



**THE INDEPENDENT  
FOOTBALL OMBUDSMAN**

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**IFO COMPLAINT REF: 09/05**

**EJECTION OF FAN AT WIGAN ATHLETIC v MANCHESTER CITY  
ON 18 OCTOBER 2009**

**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. 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.

**The complaint**

2. A 60 years' old professional gentleman, a Manchester City supporter, complained that stewards and police had not taken appropriate action on his complaints about racist chanting by Wigan fans, and had then unjustifiably ejected him from the ground.

3. The IFO has received full cooperation from The Premier League and Wigan Athletic. The police are not within the jurisdiction of the IFO, but have also cooperated fully. The IFO mentions the actions of the police solely to place in context the actions of the Premier League and Wigan which have been the subjects of this investigation.

## **The main events**

4. After attending the Wigan Athletic v Manchester City game on 18 October 2009, the complainant emailed Manchester City. He said "About 20 minutes into the second half, the Wigan fans near us were clearly singing the racist (elephant/whore) version of the Adebayor song. Several City fans shouted at stewards. I went down (from row F) and told the steward on the stairs that they were singing racist songs and I was making a complaint. Two policewomen came over and asked what the Wigan fans were singing. I told them, and repeated it (having to speak quite loudly because of the other noise). One steward half-justified it because he said City fans were singing songs about Munich (as indeed they were as in the Tevez "he hates Munichs" song). I asked what that had to do with it, and he seemed incapable of understanding the difference.

They asked whether I expected them to arrest everyone singing the offensive song. I said no, just the first person you hear singing it.

It was obvious neither stewards nor police were going to take any action, even when shortly afterwards the Wigan fans started singing it again.

The stewards (four of them by now) were insisting I went back to my seat. I did, but then a minute or so later I saw a police sergeant walk past, so I shouted "Sergeant!" and went back down. Instead of letting me make my complaint about a criminal offence to the senior police officer in the vicinity, the stewards asked me to come down with them and, - after I'd given them my ticket, and my name (and title) - they ejected me from the ground. I asked why, and was given no reason.

When I went back down I think I knew there was a realistic prospect of getting thrown out, but on a weekend when there was an emphasis on "Let's kick racism out of football", I complained about a criminal offence of racist singing, no-one took the complaint seriously, and when I complained that no-one was bothered about it, I was ejected from the ground."

5. On the following day, having telephoned Wigan, the complainant sent to both them and Kick It Out (KIO) a copy of his email. On 30 October KIO wrote to the complainant saying that they were most surprised to hear about his experience, especially as he was complaining about a racist incident. They agreed that the chant was unacceptable; they were working with the football authorities and the clubs to try to eradicate it. KIO would raise the matter with Wigan.

6. On 6 November Wigan's stadium safety officer wrote to the complainant. He said that he had spoken with the stewards concerned and with the police liaison officer, who had been on duty at the match. He said that it was quite apparent that the complainant had left his seat on four occasions to remonstrate with stewards and police officers, despite having been told to remain in his seat and watch the game. He said that he knew that the complainant was making allegations about racist songs but the police said that the songs were offensive and not racist. The safety officer said that in view of the complainant's admission that he thought he might be ejected, he should have stayed in his seat and watched the game, which had been the purpose of his visit. The safety officer was completely satisfied with the actions of the stewards and the police officers who had dealt with the incident.

7. On 11 November the complainant wrote to Wigan's club secretary. When neither police nor stewards would act on his complaint, he had asked to speak to a senior police officer. When the stewards had refused to let him and had told him to go back to his seat, he had refused to do so. He asked if it was the club's official stance that in their programme they encourage fans to report racial abuse to stewards or police, then when a supporter does that, they take no action other than to eject the fan from the stadium. He asked for the name of the police liaison officer so that he could follow up the matter. He said that he had not "remonstrated" with stewards and police on four occasions; he had spoken only once with police officers and had been prevented by stewards from further contact with the police. He wanted to know when, and to whom, the police had said that "the songs being sung were offensive but not racist". He was concerned that none of the persons involved wanted to stop offensive chanting. He pointed out that under ground regulation (7), the use of abusive language, and taking part in chanting of an indecent or racist nature are arrestable offences under the Football (Offences) Act of 1991. He said that although he had wanted to watch the game, that had not overridden his public duty to report a criminal offence. He said that the stewards had given no warning of ejection; when asked to go with them he had hoped they were taking him to a senior police officer as he had requested. He asked if the stewards' completed incident report tallied with his account of what had happened. He copied his letter to the Football Licensing Authority, KIO and Greater Manchester Police (GMP).

8. On 16 November the complainant wrote to the Crown Prosecution Service (CPS) saying that he understood that Manchester City had sought their advice as to whether songs about Adebayor are offences under the Football (Offences) Act. Apparently as the songs do not mention a particular race or culture, the CPS had felt that a successful prosecution would be unlikely. The complainant wanted to know the basis for that supposition. On 18 November the CPS replied saying that if he had concerns about a police decision not to prosecute, he could complain to the force concerned or the Independent Police Complaints Commission. On the following day the complainant wrote to the CPS asking how he could complain to the police about unwillingness to investigate a complaint if it was based on CPS advice that, even if it was a criminal offence, the CPS would not prosecute.

