



IFO COMPLAINT REF: 15/08

THE FA'S HANDLING OF A COMPLAINT ABOUT A COUNTY FA'S INVESTIGATION OF ABUSE

The Role of the Independent Football Ombudsman (IFO)

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. 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 confirms that in investigating this complaint he has received full cooperation from 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 the CFA involved in order to put in context the part played by the FA.

The complaint

3. A man complained about the way in which the FA had handled his complaint about the failure of his local CFA to investigate properly the reporting of abuse of his 15 year old son.

The events

4. On 19 April 2015 the man's son reported two players from the opposing football team for homophobic and racist abuse. The CFA charged both players but a CFA Disciplinary Commission found the case not proven. Paragraph 19 of the Commission's written reasons for their decision stated:

"The Commission felt that the credibility of [the son] as a witness was in doubt as he had described a person who had made the alleged remarks, which did not fit the description of [the accused] who was present in front of the Commission. It was also noted that the [son's] second report mentioned a remark to another teammate where the word Gay was used, however in the first report it was alleged by [the son] that it had been said to him directly."

Paragraph 36 stated: "The Commission were asked to believe that the match referee had been made aware of these allegations. It was noted that this was a high profile game with apparently many County Officials present, no one including the referee, his assistants or any County Official had submitted any reports in support of this claim, which the Commission felt was what would have occurred had there been knowledge of the allegations on the day".

5. On 19 August, after he had seen the Commission's report, the complainant, with assistance from Kick It Out, complained to the FA about what had taken place. He said that although his son had reported the abuse to the referee during the game, the referee had not reported it and the CFA had not obtained a statement from him. The complainant and his son had also reported the abuse to CFA officials after the game. He said that the Commission had been informed that the abuse had not been reported at the time. The

complainant pointed out that the CFA had asked his son to write a second, formal statement. The first statement had been written when he was angry and upset immediately after the match; it was ridiculous to dismiss the second statement because when his son had sat down a week later he had either corrected himself or had remembered more clearly. The Commission had deemed his son not to be a credible witness, in effect saying that he was a liar. The complainant subsequently (up to 1 September) provided to the FA various photographs of players, and video evidence, and a transcript of it, taken when reporting the abuse to CFA officials after the match. The photographs showed pictures of the alleged transgressors, including the shirt number of the boy accused of homophobic abuse; and the video/transcript refers to the boy by shirt number. The complainant also voiced his concerns over how the CFA fail to support children who report abuse. He pointed out how upset his son was over the Commission's comments.

6. On 7 September the FA's Head of Judicial Services replied to the complainant. From his review of the case he had discovered that, on the day of the game, the referee had told the CFA that he had not received any report of abuse; best practice dictated that the CFA should have asked the referee to confirm that in a statement. The CFA had confirmed that they had arranged for their welfare officer to take details of the complaint from the complainant and his son. At least one of the CFA officials should have made a statement that abuse had been reported to them after the match. The FA had reminded the CFA of best practice for conducting investigations. The FA said that it would have been of assistance to the Commission if the complainant had provided the CFA with photographic/video evidence as part of their investigation.

7. The Head of Judicial Services said that two of the Commission members had been appointed by the FA; the third by the CFA. The Chair was from the Anti-Discrimination Chair Panel and was experienced at chairing such commissions. The FA were satisfied that the Commission was appropriately constituted. A request had been granted for the complainant's son and a fellow witness to give evidence to the Commission by telephone, even though FA guidance is that children aged 14 and over can attend a Commission. The Commission's role was to establish a version of events which was more probable than not to have occurred on the evidence it had heard. There were elements of the evidence provided in support of the charges which led the Commission to doubt its

reliability and the weight they could apportion to it, which was a reasonable conclusion for the Commission to have reached. The FA's Regulatory Legal Adviser had reviewed the Commission's written reasons for their decision and did not consider it a case where an appeal could be lodged against the outcome. The Commission had not called the witnesses liars and had not ridiculed or completely discredited them. The FA's Safeguarding Department had reviewed the matter and had no safeguarding or welfare concerns arising from the wording of the Commission's report. At an upcoming training event the FA would be taking the opportunity to remind Commissions of the importance of the language used within their written reasons for decisions.

8. The Head of Judicial Services said that in respect of the incident of abusive language which the complainant had reported as having occurred during the presentation of medals after the match, the player concerned had been suspended for two matches and fined £40.

