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THE INDEPENDENT  
FOOTBALL OMBUDSMAN

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**IFO COMPLAINT REF: 13/11**

**THE FA'S HANDLING OF A WARNING GIVEN OVER A  
NON-FOOTBALLING INCIDENT**

**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. Although the remit of the IFO does not cover County FAs (CFAs), in order to understand the issues giving rise to the complaint, it has been necessary to review the part played by the CFA. The IFO has received full cooperation from the FA in investigating this complaint.

### **The complaint**

3. A football referee complained that the FA had failed to explain why he had been issued with a severe warning over a non-footballing incident and had not dealt with his subsequent enquiries fully or correctly.

### **The facts of the case**

4. On 22 February 2013 the complainant submitted to the CFA a report of an incident which had occurred on 20 February in a supermarket. The complainant had been shopping with his mother when he encountered a man (Mr X) whom the complainant, in his capacity as a referee, had reported to the CFA in September 2011 for threatening and abusive behaviour at a football match. Mr X had been fined £120 by the CFA. Mr X also submitted to the CFA an account of the incident from his perspective. The respective accounts (which the IFO has seen) are markedly different, each blaming the other for instigating the altercation. Following the incident, the complainant's mother complained to the police about Mr X's behaviour toward her. The police told the CFA that they had warned Mr X not to contact the complainant or his mother again; the police had filed the matter as a "non-crime incident". The police told the CFA that they had had no dealings with the complainant since his mother had told them that he was going to report the matter to the CFA.

5. At the request of the CFA the FA's Discipline Manager advised, in light of the conflicting accounts of the incident, "I would be tempted to write to both to severely warn", given that it had been a verbal rather than a violent altercation. On 4 March the CFA's Discipline Manager emailed the complainant saying that his report had been passed to the FA at Wembley for guidance. She said "on this occasion we will not be taking any action". But she added "I must inform you that you have been issued with a severe warning as to your future conduct. .... The case will be held on file and it will be reviewed should any further incidents occur between yourself and Mr X". The CFA Discipline Manager wrote to Mr X in similar vein. That same day the complainant replied asking why he had been issued with a warning when he had submitted the report on the advice of the police. The CFA Discipline Manager replied "It was felt that you were as much to

blame for the incident as Mr X, I can only suggest that if you see him in the shop or at any football matches that you turn around and go in the opposite direction". On 6 March the complainant emailed the CFA Discipline Manager referring to a telephone conversation in which he said that she had told him that as the incident was not a footballing matter, it was outside the remit of the CFA. He asked for clarification and to appeal the decision. On 15 March the CFA Discipline Manager replied. She said that the FA at Wembley had made the decision that his complaint against Mr X was not a discipline matter. His case would be held on file, which was normal procedure, and not one he could appeal. She suggested that if he had any further incidents at work (he works in the supermarket) he should discuss them with the police, not the CFA. She said that the matter was closed and the CFA would not correspond further about it.

6. On 13 May the complainant emailed the FA. He said that the CFA had explicitly told him that he had been equally responsible for the incident and that the decision over his conduct had been made by the FA. He said that from speaking with the FA's Customer Relations Team (CRT), he understood that that was not the case and the decision had been taken by the CFA. He asked for clarification as to which body had made the decision and the basis on which it was made. On the following day a CRT officer replied confirming what the CFA had told the complainant about no further action being taken. The officer said "It is my belief that guidance from the FA was sought by the CFA."

7. On 24 May the complainant emailed the FA asking for clarification of the process and how, if no action was to be taken against him, he had received a severe warning and the threat of potential action against him in the future. That same day the CRT acknowledged receipt of the email, saying that it could take up to five working days to deal with it. On 14 June the CRT emailed the complainant saying that the "relevant department" were dealing with the matter. On 20 June the CRT emailed the complainant saying that the relevant department had confirmed that the information about him would not be held on a disciplinary record, but the correspondence had to be kept on file as a matter of record as to how it had been concluded. The complainant replied asking why the CFA had issued a warning as to his future conduct if it was not a disciplinary matter. The CRT told him that that was something he should take up with the

CFA. The complainant pointed out to the CRT that the CFA decision had been based on guidance from the FA and the CFA had refused to provide him with further information. The CRT replied that the case was not under their jurisdiction and they were unable to assist him further.

