the fact that, while not accepting many of the IFO's arguments, the Club is willing to apologise to the complainant and to renew its offer of compensation. Though finding in the complainant's favour, the IFO believes that the Club has emerged with much credit in the way it responded to the complaint.

Professor Derek Fraser
Alan Watson CBE

21 March 2013