9. The Head of Judicial Services said that although there were some areas where best practice could be reiterated to the CFA, the general standards had been met by them throughout the process. The FA echoed the complainant's sentiments that all participants in the game should be encouraged to report acts of discriminatory abuse. In 2014/15 74% of 390 cases charged were found proven, which demonstrated the independence of the Disciplinary Commissions from the CFAs who issue the charges. The FA hoped that the complainant's son, and the other young witness, although not getting the outcome they had sought, would continue to assist the FA by reporting any future incidents.

10. The complainant remained dissatisfied and, through Kick It Out, referred the matter to the IFO. He said that, although the FA had on several occasions confirmed that the CFA had not followed best practice, they had failed to assess how that "faulty behaviour" had affected the Commission's decision; and they had not considered how the additional evidence he had supplied could have affected the outcome. He contended that the Commission could not have reached "a reasonable conclusion" because their findings had been based on lies. It seemed to the complainant that the additional evidence he had supplied could not have been passed on to the Regulatory Legal Adviser, in which case the FA themselves had failed to follow best practice.

The investigation

11. The IFO and his Deputy met with the Head of Judicial Services who explained that it had been the responsibility of the CFA to prove the charges. There had been some shortcomings in the CFA investigation but on the evidence before them as an independent body, the Commission's findings could not be faulted. That was not to say that a differently constituted Commission might not have reached a different conclusion. Any appeal had to be based on the decision of the Commission on the evidence before them at the time. Unfortunately, the complainant had not made available to the CFA or the Commission the additional evidence which he sent to the FA. The Head of Judicial Services said that, as it happened, the video would have been unlikely to have changed the position as the Judicial Services Manager had confirmed that it merely included details of the conversation which had taken place with CFA officials after the match, and that situation was not in dispute. The Head of Judicial Services viewed as insensitive some of the wording in the findings, which could have been more child friendly. He explained that in October he had met with the complainant and his son to discuss the case, hear at first hand how the son felt he had been treated and explain things from a FA viewpoint. He had outlined to them changes to be made to the disciplinary process in relation to young persons and the son had agreed to do some video work for the FA to use in panel member training. The father wanted to continue with his complaint as he believed that there had been deliberate misdeeds within the CFA.

Findings

12. As explained in paragraph 1, it is not the IFO's role to re-try cases. Clearly in using the principle of the balance of probabilities, it is possible for differently constituted independent commissions to reach different conclusions on the same set of basic circumstances. What has been admitted in this case is that there were shortcomings on the part of the CFA in relation to best practice, but that does not constitute "deliberate misdeeds" and it is impossible to judge what the outcome of the hearing would have been in the absence of those shortcomings. The FA are satisfied that the Commission's decision was justified on the evidence before them and, based on legal advice, that an appeal was not appropriate. Although the IFO has the greatest sympathy with the way in which things turned out from the son's point of view, particularly in light of the insensitive wording in the Commission's findings, he found no reason not to accept the position adopted by the FA.

13. It would probably have been better if the son and his fellow player had attended the Commission to give evidence and answer questions face to face, thus enabling the Members to judge their personalities and demeanour, and to give them a better opportunity to clarify what the Commission saw as anomalies in the evidence. To give evidence by telephone may have placed them at a disadvantage compared to the two defendants, who both appeared before the Commission. Rather than suggest that the son's "credibility as a witness was in doubt", the Commission could more appropriately have said that they found "insufficient evidence" to justify the charges. Although it may be of little consolation to the complainant, the FA have given the CFA best practice advice and, as a result of this case, are changing the procedures on the treatment of young persons at hearings. The IFO welcomes those developments.

13. While sympathising with the complainant and his son over the events which took place, the IFO is satisfied that the FA acted promptly on the complaint and gave it and the additional evidence proper consideration. Moreover, the Head of Judicial Services met with the complainant and his son specifically to discuss the case and explain things from the FA perspective. That was good customer service.

Conclusion

14. The IFO agrees with the FA's findings that there were shortcomings in the CFA's handling of the case, particularly in relation to the insensitive language used. It is to the FA's credit that the father and son were invited to discuss the case personally with the Head of Judicial Services and that improvements in procedure have been implemented. Though the son was disappointed with the CFA decision, his participation in a future FA training video is a positive outcome to this complaint.

Professor Derek Fraser, Ombudsman
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25 January 2016