



THE INDEPENDENT
FOOTBALL OMBUDSMAN

IFO COMPLAINT REF: 14/10

**THE FOOTBALL ASSOCIATION'S HANDLING OF A
COMPLAINT ABOUT THE ACTIONS OF A REFEREE**

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. 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 at the outset that he has received full cooperation from the FA in investigating this complaint.

The complaint

3. The Assessment Coordinator of a football league complained that the FA had not taken disciplinary action against a referee despite having been provided with evidence of his misconduct. He wished to ensure that similar situations were prevented in the future. He also wished to complain about the way in which his complaints had been handled and asked to meet with the IFO to expand on his complaints. In order to put the complaints fully into context, it has been necessary to outline in some detail the relevant events leading up to the complaint. The report also contains information which the IFO would normally omit as confidential, but which has already been put in the public domain, primarily through the referee's wide circulation of his own complaints, and some coverage in the press.

The facts of the matter

4. On 2 October 2013 the referee complained to an assessor who had assessed his performance at a match on 24 September. He believed that the assessor had marked him too low and had actually marked him before the match had taken place. He said that he was happy not to be refereeing on a league on which he had previously been assessed (a different league) as the majority of referees were non-English (as he is) and he had not heard of any non-English referees having been promoted to the next level. He ended by saying "The only thing I can say is God watching all of us". He copied his email to an assortment of 13 football administrators and referees, including the league Referees' Manager, and a county FA official who, in light of the allegations, referred the matter to the FA for investigation.

5. On 9 October the referee emailed league officials asking either to be able to swap his appointment to a game which he had already accepted, or for a different assessor to be appointed to the game, as the appointed assessor had given him a poor mark the previous season (in a match in the other league). The Referees' Manager replied saying that the league would be changing neither his appointment nor the assessor. The referee replied saying "I can not referee a game that assessing (sic) by a person that his mark did not let me to promote last season. Please remove me from the game as I am not emotionally ready for

this game.” Later that day the referee emailed the Referees’ Manager saying “I like to have a game this Saturday but not assessing by [the assessor appointed to the other game].” When he was advised of this situation, the FA’s Head of Senior Referee Development (the HSRD) told the league “Take him off the game and do not appoint him to anymore until I receive guidance from the Equality Manager”. The Referees’ Manager emailed the referee saying he had removed him from the fixture and reported the matter to the FA. He said the referee would not get any more matches on the league until the matter was resolved to their satisfaction. In his role as the league’s Assessment Coordinator, the complainant emailed the referee saying that as the league had told him that they would not amend his appointment, he had “removed himself from the game”.

6. On 4 November the FA’s Inclusion Projects Co-ordinator (IPC), following discussions with the HSRD, wrote to the referee saying that several ‘non-English’ referees in his area had been promoted for 2013/14. He said that the FA had no evidence that the referee had been treated unfavourably because of his background or his ethnicity and that he had already been promoted several times under the same assessment system; if he had evidence of discrimination he should send it to the FA. On 13 November the IPC wrote to the league, the referee and to all parties affected by the complaint, including the assessor, outlining what he had told the referee earlier. He said that the FA had not seen any evidence of bias in the referee’s assessments and they had complete confidence in the assessor’s integrity. In comments directed at the referee by name, the IPC said that all referees must abide by the results of assessments and his requests to referee different games with different assessors was unacceptable. The IPC recommended that before making such accusations, the referee should be more sure of his facts, “as this will only reflect badly on yourself if proved incorrect, as in this case”. The IPC said that the FA were not clear if the referee’s emails had been simply comment or if they constituted a formal complaint. If he wished to make a formal complaint he should provide evidence in support. He reminded the referee that if he made spurious claims against refereeing officials which were not based on evidence, he might be the subject of disciplinary proceedings. On 22 November the referee emailed the FA saying that he wished to make a formal complaint of discrimination.

7. On 28 November the IPC wrote to colleagues, including the league, saying the FA were in the process of gathering evidence regarding a complaint of discrimination made by the referee, "which the FA must take seriously, whether founded or unfounded". He said that the FA would appreciate if communications were kept private and confidential; the practice of copying several people into emails was not helpful to the process and should be discontinued.

