

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
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IFO COMPLAINT REF: 18/08

INDEFINITE EXCLUSIONS AT HUDDERSFIELD TOWN

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 the full cooperation of Huddersfield Town AFC.

The Complaints

3. Two Huddersfield Town season ticket holders complained that they had been unfairly excluded, on an indefinite basis, and that they had been unable to

progress appeals against their exclusion bans. They further complained that they were deprived of any refunds for the matches missed.

The Background

4. Huddersfield Town play at the John Smith Stadium, which also hosts the Huddersfield Giants rugby league team. The stadium was built in the 1990s on a site provided by the local authority and is owned and managed by Kirklees Stadium Development Ltd. The company is jointly owned by Kirklees Council (40%), Huddersfield Town (40%) and Huddersfield Giants (20%). It is the stadium (not the club) which is licensed to hold events and there is a fortnightly joint meeting of the partners, senior managers and local officials (including the Chair of the Safety Advisory Group) to plan the arrangements for forthcoming matches or other events. The Stadium Safety Officer is responsible for ensuring that those attending may do so free from anti-social behaviour or threats to public order and takes appropriate action to exclude those committing misdemeanours. The decision to exclude or ban supporters is taken by the Safety Officer. The letters sent to supporters receiving a sanction are issued by the Safety Officer and they contain the terms of the exclusion or ban, together with the options for review/appeal. It is normal practice to allow a cooling off period (usually two or three matches) and then to invite the supporter to a meeting with the Safety Officer and a Club representative, usually the Club Secretary, who will discuss the case with the excluded person to decide the way forward. Almost all of those excluded (except those in receipt of a banning order from the courts) are subsequently re-admitted.

The facts of the case

5. On 13 January 2018 Huddersfield Town had a home fixture against West Ham United, an event which had been deemed to be Category C (the most challenging from a security/stewarding/policing perspective) and there had been prior police intelligence of a risk from a section of away supporters. Police were deployed in the town centre to keep home and away fans separated and, fearing an attack on visiting supporters by a crowd of home fans, the police issued a Section 35 Dispersal Order. (The police action does not fall within the IFO remit and is the subject of a separate appeal by the complainants and others.) On receiving from the Club's police liaison officer the names of the 16 supporters affected, the Safety Officer noted several (though not these two complainants) who were known to the Club because of previous misdemeanours. The Safety Officer took the view that all 16 posed a potential risk of disorder at the Stadium and so sent letters to all of them excluding them for an indefinite period.

6. The two complainants protested that they had been innocently walking towards the Stadium and had inadvertently joined a crowd of fellow supporters, who became cordoned by the police and then were issued with the Dispersal Notice. They argued that they had complied peacefully with the Order and that the Club had no evidence to justify the bans imposed. They took their case to the Football Supporters Federation (FSF) who alerted the IFO to the likely

submission of complaints from among the 16. The FSF particularly identified the expected delay in hearing any appeals/mitigation, because of the Safety Officer's decision to delay any review of the cases until the police investigation into the complainants' appeals against the police action were completed. This left the supporters in limbo without a decision for an indefinite period. On 14 and 18 February the complainants wrote separate, though almost identically worded, letters to the IFO and the investigation began.

The investigation

7. The IFO carefully reviewed the submissions of the two complainants and the several messages sent by the FSF. On 6 March the IFO visited the Club and met with the Operations Director and the Safety Officer. They explained that they had been working closely together at the Club for over a dozen years, previously at different levels within the EFL and now in the Premier League. Other than in cases involving Huddersfield fans at other grounds, sanction letters are always sent by the Safety Officer, but with the full involvement and agreement of the Club. It was pointed out that the Club owns 40% of the Stadium, so the distinction between club and ground is not as stark as elsewhere. The Safety Officer explained that he was concerned when he saw the names of several known risk supporters on the police list and judged that there was a clear imperative for him to exclude in the interest of ground safety and to protect other supporters from potential threats. He admitted that the two complainants were not previously known to the Club, but argued that since the police had treated the supporters as a group equally in receipt of the Order, he would follow suit because at that point he lacked the evidence on which to make individual judgments. That would come later when the police investigation was completed, when he and the Club would be able to make a judgment on the degree of culpability of individual supporters and decide the appropriate and proportionate sanction. Both complainants had been informed that the circumstances of their exclusion would be reconsidered when the outcome of their complaints against West Yorkshire Police was known. Unless the complainants were to be charged and convicted of a criminal offence, past experience suggested that the two complainants would in due course be readmitted to the Stadium. They were free to purchase season tickets for 2018-19 and one had done so.

