



THE INDEPENDENT
FOOTBALL OMBUDSMAN

IFO COMPLAINT REF: 16/01

THE APPEALS PROCESS AT ARSENAL **FOR STADIUM BANS**

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 that in investigating this complaint he has received full cooperation from the Premier League and Arsenal FC. It should also be

made clear that this Adjudication relates to the appeal submitted and not to the supporter's original ban.

The complaint

3. A long-standing Arsenal fan who had been given a five year stadium ban complained that his appeal was not properly considered and that the Club's process was not open and transparent. He expressed doubts as to whether an appeal panel had actually met and he complained that he was not given reasons for his appeal being rejected.

The background

4. The complainant has already been subject to a previous IFO Adjudication (IFO Ref 14/15) which investigated a five year stadium ban imposed by Arsenal, following police advice. Arsenal FC did not accept the IFO recommendation that the ban be suspended after two years on condition of good behaviour. The Club did however take up the IFO's suggestion that for serious offences involving a ban of more than one year there should be a right of appeal.

5. In August 2015 Arsenal informed the supporter that, following the IFO report, the Club had included an appeals process as described in the Club Charter for season 2015-16. He was entitled to submit an appeal with supporting evidence, which would be considered by an appeals committee within 30 days. The decision of the committee would be communicated to the appellant within 14 days of the meeting. Paragraph 13 of the Club Charter states: "*The decision of the appeals committee will be final and no reasons will be provided for its decision*". The complainant did submit an appeal which was considered at a meeting of the appeals committee on 24 September 2015. The complainant was informed in October that his appeal had been rejected and that the ban would remain in place until August 2018. The complainant then made a subject access request under the Data Protection Act, to which the Club responded with a five page letter in November 2015.

6. In the following month the complainant registered his concern with the Premier League, asserting that his appeal had not been given proper consideration and that Arsenal had failed to hold an open and transparent appeal hearing. He cited information derived from his access request which showed that

- No minutes of the meeting were taken and no notes were retained
- The Club refused to divulge the names of those attending the appeal committee
- All letters were signed "The Arsenal Football Club"
- The above facts raised doubts about whether a meeting ever took place

The Premier League discussed the case with the complainant and with the Club's legal department. The League did not review the merit of the appeal, but rather sought to enquire whether the Club had followed its stated processes. When the League informed the complainant that it was satisfied that the Club had followed its stated process and given proper consideration to the appeal, he requested that his complaint be passed to the IFO, whose investigation began in March 2016.

The Investigation

7. The IFO carefully reviewed the evidence submitted by the complainant together with the information about its review supplied by the Premier League. On 21 April 2016 the Ombudsman and Deputy visited Arsenal to discuss the case with the Club lawyer who had processed the appeal. Additional documentary evidence was supplied at the meeting.

The Findings

8. The role of IFO is not to re-run cases which have been considered by properly constituted bodies, nor to substitute its wisdom for that of responsible tribunals. The findings do not therefore assess the merits of the appeal, but explore how Arsenal handled the case and whether due process was followed. The accusation that no meeting took place can be dismissed, as the IFO is fully persuaded that the appeals committee did meet and considered the evidence presented. Moreover in many respects the Arsenal appeals process conformed to wider good practice. It followed the widely used principle that an appeal should be heard by officers who had not previously been involved in the case. The appeal committee comprised a board director, a member of the safety management team and a lawyer, all of appropriate seniority. The Club met its own timescale, holding the meeting within 30 days of receipt of the appeal and notifying the complainant of the outcome within 14 days of the meeting. Hence there are no grounds for arguing that the correct process was not followed, since the Club considered the appeal within the procedure as set out in its Charter.

9. What of the other concerns expressed by the complainant? He makes much of the absence of minutes (which caused his initial doubt as to whether the meeting occurred). The outcome of the meeting was clearly recorded since its conclusion was communicated to the appellant. In responding to the subject access request the Club did provide a one page summary which indicated the topics and issues considered (see below para 10). The complainant also highlights the refusal to identify the members of the appeal committee or the signatories to letters as a serious and sinister shortcoming. Given that the complainant is conducting a high profile campaign against the Club (which he describes as "merely publicising the facts of the case"), the IFO finds it not

unreasonable that individual names have been withheld. The complainant was entitled to know the composition of the appeal by role and function, which was provided to him. The complainant also protested that his police evidence was not considered properly. The IFO was informed that the Club did indeed take police advice through its ongoing and structured dialogue with the regular liaison officers. It was reported to the IFO that the police advice had not changed in relation to the potential risk posed by the complainant and that was an important element in the committee reaching its conclusion. The Club highlighted that the police comments submitted by the complainant emanated from a former Club liaison officer who had ceased his involvement with Arsenal several years earlier (and even before the incident in 2012 which led to the stadium ban). The complainant disputes this and claims that the officer is still involved at Arsenal games. He also claims that a member of the current liaison team supports the lifting of his ban.

10. There is only one issue where the IFO finds the complainant justified and that is that he was not given the reasons for his appeal being rejected. This was, of course, in line with the stated procedure and the Charter has already been quoted as saying "no reasons will be provided" for the appeal committee's decision. The IFO believes that this does not accord with judicial practice and should be reconsidered by the Club. In fact Arsenal did provide a summary of the reasoning in response to the subject access request. This identified a number of considerations of which the committee took particular note:

- The Club's duty of care towards its supporters
- The Stadium Ban was imposed because the supporter was considered to pose a risk to public safety
- The IFO did not dispute the imposition of the Stadium Ban
- The evidence did not clearly demonstrate that the supporter no longer posed a risk
- In the circumstances it would be inappropriate to reduce or amend the Stadium Ban

It is slightly odd that the Club's public position is that no reasons will be given, but then it did provide them. The IFO believes that it is reasonable for appellants to expect to be given the reasons, even in brief, for the outcome of their appeals. **The IFO, therefore, recommends that the appeals process in the Club Charter be amended for the 2016-17 season to include the provision of the reasons for the decisions of the appeals committee.**

Conclusion

11. The complainant continues to believe that he has been unfairly treated by the Club he has supported all his life. This leads him to take a jaundiced view of the appeals process which has afforded him no comfort. The IFO concludes, as

it has done on other occasions, that because the appellant did not get the outcome he desired that does not mean that the process was flawed. Arsenal conducted the appeal in line with good practice and in conformity with its own stated procedures. The appeal committee was clearly not convinced that the perceived risk posed by admitting the complainant to the stadium had reduced. The Club has indicated that the complainant's stadium ban will be subject to the annual review of all bans which the Club conducts each summer during the close season. If the complainant has genuinely new information, this should be submitted to the Club.

Professor Derek Fraser, Ombudsman

7 June 2016

Alan Watson CBE, Deputy Ombudsman