8. On 13 December the referee met with the HSRD and the IPC. The referee handed over a number of documents which he alleged was evidence of discrimination against him. The HSRD told him orally that it was not acceptable to ask for an assessor to be removed from a game, nor to say that he would still referee the game but with a different assessor, nor to determine which games he would or would not referee, nor to determine which assessor should be appointed. The HSRD also made clear to him the independent appeals process (which the referee could have used) and the void assessment process, and explained why the assessment of 2 October 2013 did not meet the criteria for either of those processes. The HSRD also explained that it was not acceptable for the referee to ask for an assessment to be declared void just because he did not like the mark awarded, nor to suggest that the assessor had marked him before the game. The referee believed that he had appealed the relevant assessment but the HSRD pointed out that his letter on the subject had been treated as a complaint, as it had not mentioned appeal. At a subsequent annual meeting of level 4 referees the referee approached the HSRD repeating his earlier allegations. According to the HSRD, he repeated the points he had made to him in the formal meeting.

9. On 14 January 2014 the complainant and the league's Referees' Manager wrote jointly to the IPC saying that some four months into the FA's investigation the league had received nothing from the FA. They enclosed comments sent to the league by the assessor (in his thirtieth year of assessing) describing his feelings at having had his integrity unjustly questioned. He was concerned that other assessors could be abused or have remarks made against them by referees, with no action taken against them. He was seriously considering his future in football. The league was of the view that the FA had failed to carry out

their investigation with full diligence. The complainant and the Referees' Manager were concerned that recent press coverage of the matter was not in anyone's interest. The FA did not reply. Meanwhile, as part of his investigation, the HSRD had been going carefully through the referee's documents, the referee's marks, and referee merit lists but found no evidence that the referee had been assessed incorrectly, that any other referee named in the documents had been promoted unjustifiably or that any named referee should have been promoted. On 4 February the IPC emailed colleagues, including the league, saying that during October and November the referee had made several allegations that he had been discriminated against through unfair assessments on the two leagues. The HSRD had investigated the assessments and had concluded that there was no evidence to support the claims, that nothing untoward had taken place and that no further action should be taken. The FA considered the matter closed. (There was no mention of the advice given to the referee by the HSRD.)

10. On 13 February the league Referees' Manager emailed the HSRD saying that the league were very disappointed that no disciplinary action had been taken against the referee. He pointed out that on the previous day the referee had asked the complainant to review the assessor's report of 24 September on the grounds that the FA had not reviewed his appeal. He said that the referee had clearly ignored any advice or warning given to him. The HSRD replied saying that, although the Referees' Manager might be disappointed with the outcome of the investigation, the fact was that the referee had been transferred to a different league. He said that the referee had no right to ask that the assessment go through the appeals process, but made no mention of the advice given to him. On 20 February the complainant replied to the referee's request for a review. He said that he had reviewed the assessment of 9 October when he had received it and there were no grounds for appeal. He said that the referee's continued attempts to abuse the system meant he could no longer keep quiet if he was to retain his integrity. He had hoped that the referee would have apologised to the assessor for the allegations made, which the FA had described as groundless. He said that it was clear from the referee's assessments and the marks awarded to him by clubs that he was no more than an average level 4 referee and his position on the merit table reflected that. He said that, rather

than attack fair minded people, the referee should seek advice on how to improve his ability. The complainant had copied his email only to those who needed to know; the referee "might wish to learn from that". The referee replied referring to the meeting he had had with the HSRD. He claimed that the complainant had "suspended me unfairly and unjustly since 9 October. I take this matter to a discrimination court as I beloved (sic) you have treated me and referees like me equally (sic)." He copied the email to a number of administrators and nine referees who were either non-English or from ethnic backgrounds.

11. On 21 February the complainant copied to the HSRD the referee's email, saying he reserved the right to complain to the FA about the serious allegation against him which the referee had put in the public domain. He asked for a purposeful dialogue with the FA so that a speedy, positive outcome could be reached. He was disappointed that the FA had not supported the assessor, not even one phone call, and there had been no response to himself following the referee's "outburst". There is no indication that the FA replied and the complainant confirms that no reply was received.