Findings

8. It is important at the outset to stress that the IFO recognises and respects the Safety Officer's responsibility for ensuring the peaceful and orderly running of matches at the Stadium. The IFO is satisfied that when it is judged appropriate to discipline supporters on the basis of their behaviour, the Club is fully involved in that decision, although the letters are issued by the Stadium Safety Officer. The question raised by the IFO was whether the Dispersal Order *of itself* provided sufficient grounds to justify the exclusions, given that no offence had been committed and the events took place away from the Stadium. In accordance with the Ground Regulations, the Club/Safety Officer can exclude

from the ground someone whose presence could constitute a source of danger, nuisance or annoyance to any other person. The Club contends that the exclusions were justified because Dispersal Orders are only issued after a careful assessment of the risk of disorder and because of the presence on the list of known risk supporters. The IFO feels that there is an element of guilt by association here, given that neither complainant has previously been involved in any disorder of any kind, and a Dispersal Order does not distinguish between levels of culpability between any of those concerned. However, the Club believes there is prima facie evidence of intent to become involved with the away supporters through the route taken through the town centre. Given their knowledge of the central streets, the officers point out that that the group targeted the pub where the away supporters were drinking, rather than walking directly to the ground. Moreover, since the IFO visit Club officials had viewed the CCTV record of the incidents, from which they conclude that the complainants "had ample opportunity to walk away from the issues which they failed to take." Although the decision to exclude was taken only after a proper risk assessment by the officer clearly empowered to make such a decision, the IFO remains somewhat sceptical about the grounds for the complainants' exclusion, given that the decision was taken solely on the basis of names on the Dispersal Order without further investigation of individual circumstances or access to specific evidence held by the police.

9. The IFO is also sympathetic towards the complainants' contention that they have suffered unfair treatment due to the delay in considering their appeals. Normally the supporter would be invited to the Club to discuss the sanction soon after its imposition. In these cases, the Club contends that the process must await the completion of the police investigation into the complaints submitted against the police, because only then will there be evidence to assess individual involvement in the incident. For example, at the time of the IFO visit the Safety Officer had not requested access to any CCTV evidence for fear of compromising the police process, believing that the police must have primary access to this evidence. Subsequent to the IFO visit the Safety Officer did examine this and will use this and other evidence prior to meeting with the supporters. The timescale is clearly not within the Club's control and will significantly exceed the 6 weeks normally allowed for resolution of a complaint within both IFO and ADR procedures.

10. The Club has recently augmented and enhanced the text of its Good Behaviour Agreement by the inclusion of equality and diversity aspects. The IFO believes that this provides a means to address the complainants' legitimate concern over the delay. The Agreement contains no admission of previous guilt and merely reinforces explicitly a commitment made implicitly in the purchase of a ticket, *ie* that the supporter will not engage in anti-social behaviour and will comply with the ground regulations. The complainants say that they pose no threat to Stadium safety. Hence, they should have no problem in signing the agreement and should be invited to do so forthwith. **The IFO recommends**

that, having signed the Good Behaviour Agreement, the complainants' bans be temporarily suspended and they be readmitted to the Stadium, pending the final determination of the appeals against the original exclusion. [The Club has indicated that it intends to meet the complainants to discuss readmission to the Stadium]

11. The IFO is persuaded that the Club does have in place procedures which are effective in maintaining a safe environment and are also fair to supporters. These procedures have evolved over many years and are based on past experience. Indeed, the IFO commends the Club for including the practice of holding face to face meetings with supporters who have received a sanction. It is a bone of contention for many complainants who approach the IFO that they have been denied a personal hearing, whereas at Huddersfield it is the norm. However, if the procedures are both effective and fair, they are not all transparent and even internally there are few written policy statements. Supporters are entitled to know how they will be treated if they behave unacceptably and what process will be followed if they wish to challenge the imposition of a sanction. The IFO believes that this is largely a matter of codifying and publicising existing practice. **The IFO recommends that by no later than the start of the 2018-19 season the Club develops policy and procedure statements for complaints and sanctions, to be included in the Club Charter, Website and Visitors Guide, as appropriate.** The IFO advises that these statements include reference to offences committed off-site and the respective roles of the Club and the Stadium in the enforcement of the ++policies.

12. The final aspect of the complaint relates to the matter of refunds. The ticketing terms and conditions are explicit in stating that supporters whose tickets are withdrawn or cancelled because of a breach (actual or potential) of Club rules have no right whatsoever to a refund. This wording, which is similar to that used by all other clubs, is in line with Governing Body guidelines. The IFO is not a legal tribunal and can only examine whether supporters are treated fairly by the ticketing terms and conditions. The Club argues strongly that a no-refund policy is an essential deterrent against anti-social behaviour, since otherwise fans could behave with impunity without a financial penalty (an argument supported by the Premier League). The Club believes that supporters need to know that if they behave in an unacceptable way there will be financial as well as other consequences. The IFO finds such arguments compelling for those committing misdemeanours which in effect breach the terms under which the ticket was bought. However, in the present cases it has not yet been determined whether the supporters have breached club rules. In the event that these supporters are ultimately exonerated then they would be entitled to a refund for the matches missed.

Conclusion

13. The complainants' involvement (inadvertent or otherwise) in potential crowd disturbances which the police deemed worthy of the issue of a Dispersal Order has already attracted sufficient sanction from the Club and their suspension should be lifted. The IFO welcomes the indication that the Club will hold early meetings with the complainants with a view to their admission to the stadium. The IFO is also pleased to learn that the Club will implement the recommendation about policy statements contained in this report.

Professor Derek Fraser, Ombudsman
Alan Watson CBE, Deputy Ombudsman

29 March 2018