9. On 25 November KIO wrote to Wigan drawing attention to the complaint and saying that it was most disappointing to hear that a supporter has been ejected for following the club's protocol for reporting incidents of racism, as advised in the club's programme. KIO understood that it is difficult to police large numbers of fans chanting an offensive song at any given time, but it seemed inappropriate for the club to eject an individual for raising a complaint about such an episode. That same day KIO wrote to the complainant saying that they were liaising with the Premier League on how to address the abuse of Adebayor, as Wigan were not the only club involved.

10. On 26 November Wigan's secretary replied to KIO. He said the club take a very firm line with racist language or chanting and, with the cooperation of GMP, had ejected and banned a number of people over the past seasons. He said that the club's own supporters were perhaps the best on the spot reporters of incidents which occur and on a number of occasions, following tip-offs, the club had run covert operations to rid themselves of undesirable individuals.

11. Meanwhile, on 11 November the complainant had complained to the Premier League. The League replied saying that they would discuss his complaint with KIO and Wigan. On 7 December the complainant asked the League about progress. On 14 December the League replied saying that they had met KIO to discuss the matter and would be having a further meeting. Wigan's safety officer had confirmed that the ejection had been because the complainant had not obeyed the steward's instructions. The wider issue of the Adebayor chant was more difficult to deal with; the key difficulty had been the refusal of the police to treat it as racial abuse. The League asked if he had more information about the apparent police attitude to the situation. The complainant replied saying that the official police response to his complaint, given orally, was that the officers he had spoken to had not been able to distinguish the words of the chant (even after he had told them), not that they had made any judgement of whether or not the words were racist under the Football (Offences) Act. He said that the CPS had "blown hot and cold", first telling Manchester City that both versions of the song (the original and the more jocular Manchester City version) were racist, then that only the original was racist, then that neither was (at least they did not think they could get a conviction). He said that no-one had made a judgement at the Wigan game, despite what the safety officer had said. He said that the issue was not whether he had broken the ground regulations, but how it looked when fans were being encouraged to complain then ended up being ejected. The fact that the CPS did not think they could get a conviction did not mean that an offence had not been committed.

12. On 17 December the complainant wrote to GMP asking for a reply in writing to his complaint. He said that when he had persisted in asking to speak with a senior police officer, and refused to resume his seat, stewards had ejected him, without further police involvement. On 23 December GMP replied saying that they understood that he had agreed to have his complaint "Locally Resolved", which they had done, and they did not intend any further action on the matter. They enclosed their complaint resolution record which showed that the two police constables who had spoken with the complainant had both said that the complainant had been unable to identify any specific people in the crowd for them to challenge, and that they would monitor the situation from that point. Having spoken to the complainant, they had sought advice from their sergeant who had considered that the chant would probably not be regarded as racist. They had tried to listen to the words of the chant but all they had heard was "a wall of noise". The sergeant had confirmed the officers' account. GMP had sought advice regarding the chant and had found that the matter had been the subject of a complaint to the Crown Prosecution Service (CPS), who had deemed it **not** to be racist.

13. On 24 December the complainant told the Premier League that he had received a letter from the CPS Senior Crown Prosecutor which said "I conclude that the words could be potentially indecent and racist, however, the matter of whether anyone is arrested or ejected for chanting it is entirely a matter for the police and the football club concerned". On 30 December the complainant told the League about the letter from the police. He said that it raised the question as to why the stewards had not let him speak to the sergeant.

14. On 22 January 2010 the complainant asked the IFO to investigate his complaint as he considered that the Premier League were making little progress with Wigan and were getting bogged down in the issue of whether the chant was racist under the law. In their comments to the IFO the League said that Wigan wished it to be known that they take

racist complaints seriously and have robust systems in place to catch persistent offenders. However, it had become necessary to eject the complainant as he was refusing to obey the instructions of the stewards. The League supported the club's actions and did not consider that a refund or apology was warranted.

### **The investigation**

15. The IFO reviewed all the correspondence between the complainant and the club, the Premier League, and the police. The Deputy IFO visited the Premier League and discussed the complaint. Although sympathetic with the situation, they were satisfied that Wigan had taken appropriate action when the complainant had consistently left his seat and had refused to return to it. Their view was that Wigan have a good record in dealing with such issues. The League had met with KIO, who were liaising with the Assistant Director of the UK Football Policing Unit.

16. The IFO and his Deputy visited Wigan and met with the club secretary, the safety officer, the steward team leader who had ejected the complainant, the police liaison officer who had been present at the match, and another police officer. There had been 171 stewards and 70 police officers at the game, attendance 20,005 including 4,811 away fans. Conduct was recorded as generally excellent but there had been persistent standing by Manchester City fans. One away fan had been arrested and seven ejected, mainly for alcohol related or abusive behaviour. The complainant's ejection was not specifically mentioned in the match report.