12. During March the complainant made representations to the FA expressing disillusionment over lack of action against the referee and the fact that no-one from the FA had spoken with him, the assessor, or the Referees' Manager, who had resigned over the affair. He was told that the FA could not take the matter further without a formal complaint. On 8 April the complainant emailed the IPC complaining formally that the referee had brought the game into disrepute through false allegations of discrimination and unfairness against himself and two assessors. In support of his complaint he described the events as outlined above and added evidence showing that on 29 September 2012 the referee had asked if it was possible to have an assessment mark (which he had unsuccessfully appealed) excluded from his record as it lowered his average marking for the season. The complainant urged the FA to investigate and charge the referee accordingly. On 17 April the IPC replied apologising for the delay. He said that as both he and the HSRD had been involved in the case previously, the FA's Discipline Manager would be reviewing the points he had made in his formal letter of 8 April.

13. On 22 May the Discipline Manager wrote to the complainant. He said that the referee had a right to challenge an assessment if he felt the assessor had made an error and such a challenge should not be seen as questioning the integrity of the assessor. As far as the question of discrimination was concerned, the ability for someone to make such an allegation is protected in law. The referee had made the allegation in the only forum he had known possible and had been "made with the minimum circulation possible". He said that the referee's "approach, not necessarily the validity of the claim, was in my view proportionate." He said that while the FA's Equality Department had found that there was no act of discrimination, equally there had been no finding that the referee's allegation had been made in bad faith or was malicious; in such circumstances it would be inappropriate to take any action against the referee. He said that when considering the matter in context, the referee had moved to England from a foreign country and would need support in understanding the process followed in England. Operationally the referee should have been given advice on the appropriate refereeing procedures that operate in particular around promotion; from the correspondence reviewed it was not clear that that had happened. The request to withhold a mark that the referee was appealing was not on the surface unreasonable; he should simply have been advised that all marks are included until such time as an appeal amends a result. The Discipline Manager said it was disappointing that respectful communication appeared to have broken down; on balance, he found correct the position not to take any action against the referee. The Manager suggested that if the complainant remained unhappy he could refer the matter to the IFO.

14. The following day the complainant replied, expressing his extreme disappointment. He contended that the Manager's comments were based on general inaccurate interpretation of the facts and a complete misunderstanding on FA guidelines in relation to league assessors. He claimed that the FA were failing to support those who had worked tirelessly for many years. He pointed out that, as far as "minimum circulation" was concerned, the referee had contacted everyone on the league not born in the UK or from an ethnic background; in his view, that comment undermined any credibility or integrity within the Manager's response. The assessor's integrity had been questioned by

the allegation that he had marked the referee before the match and the referee had not appealed the assessment in question. He also pointed out that the referee had been officiating in England for several years and was well versed in procedures from the annual seminars run by the HRSD; and that no referee can ask for a mark to be excluded, whether under appeal or not. The complainant said that it was clear that the FA themselves did not want to run into a discrimination claim; their action discriminated against those who seek justice for all in football. The complainant also wrote to all the league's assessors and level 4 referees outlining the events above and explaining that he had reluctantly resigned as the league's Assessment Coordinator over what he saw as unfairness in the FA's approach to referees.

15. On 27 May the complainant emailed the Discipline Manager saying that the offer of the IFO was inappropriate as the FA complaints process had not been exhausted. He asked for the complaint to be referred to the Discipline Manager's line manager for further investigation. On 29 May the Discipline Manager emailed the complainant saying that following discussion with senior members of FA staff he was reiterating the position stated in his previous letter. The matter had been concluded and would not be escalated further. He and other staff were prepared to meet with the complainant to explain why they had taken the decision they had, but they would not review or change their decision.

