



THE INDEPENDENT
FOOTBALL OMBUDSMAN

IFO COMPLAINT REF: 15/04

THE FA'S HANDLING OF A DISPUTE OVER AFFILIATION

1. The office of the IFO was 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. 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 confirms that in investigating this complaint he has received the full cooperation of the FA. The jurisdiction of the IFO does not cover the actions or decisions of County FAs (CFAs). However, in order to understand the nature of the issues giving rise to this complaint, it has been necessary to recount some of the events concerning those bodies in order to put in context the part played by the FA.

The complaint

3. A grassroots football club (the Club) complained that the FA had not granted their claim of parentage to the City CFA in which the Club is based, despite all the evidence which showed, on the balance of probabilities, that their first affiliation was with the City CFA, not the County FA.

4. The FA Rules

- Clubs subject to the jurisdiction of the FA and/or a CFA shall not play against any club which is not a member of the FA or a CFA.
- Clubs being members of more than one Association shall be under the jurisdiction of the Affiliated Association of which they first became a member, except in matters

arising in a match under the control of another Affiliated Association, (from season 2014/15 the following was added:- “or any other case where the Association in using its discretion, determines that this position should not apply.)

- Any District, Junior or Youth Association operating in two or more Counties shall affiliate to the senior of the two County Associations concerned.

The facts of the matter

5. The Club was founded in 1909 by former pupils of a school and currently comprises four teams playing in local leagues. That same year the Club was elected to a local league (the League). They withdrew from the League in 1912 because of financial difficulties, re-joined in 1919 and played in it until 2006, when the League merged with another one. Some of their teams played in other leagues, but all were within the jurisdiction of the City CFA where the Club is based. In 2006 a County CFA, which had overlapping jurisdiction with the City CFA, claimed that the City CFA owed them money in respect of three amateur clubs, including the complainant Club, in the city. This no doubt was the result of a new centralised administrative system which revealed anomalies here and elsewhere. The City CFA disputed the claim but the County CFA claimed “First affiliation” of the three clubs. In January 2007 the City CFA informed the clubs that the FA had ratified the County CFA’s claim, which meant that all disciplinary matters pertaining to the clubs came under the jurisdiction of the County CFA. According to the Club, the County CFA said that from season 2007/08 they would take over responsibility for the appointment of the Club’s match officials, but when the Referees’ Officer discovered that the League did not pay expenses to officials, they transferred appointments back to the City CFA.

6. After much correspondence, in October 2008 the FA convened a Board of Inquiry. (None of the parties has been able to produce a copy of the Board’s report.) Because the City CFA had no records prior to 1920, when the Club had affiliated to the County CFA, and the Club was unable to provide conclusive proof of their earlier affiliation to the City CFA, the FA subsequently parented the Club with the County CFA. Later appeals by the Club were rejected by the FA’s Sanctions and Registrations Committee. Over the years the Club persisted with their efforts to achieve parentage with the City CFA, but the FA continued their refusal without seeing conclusive evidence of first affiliation, culminating on 5 January 2015 in a letter from a FA lawyer saying “The Club has failed to evidence that it was first affiliated to [the City CFA]. However, in the event that evidence can be produced which supports this contention, the Sanctions and Registrations Committee would be happy to reconsider the matter.” On 21 January the Club asked the IFO to intervene in the dispute.

The Investigation

7. The IFO and his Deputy held two meetings with the FA's Head of Judicial Services. He said that the only disadvantage in the Club being parented to the County CFA was in the travelling for disciplinary cases. He maintained the line that there was no conclusive evidence that the Club was affiliated with the City CFA prior to 1920, and nothing to show why the Club had affiliated to the County FA in 1920. He said that, although there is evidence to show that the Club played in the League prior to 1920, it was not necessarily true that they had affiliated to the City CFA. The way to challenge the FA decision was Rule K arbitration but the Club would have to show that the decision was outside the Regulations or irrational. If the City and County CFAs were to agree to a change of parentage the FA would accept that.

8. On 5 May the IFO and Deputy met with Club officials. They said that having had all their affairs dealt with for 97 years by the City CFA, out of the blue had come the claim by the County CFA and the subsequent FA decision on the Club's parentage. The Club had not been consulted over that initial decision and had not been told specifically how the issue had arisen. They did, however, have an email dated 19 November 2007 from the Chief Executive of the City CFA saying "The claim or counter claim over historical rights became an issue when the Football Association under a data cleaning exercise highlighted anomalies across the County. It is my belief that the exercise was designed as a method of calculating future funding to Counties on a National Basis hopefully the successful outcome will be that the status quo can be returned to what it was before all this nonsense caused by revenue generating and not in the interests of you as customers."

9. The officials did not know why the Club had affiliated to the County CFA in 1920, but assumed it related to the ability to play in the County Amateur Cup competition. They made the following points, which had been part of their submissions to the FA:-

- To have played in the League from 1909, the Club would have had to be affiliated to a CFA. Adjoining CFAs had confirmed that the Club was never affiliated to them, and the Club did not affiliate to the County CFA until 1920. The Club considered it inconceivable that affiliation could have been anywhere but the City CFA, where it is based and the body to which their League is affiliated. A 1919 League table showed the Club's membership.
- The only matches the Club plays under the jurisdiction of the County CFA are a small number of County Amateur Shield matches, yet the County CFA deals with the Club's disciplinary related matters for the rest of their matches over which the County FA has no other jurisdiction.
- The Club is the only club in the leagues in which it competes not to be accepted as first affiliated to the City CFA.
- All referee appointments are made via the City CFA.
- As the County CFA has no jurisdiction over the leagues in which the club plays, they are unable to help in disputes involving the Club.
- To play in their home city the Club has to accept parentage to the County CFA which provides no service other than to impose and collect disciplinary fines. (Up to £1,000 per annum.) Why after 97 years had the County CFA done that?
- To attend disciplinary hearings involves a round trip of 60 miles, whereas the City CFA and most of the Club's players are based in the city, which would entail minimal travel.