8. On 4 July the complainant emailed the CRT asking what was happening with his complaint as he had not received a reply to his email of 20 June. On 5 July the CRT replied saying that they had nothing to add to their previous reply. On 8 July a different CRT officer told the complainant that the CFA had investigated the matter and held the records of it. He added that non-footballing offences could still be governed by the FA "for instance rules such as E3 and E26. The fact that the incident was not football related may have had some bearing on their findings and the conclusion of the case – not to take any further action. But as previously mentioned the case was not under the FA's jurisdiction."

9. On 29 July the FA's Disciplinary Department wrote to the complainant saying that, in accordance with FA Appeal Regulations, an appeal could be lodged only for decisions imposing a ban of more than matches and/or a £25 fine. The FA was, therefore, unable to take his case any further. The CFA decision to issue a severe warning as to his future conduct remained.

10. Meanwhile, on 5 June the complainant had written to the IFO. He complained that the decision to give him a severe warning was wholly unreasonable and the FA had not investigated the matter thoroughly. He also understood that Mr X had not received any warning from the CFA. He asked why it had been necessary to record the incident when it had been deemed "non-footballing". He asked how, if he was to referee a match at which Mr X was present, he could "turn around and go in the opposite direction"; he would have to abandon the game. The IFO suggested that the complainant first asked the FA's Disciplinary Department to review his case. On 14 August the complainant wrote to the FA's Disciplinary Department asking for a review of his case. In reply the FA Discipline Manager said that while he was on leave a member of his team would get relevant correspondence and observations from the CFA and would start enquiries. On 30 August, after the complainant had asked for an update, the FA Discipline Manager told him that his case was with the FA Legal

Team seeking an opinion. On 2 September the FA replied referring to "the disciplinary matter that has been dealt with by the CFA". They repeated that his case could not be appealed, that the decision of the CFA was final and that the case was concluded from the FA's perspective.

### **The investigation**

11. The IFO carefully reviewed the correspondence from the complainant, the FA, the CFA and the police. The IFO and his Deputy visited the FA on 16 September and met with the Discipline Manager. It was he who had given guidance to the CFA in March, after studying the respective accounts of the incident and the information supplied by the police. His advice to the CFA was that both parties should be warned so as to prevent further problems. He explained that such a non-footballing incident was still a football matter as it related to a football incident (i.e. the previous misconduct cases) and is governed by FA Rule E3 because it stemmed from footballing activity in September 2011. Rule E3 states "A participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or us any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour." (FA Rule E26 relates to conviction for a non-football related criminal offence and is not appropriate to this case - see paragraph 8.)

12. The Manager said that he had not considered the nature of the offence warranting **formal** disciplinary action at that stage. He explained that a severe warning was the step taken short of the FA charging a person and was considered necessary in this case to prevent any recurrence of such an incident by either party, in which event **formal** disciplinary action would follow. Basically the message to both parties was "behave yourselves" and you will hear no more about it. The IFO queried with the FA whether the use of the word "severe" was too strong, given that the intention was simply to prevent any future such incidents, and particularly since both the complainant and Mr X considered themselves the aggrieved party. The FA view was that the word severe was appropriate for an incident which took place in the public domain (ie a supermarket), and which showed football in a bad light. The Manager said that he had referred the jurisdictional issue to the FA Legal Department (see

paragraph 10) for confirmation of his interpretation of the Rules, which they had done. The disciplinary record is used only for cases proven by a Commission; in the complainant's case his record was not affected and the matter would be referred to again only if a further incident occurred. Having given the advice, the Discipline Manager was satisfied that the CFA had acted appropriately in implementing it.

13. The Deputy IFO met with the complainant on 20 September. He explained what had happened in the supermarket. The police officer who interviewed his mother in her home had advised the complainant that, as a referee, he should report the incident to the CFA. He said that he would not have done so had he been in any way responsible for what had happened and he was aggrieved that that had resulted in him having been given a warning. He could not understand how he could be held equally to blame for the incident. He contended that the fact that the police had warned Mr X not to have further contact with him or his mother, and had not given the complainant a warning about contact with Mr X, strongly suggested that Mr X had been culpable.