16. On 30 May the complainant replied. He had discussed the offer with the league's Referees' Manager and the League Support Officer (effectively the complainant's manager) who were all "very much willing" to attend such a meeting, but all agreed that there was no point if the FA were not prepared to explore other avenues. He said that he would have been happy for the FA to have decided that it was not in the interests of the game to charge the referee, but he should have been advised that some of his actions had been inappropriate and warned as to his future conduct. He said "We could then move on and do what we all do best." He said that, leaving the ethnicity issue to one side, it was beyond any reasonable thinking that a referee could make baseless allegations, conspire to be awarded a mark he did not attain, refuse to be assessed by an appointed assessor, then refuse to officiate a match to which he had been appointed, and then no action is taken by the FA. He asked the FA to

reconsider the matter to enable a meeting to take place, and offered suitable dates on which he and his colleagues could attend. The following day the Discipline Manager replied saying that the FA's position remained unchanged. The matter had previously been discussed with the FA's Regulatory Legal Advisers, the Equality Team and the Referees' Department, and he, the Discipline Manager, had carried out a final review of the matter following the complainant's complaint. The complainant replied pointing out that the complaint had not been escalated, as he had previously requested. On 2 June the Discipline Manager emailed the complainant outlining the stages of the FA complaints procedure. The complainant replied contending that the process followed was flawed and that the investigation had been inadequate; also the HSRD should have been disqualified from investigating the matter, because of his previous involvement.

17. On 2 June the complainant emailed the League Support Officer, with copies to relevant FA staff, saying that he believed that the FA were hoping he would refer his complaint to the IFO to take the problem away from them. He was considering involving the media but that was not the way he wanted to go. He believed the FA were running scared of a discrimination claim, although the issues he was challenging were not related to discrimination. The Support Officer replied totally agreeing with the complainant's dissatisfaction over how the FA had handled the complaint. He had resigned over the strongly held principles of truth and honesty. Because the matter had been put into the public domain, he was particularly concerned about the effect of the case on assessors and referees who had seen how a referee could make false allegations and attempt to abuse the assessment system, without having been corrected. On 5 June five other Support Officers (there are seven nationally) wrote to the HSRD asking for a solution to be found to resolve the ongoing situation between the FA, the complainant and the Support Officer. In light of what had happened they were uncertain as to what was required of them if such allegations were made. As a simple solution they suggested that the FA should inform the referee that such conduct was inappropriate, that no referee could dictate which assessor was appointed, that no mark could be removed unless it met appeal criteria, and that the referee should focus on his own performance in order to achieve promotion.

18. On 6 June an FA solicitor wrote to the complainant. He had discussed the matter with the Discipline Manager and had reviewed the papers personally. He said that the fact that the complainant disagreed with the Discipline Manager's decision did not render the decision invalid. The FA did not consider the need for further escalation. He could understand the confusion over the involvement of the HRSD, but the complaint had actually been reviewed by the Senior Regulatory Legal Adviser, the Head of Equality and Safeguarding and the Equality Manager (each of whom he named), prior to being reviewed by the Discipline Manager. If the complainant believed that there were issues which had not been addressed, he should let the FA know. That same day the complainant replied. He repeated what he perceived as inconsistencies in the FA's replies which he had outlined previously. He pointed out that the Assessment Coordinator for the other league had already decided that the assessment which the referee had asked to be expunged had not met the FA's criteria for appeal; he contended that the referee's aim had been to falsify the merit table list, thereby gaining an unfair advantage over other referees. He said that the league's Referees' Manager, the Support Officer and himself had all resigned over the failure of the FA to act appropriately. Two of the league's assessors had also resigned as they were not prepared to be accused of racism without the knowledge that they would be supported by the FA in the case of a vexacious complaint. He contended that by failing to take corrective action against the referee, the FA were themselves bringing the game into disrepute. He said that all the league officials were looking for was for the FA to warn the referee as to his future conduct.

19. The Support Officer also emailed the solicitor. He said that the fact that the FA had not taken action against the referee, despite the transgressions, had become widely known around the supply league assessment scheme; he was worried about the effects of that. He wanted to know how many times he had to state that before someone answered the question of how such inappropriate conduct by a referee could not result in action by the FA. On 9 June the solicitor replied to both the complainant and the Support Officer saying that there did not appear to be a compelling case for the action to be reviewed; the FA were not considering warning the referee as to his future conduct. The FA refuted the allegation that the Discipline Manager was acting on the instructions of someone

else at the FA. On 11 June the complainant replied saying that the solicitor had not addressed the rationale as to why the FA were not taking action against the referee, and that the complaints process was flawed and should be escalated within the FA.