- The Club should be allowed parentage with the CFA which best serves their interests.
- Although parentage cannot be proved, equally it cannot be disproved. The reason is that when the City CFA moved premises they lost records prior to 1920.
- The Club believed that, where a matter was within the FA's power, the FA's role should be to assist grassroots clubs wherever possible.
- The Club could disband and reform under another name in order to be under City CFA jurisdiction but are not prepared to throw away over a century of history.
- The County CFA has refused to cede parentage on the grounds that it might create a precedent, and say that clubs cannot change associations, yet there is already a legal precedent (See High Court Writ – 1994 – Newport County FC v Football Association of Wales.)
- On 22 October 2009 the FA's then Registrations and Sanctions Manager said in an email "The matter is closed as far as we are concerned as the Club could not provide the evidence required to determine parentage to Liverpool (even though it is accepted that this is likely and preferable). They know we will only revisit if they can come up with irrefutable evidence."
- On 26 April 2012 the Registrations and Sanctions Manager wrote to the City CFA saying "... still insufficient evidence to justify changing parentage. Having attended the Board of Inquiry there is no doubt that the Board members had huge sympathy for the Club but the Club representative could not provide a shred of evidence to support their case. " "The members fully understood that the Club had played in the league as early as 1919 but their affiliation remained inconclusive." [One of the other clubs was able to provide evidence from City CFA county cup matches that their involvement and affiliation with the City CFA dated back to 1895. That club's parentage accordingly reverted to the City CFA.]
- In 2009 the Club had received from the FA a plaque "to record its appreciation of the outstanding services to the game rendered by the Officers and Players of the Club over a period of one hundred years".

10. The Club officials produced a copy of the "Old Boys' Association" page from a school magazine dated July 1909, which said "[The Club] has been elected to [the League]". They also produced an email dated 30 April 2015 which they had recently received from the former Secretary of the League who said that the rules of the League stated that "Any club to be eligible for membership shall be affiliated to either the [County CFA] or the [City CFA]." The officials contended that as the Club had not affiliated to the County CFA until 1920, it followed that they must have been affiliated to the County CFA in 1909. They also pointed out that the addition to the FA rule regarding membership of more than one County Association (paragraph 4) gives the FA discretion to return the Club to the City FA.

11. The Officials complained that, although they had repeatedly asked the FA whether it was possible for the Club, if unaffiliated, to have been allowed to play for several seasons between 1909 and 1919 in a league affiliated to the City CFA, the question had never been answered. They pointed out that in a letter of 2 September 2014 the FA lawyer had said "We do not agree that the question which you pose in your letter is of assistance in determining the actual matter of the Club's original affiliation".

The Findings

12. As outlined in paragraph 2, it is not the role of the IFO to investigate the actions of CFAs, but to examine solely the actions of the FA. When the Club disputed the County CFA's claim of first affiliation, the FA constituted a Board of

Inquiry to look into the matter. Although no copy of the Board's report can be found, it is clear from FA papers that the Board gave the Club more time to find proof of first affiliation to the City CFA, and that further information was required before a recommendation could be put to the FA's Sanctions and Registrations Committee. It is equally clear that the Board Members had huge sympathy for the Club and that the FA accepted that parentage to the City CFA was "likely and preferable" (paragraph 8). Unfortunately, despite strenuous efforts by the Club over the years, they have not been able to convince the FA, on what they see as the strong balance of probabilities, that the Club must have been affiliated to the City CFA prior to 1920. The IFO finds that in sticking to the requirement for conclusive evidence, despite the sympathy they obviously had for the Club's situation, the FA were acting within their discretionary powers, disappointing though it was for the Club. For the IFO to find that the FA were wrong in adopting that stance, he would have had to have found they they had not properly taken into account the evidence presented to them. The IFO has not found that to have been the case.

13. The Club complained that the FA had consistently refused to answer the question of whether it was possible for them to have played in the League prior to 1920 without having been affiliated to a CFA. That was a legitimate question which the FA should have answered, given that the Club had not affiliated to the County FA until 1920 and had evidence to show that they had never been affiliated to the other two neighbouring CFAs. Clearly, affiliation was a requirement (paragraph 4). In that context the Club presented to the IFO fresh evidence which they had just obtained from the former Secretary of the League (paragraph 10) showing that it was a League requirement for member clubs to be affiliated to either the City or the County CFA. The Club contends that as they did not affiliate to the County FA until 1920, they must have first affiliated to the City CFA. As this evidence has come to light subsequent to the Club's complaint to the IFO, it forms no part of the IFO investigation or findings. However, given that the last correspondence from the FA lawyer (paragraph 6) said that the Sanctions and Registrations Committee would be happy to reconsider the Club's claim if there was fresh evidence to support it, **the IFO recommends that the FA refer the matter to the Committee, should the Club produce such evidence to them.**

Conclusion

14. This has been a long running saga and it is unfortunate for the complainants that definitive historical evidence is lacking to convince the FA of their case for reallocation to the City CFA. They have made much of the argument "on the balance of probabilities", but the FA has the discretion to reject that evidence and properly exercised its powers in coming to its decision. It does appear that the club has acquired some new evidence and when this is submitted the FA should honour their undertaking to reconsider the case through its relevant committee.

Professor Derek Fraser, Ombudsman

7 August 2015

Alan Watson CBE, Deputy