14. The complainant said that he had been totally confused by the correspondence he had received from both the CFA and the FA. First, the CFA told him they would not be taking any action, then went on to give him a severe warning. From that exchange he had drawn the conclusion that the CFA were not taking any action against Mr X. He found bizarre the CFA advice for him to turn around and go in the opposite direction if he encountered Mr X again, given that he works in a shop, is a referee and Mr X manages two football teams. Despite asking for further explanation of that advice, the matter has not been addressed by either the FA or the CFA. He had also been given conflicting information as to whether the incident was a non-footballing matter and outside the remit of the CFA, and whether it was a disciplinary matter. He was concerned that his standing with the CFA will be affected adversely and the warning will count against him in his refereeing career. Originally he had intended applying for promotion in the current season, but in light of the ongoing problems with the CFA he had put the idea off, and had even considered giving up refereeing. (This was the second occasion of him having been

threatened in the shop. In 2010 he reported a player whom he had sent off and the CFA imposed a lengthy ban.)

15. The complainant was also dissatisfied with the CRT who had missed target times for replying to him and who had seemed simply to be trying to get rid of him by referring him back to the CFA, who had already declined to correspond further with him, rather than answering his legitimate questions.

## **Findings**

16. From the correspondence it is easy to see why the complainant was confused as to how he had come to get a warning for a non-footballing incident, which body had made the relevant decision, how the incident could not be disciplinary matter yet involve a severe warning and what that warning meant. To clear up any remaining misunderstanding, the FA's Discipline Manager decided that no charge should be brought against either party and suggested the CFA give both the complainant and Mr X a severe warning about future behaviour. In essence, that simply means that the matter will be kept on file without further action provided the warning is heeded. The IFO is satisfied that that was a course of action which the Manager was entitled to take and that he took the circumstances of the case fully into account in making his suggestion. The complainant later told the IFO that although he did not agree that he was equally responsible for the incident, he was content to accept that the decision to warn was made primarily with a view to prevent future incidents. His main frustration had been the belief that no action had been taken against Mr X.

17. The IFO can well understand how the complainant was confused by the correspondence he received. Much of that correspondence was from the CFA, which is outside the IFO's remit. **The IFO recommends that the FA discuss the matter with the CFA to try to improve the quality of correspondence in order to avoid any ambiguity over such matters, and to clarify their advice to the complainant about what he should do if he encounters Mr X while he is refereeing (see paragraph 5).** In addition, the FA's CRT were sometimes slow to reply to the complainant's enquiries and could have been much more explicit and helpful in explaining matters to the complainant, for example in outlining the relevance of FA Rule E3, rather than just quoting the

paragraph number; and in providing a definitive answer rather than saying "It is my belief ...." (see paragraph 6) which, not surprisingly, convinced the complainant that they had not considered the matter thoroughly. The CRT also kept referring the complainant back to the CFA (see paragraph 7), even though the CFA had refused to correspond further with him, despite the fact that some of his legitimate questions remained unanswered. The IFO appreciates that the complainant had justification for feeling that he was being fobbed off. The whole issue could have been nipped in the bud with an explanation of how the CFA had made the decision based on FA advice, how a non-footballing incident could be within the CFA's remit, and how it was not regarded as a formal disciplinary matter. It was also inappropriate for the CRT to persistently reply to the complainant as "Dear Supporter". He was not corresponding as a supporter and it would have been much more user friendly to have referred to him by name.

**The IFO recommends that the FA review the CRT's handling of the complainant's enquiries with a view to improving their own correspondence, and apologise to the complainant for the way in which the CRT had handled his enquiries.**

**18. Finally, the IFO recommends that the FA should assure the complainant that there is nothing on his disciplinary record which would adversely affect his refereeing career.**

### **Conclusion**

19. The IFO can well understand how the complainant was confused by the events in this case and how frustrated he was by the correspondence he received. The IFO has recommended that the FA apologise to him for the way in which the CRT handled his enquiries, that they take steps to improve the quality of correspondence in both the CRT and the CFA, and that they give him the assurance recommended in paragraph 18. Implementation of those recommendations will constitute an appropriate outcome to a justified complaint.

**Professor Derek Fraser, Ombudsman**  
**Mr Alan Watson CBE, Deputy Ombudsman**

**17 October 2013**