17. The steward, a man with seven years' experience and a qualification in crowd control, provided the IFO with a written statement. He said that he had ejected the complainant because of unreasonable behaviour in that he had left his seat and come down to the front of the stand on four separate occasions. The steward had told the police that the complainant wished to speak with them about what he regarded as racist chanting; having spoken to the police he had gone back to his seat. He had then come down again for the numbers of the police officers and stewards. The steward was adamant that when the complainant had come down a third time he had warned him that if he persisted he would be asked to leave the ground. When he did come down again the stewards took him to the exit, and took his details. He had asked to speak to the police again but, on the advice of police officers at the gate, the stewards had told him he would have to go to the police station to do so. The complainant had asked why he was being ejected; they said it was because of his unreasonable behaviour. The steward told the IFO that he had been worried that the complainant's actions would incite trouble; he had given him every opportunity to take his seat and watch the game.

18. The club officials said that they take racism very seriously and in other games there have been arrests for the offence. The officials said that ground regulations are on display at the entrance and in the concourse, and the complainant was warned that he must remain in his seat after the police opinion had been relayed to him. The police liaison officer had not been aware of any particular problems during the match, but some days later had learned of the complainant's ejection. The IFO viewed CCTV footage of the match but, because the cameras ranged around the stands, was unable to identify any of the occasions when the complainant had left his seat.

## Findings

19. In the face of accounts which conflict in some aspects, it is not possible for the IFO to determine precisely what took place in the events leading up to the complainant's ejection, in particular what was said by way of warnings, or reasons for the ejection. However, the main points are not in dispute. The complainant asked stewards to take action on what he regarded as racist chanting. They arranged for two police officers to speak to him but they, for whatever reason, did not take the action he wanted. Apparently the officers spoke to their sergeant, whose opinion was that the chant was offensive, rather than racist, but that does not appear to have been conveyed to the complainant at the time. It was only when the safety officer wrote to him that he learned of that opinion. Having returned to his seat, he again went to the front of the stand to get the numbers of the police and stewards. Stewards did not allow him further access to the police and asked him to remain in his seat but, although by his own admission he was aware that he might be ejected, he again went to the front of the stand to speak to the stewards. He refused to return to his seat and stewards ejected him.

20. Another fact which is not in dispute is that the ground regulations provide that any person failing to comply with the instructions of a steward or police officer may be ejected from the ground.

21. The IFO can well understand why the complainant was frustrated by what he saw as an unwillingness to act on his complaints, particularly when Wigan had encouraged action against racist behaviour. Even if the chants were not regarded as racist, there is little doubt that they were offensive. However, although the IFO certainly does not condone such behaviour, he accepts that to try to eject large numbers of offenders, or even to select one or two out of a group, has the potential to cause a public order incident. There can be no doubt that stadium safety is a matter of great importance and that there is a requirement that spectators should remain seated throughout a game. Despite his good intentions, the complainant was in contravention of the ground regulations in continuing to leave his seat, refusing to return to it, and not being prepared to comply with the instructions of the stewards; and, of course, as a sole "offender", ejecting him was unlikely to cause a public order incident. In such circumstances, however much sympathy the IFO might feel for the complainant, it is not possible to say that Wigan were not entitled to take the action which they did. **In the circumstances the IFO is unable to uphold the complaint.**

## Subsequent events

22. The Premier League told the IFO that the Assistant Director of the UK Football Policing Unit had asked the CPS National Football Lead for opinion on whether the Adebayor chant was racist or indecent, with a view to prosecutions. He had put the matter to a number of prosecutors who lead on football matters, asking them whether the chant was an offence under the Act, whether it achieved the legal threshold for prosecution, whether prosecution would be in the public interest, and the likelihood of achieving a successful prosecution in court. There were wide variances of opinion, with the consensus view of those in the middle ground being that the chant might constitute an offence, but that there was little chance of a successful prosecution. The Assistant Director had had further discussions with KIO centred around the need to educate and enlighten the majority of supporters, as opposed to seeking prosecutions, keeping in mind the negative impact of unsuccessful prosecutions. The Assistant Director also thought that there was some scope to take a further look at the Act relating to

racist/indecent chanting as it does not contain the word "obscene"; he believed that many of the more obnoxious chants fitted such a category. In light of all that information, the Premier League view – with which the IFO concurs – is that it is difficult for clubs to know how to react when there is not really any clear agreement on the matter from the police and prosecution services.

### **Conclusion**

23. While the IFO realises that the complainant is unlikely to be satisfied with the outcome of this investigation, given that the subject of his complaint was the failure of stewards to take appropriate action, he hopes that the complainant will find some consolation in the fact that the matter of unacceptable chanting is being given serious consideration.

**Professor Derek Fraser, Ombudsman**

**24 February 2010**

**Mr Alan Watson CBE, Deputy Ombudsman**