20. On 17 June the HRSD wrote to all League Assessor Coordinators and League Support Officers saying that he had become aware of a case where an assessor's mark was changed by a Coordinator. (According to the HRSD this arose from a different case.) He reminded them that under no circumstances could a final assessment mark be altered other than where a report is subject to official modification or appeal procedure which results in the mark being amended upwards or downwards. Any attempt by a referee trying to influence the integrity of the assessment scheme by asking for a mark to be removed or an assessor to be changed should be reported to the FA.

21. On 9 July the complainant wrote to the FA's General Secretary outlining his concerns and pointing out that the situation had caused a loss to football of three long established administrators (unpaid) with a total of over 100 years' experience. All they were asking was for the referee to be spoken to; he also considered that the assessor should be given an apology. He urged the General Secretary to see whether a resolution was possible which would enable them to withdraw their resignations. In his view the FA had attempted to avoid dealing with the matter because of potential racial undertones. He also pointed out that the letter issued by the HRSD set out action to be taken in the very matters over which he was complaining. In his opinion, there had been a cover-up by individual FA staff who were more concerned with protecting their positions than dispensing justice and fairness. The FA solicitor replied saying that the General Secretary was content that the FA had handled the matter appropriately; the complainant had already been provided with the reasoning behind the FA's decision and there was nothing further to be done. On 22 July 2014 the complainant requested an IFO investigation into his complaint against the FA and how it had been handled.

The investigation

22. The IFO and Deputy met with the complainant and the Support Officer. They outlined the events as described above and stressed that their overriding concern was the effect on assessors in general of action not having been taken by the FA against a referee who had falsely accused the assessor of discrimination, and who had sought to gain an advantage over other referees by seeking to abuse the assessment process. The complainant was seeking news of the action taken by the FA against the referee and an apology for the way in which his complaint had been handled, so he could consider returning to his coordination role, which remained unfilled. In light of the support given to him by fellow Support Officers and the letter issued by the HSRD, the Support Officer had rescinded his resignation.

23. The Deputy IFO met with the Discipline Manager accompanied by the FA solicitor. The Manager explained that a key point is that to warn a referee about his future conduct would be a formal disciplinary charge, requiring entry on the referee's record. The FA did not consider the circumstances warranted that. The referee is non-English, from an entirely different culture and there was no evidence that he did not genuinely believe that he was being discriminated against. The case had been discussed widely within the FA at senior levels and there was agreement over the decision not to take further action. The Manager had wanted a meeting with the complainant to explain the reasoning behind the decision but, rather than raise false expectations about the outcome, he had made it clear that the decision would nevertheless stand. The Manager undertook to have copied for the IFO his large file of correspondence on the matter. The IFO followed up with a further meeting with the same two FA officers. He wished to clarify that there were in fact two separate issues which had got mixed up together, the allegation of discrimination and the perceived misdemeanors of the referee. The IFO enquired what would normally have happened when a referee was alleged to have attempted to change a mark or refused to take an assignment because of the identity of the assessor. The Discipline Manager confirmed that neither would be viewed as requiring disciplinary action and would be dealt with by offering guidance and advice to the referee on the correct behaviour and procedures.

24. The Deputy IFO also met with the HSRD. His account of his meetings with the referee has been outlined at paragraph 8 of this report. The HSRD said that the FA had not issued a formal disciplinary or warning letter as they had not believed the referee's complaint to be malicious or spurious, and that remains the FA's stance on the matter. The HSRD said that he would have liked to have put his advice to the referee in writing at that time and copied to the parties concerned, but had been unable to because of the ongoing issue of the discrimination investigation. Once that had been completed, he had arranged for the referee to be transferred to a different league. The letter he had issued (paragraph 20) was intended to reinforce arrangements already in place; the final part of the letter had arisen from events in this case. The HSRD pointed out that there had been no further contact from the referee after the end of the investigation and the advice he had been given. At the IFO's request the HSRD agreed to write to the complainant outlining what he had told the referee at their meeting on 13 December 2013. He did so on 26 August 2014.

25. The IFO and his Deputy met with the IPC in order to clarify the sequence of events in the winter of 2013-14. He explained that he and the HSRD had invited the referee to meet them as he claimed to have evidence of discrimination, but had not produced it. The referee had handed over a number of documents relating to his assessments and situations pertaining to other referees, but nothing had proved to be evidence of discrimination. The referee's copying of others into correspondence had broadened and delayed the process. The IPC had favoured meeting with the complainant and his colleagues but that had not transpired.

26. The IFO and his Deputy held a further meeting with the Discipline Manager and the FA solicitor. They explained that the review completed on 22 May had been to consider what the complainant had asked for in his formal complaint of 8 April, namely that the FA should investigate and charge the referee for perceived disciplinary offences. The review had precipitated reactions from the complainant which had modified and inflamed the issues, with the context overtaking the principal complaint, the result of which they stood by.

Findings

27. The first question for the IFO to address is whether the FA conducted their investigations with "diligence". The initial investigation, conducted by the IPC in consultation with the HSRD, resulted from the referee's complaint about the assessor having been forwarded to the FA by a county FA official. It was concluded quite quickly in November. The second investigation, following a formal complaint by the referee, was concluded at the beginning of February. The IFO does not find that an inordinate period, given that in addition to his other work, the HSRD had to review all the assessments not only of the referee, but those of other referees named by the referee as having been denied promotion, or promoted unjustifiably. Technically, that investigation should not have been carried out by the HSRD, because of his earlier involvement in the case, but the IFO is satisfied that he was the person best suited to the task.

28. The next question is whether the FA took appropriate action in light of their investigations. In his letter of 13 November which followed the first investigation, the IPC made clear to the referee that he should be more clear of his facts, that if he made spurious claims against refereeing officials, which were not based on evidence, he might be subject to disciplinary procedures and that it was not acceptable for him to request changes of games or assessors. The IFO is satisfied that on the evidence available that action was entirely appropriate. At the meeting on 13 December in the course of the second investigation, the HSRD gave the referee a similar message, advised him of the assessment and appeal processes, and pointed out that certain requests the referee had made were not acceptable (paragraph 8). (At a subsequent meeting of referees' the HSRD repeated those points.) The IFO is satisfied that the HSRD acted within his discretion and that his advice equated to an informal warning. The FA chose not to charge or formally warn the referee about his future conduct as that would have been regarded as a disciplinary measure recorded on his refereeing record; they did not consider that justifiable, given the referee's background and culture, and the fact that both the IPC and the HSRD had given him appropriate advice after their investigations. Although clearly the complainant and his colleagues did not agree with that, it was a discretionary decision which the FA were entitled to make in the full light of the facts of the case.

29. Unfortunately, while the discrimination investigation remained unresolved, the FA did not feel able to tell any of the interested parties what had transpired from the HSRD's misconduct investigation, which had effectively ended with the oral advice given to the referee at the meeting in December. Given that the subjects of discrimination and discipline were quite distinct, it would have been helpful, and might have prevented involvement on the part of the complainant, if the FA had told the league what had transpired when the referee met with the HSRD and the IPC. The FA missed both that opportunity to put the league in the picture and at the conclusion of the discrimination investigation, and did not respond to the complainant's subsequent representations (paragraphs 11 and 12). It was, in fact, only after the IFO's intervention that the HSRD's advice to the referee came to light and the omission was rectified at the request of the IFO (paragraph 24).

30. The Discipline Manager was appointed to consider the formal complaint of 8 April, namely that "[The referee] has made allegations of discrimination and unfairness against me and two [league] assessors, which I have formed the view have brought the game of Association Football into disrepute. As such I make this claim and urge the FA to charge [the referee] accordingly." In considering those limited terms of reference, the Discipline Manager found correct, on balance, the position not to take any disciplinary action against the referee and that, from an FA perspective, the matter should be drawn to a close. Although the complainant and his colleagues continued to disagree with that decision, the IFO is satisfied that it had broad approval from senior members of the FA, and was a discretionary decision which the Manager was entitled to reach.

31. However, in his letter of 22 May communicating that decision, the Manager suggested that the referee made his complaint "with the minimum circulation possible". That comment cannot be justified in the light of the fact that the referee had copied his initial complaint to 13 administrators and referees and he had copied a later email to the complainant to 19 recipients, including the league referees who were non-English or from ethnic backgrounds, despite having been asked by the IPC to restrict circulation of his correspondence. The comment served only to make the complainant question the credibility and integrity of the review. The IFO also found confusing the statement that the referee's request to

withhold a mark under appeal was not unreasonable. The referee had not appealed the assessment of 24 September 2013. The one he had appealed was on the other league (29 September 2012 – paragraph 12) and had not met the FA's criteria for appeal; it had been then that the referee had asked for the mark to be expunged so as to enhance his average mark. In addition, the statement that the referee would need support in understanding the assessment process followed in this country seemed to the complainant to ignore the fact that he had been refereeing here for several years, had already achieved three promotions and had attended annual senior referee meetings held by the HSRD. It was therefore reasonable for others to assume that the referee understood the procedures which were to be followed if he wished to appeal against an assessment. Indeed he had already submitted an appeal in the earlier case. This all added to the complainant's frustration over what he still believed was a failure by the FA to take appropriate action.

32. In his formal complaint of 8 April the complainant asked the FA to bring a disrepute charge against the referee, which is what the Discipline Manager considered in his review. On 30 May, following the review, the complainant softened his stance to "a warning about his future conduct" and then on 9 July "for the referee to be spoken to". The IFO is satisfied that on a number of occasions the referee was "spoken to", if not warned informally, about his conduct. Unfortunately, in exchanges of correspondence following the review the FA again missed opportunities to outline the action they had taken with regard to the perceived disciplinary offences, which may have helped to bring an end to the matter. The FA sensibly offered a meeting to outline the reasons behind their decision. However, because they made clear that the decision would not be changed, the complainant and his colleagues declined the offer.

33. The IFO accepts that, in the absence of evidence to the contrary, the fact that the IPC found no evidence of discrimination does not mean that the claim was malicious or spurious; it was quite possible for the referee to genuinely believe that he was being discriminated against. The IFO also accepts that the fact of making an allegation of discrimination is not itself a disciplinary offence, even if the claim is rejected, as in this case.

34. It is unfortunate that, following the review, the situation became inflamed somewhat and, seemingly born out of frustration, the complainant made a series of comments questioning the competence, credibility and integrity of FA officials and suggested there had been some sort of cover-up for fear of the FA themselves becoming involved in a discrimination claim. The complainant obviously felt passionate about the matter but, from the documents examined and the interviews conducted, **the IFO has seen no evidence to justify those comments.** That is not to say that the FA could not have handled matters better. The IFO has found several shortcomings in the way in which the FA communicated, or failed to communicate with the league and the complainant. First, the FA missed several opportunities to tell the league and the complainant precisely what the referee had been told in relation to what they perceived as breaches of discipline. Secondly, the FA did not reply to some of the complainant's correspondence. Finally, some of the statements in the review letter of 22 May served only to detract from the principal matter of the decision and tended to inflame the situation. In the light of the investigation, **the IFO recommends that the FA review the way in which they handled communications in this case; in particular, the failures sometimes to reply to the complainant and to provide relevant information before his formal complaint, and afterwards, the information given by the FA, which added to the complainant's frustration. The IFO further recommends that FA write to the complainant, acknowledging the communications shortcomings identified in this report.**

Conclusion

35. This complex complaint and its origins have resulted in a long drawn out acrimonious dialogue between the complainant and the FA. The IFO finds that in the principal stages of the dispute the FA exercised its legitimate discretion in advising the referee and then in deciding that no formal disciplinary action should be taken against him. While the complainant dissented from the action taken or not taken, the FA was within its powers to act as it did and there was no justification for the complainant's assertions that the FA was not acting in good faith. However, the shortcomings in communications identified in this report served to prolong the dispute, which might have been resolved with timely and effective communication about what was being done and why. While

the complainant's central concerns are not upheld, the IFO finds that he was entitled to be aggrieved by the communications shortcomings revealed in the way his complaint was handled.

Professor Derek Fraser, IFO

Alan Watson CBE, Deputy IFO

30 October 2014