

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
Standards Institute
ADR Competent Authority

The Independent Football Ombudsman is approved by Government under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

IFO COMPLAINT REF: 19/28

A THREE YEAR BAN AT ARSENAL

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 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. In investigating this complaint the IFO confirms that he has received full cooperation from Arsenal F C.

The complaint

3. A long standing Arsenal supporter complained about his three year ban which he considered to be an unduly harsh sanction from the Club. He contended that the Club had not taken due account of the mitigating circumstances and the unenviable choices he faced when travelling as an away supporter in Germany.

The facts of the case

4. The complainant has been attending matches at Arsenal since 1976 and has been taking his son, now aged 19, to the stadium since 2004, during which time he has never been in any trouble either at football grounds or elsewhere. Both he and his son are season ticket holders. In September 2019 they attended the Europa League match at Eintracht Frankfurt. The complainant reports that they were seated close to the home supporters with whom they got on very well. He said that they exchanged friendly banter and he even bought drinks for Frankfurt supporters at half time. However, he was later involved in a minor altercation with a supporter who, completely unprovoked, spat at his son. At the end of the match he was astounded to be arrested by German police who separated him from his son and took him into custody. He was informed that he had been seen on CCTV making what was deemed to be a Nazi gesture. He disputed the allegation and asked to see the CCTV evidence but was told that for that to happen he would have to remain in custody overnight. Knowing that his son's phone was out of charge and fearful of leaving his son alone in a strange town far from the hotel whose details his son did not know, he accepted the offer to pay a fine to secure his immediate release.

5. In the wake of the match, on 22 September Arsenal received a message from the Club's dedicated police liaison officer about an incident he and fellow officers had witnessed at the Eintracht match. The officer made a witness statement that he had seen the complainant making a Nazi salute, for which he had been arrested. The Club applied its published sanction for "racist or other discriminatory behaviour", which was a ban for three years. On 23 September the Club sent a letter to the complainant informing him of the ban. Over the following days the complainant sent many messages, explaining the special circumstances which gave him no choice but to pay the fine in order to secure his release and reported that he had been informed that paying the fine was not an admission of guilt. He also cited American presidents who were photographed making similar outstretched arm gestures which were not deemed to be Nazi salutes. The Club's Appeal Committee met on 30 September and concluded that the severity of the offence and the strength of the police evidence meant that the ban could not be overturned and the appeal was rejected. As a goodwill gesture it was decided that one of the season tickets would be put into his son's name. On 9 October the Club informed the complainant of the outcome of his appeal. He requested that both tickets should be assigned to his son so that he could take a friend to matches and on 18 October the Club agreed, while reminding the complainant that he was banned from the stadium and was not allowed to use either of the tickets. On 7

November the complainant referred the case to the IFO via the Football Supporters Association (FSA).

The Investigation

6. The IFO carefully reviewed the documentation submitted by the FSA on behalf of the complainant, which included a witness statement from the person who had sat next to the complainant at the match and character testimonials saying that the complainant was not capable of racist behaviour. The Club provided a detailed report on the progress of the complaint, together with correspondence and a witness statement from the Police Liaison Officer. The Police Officer said that at the match his attention had been drawn to three Arsenal fans who were gesturing and swearing at German fans and making cut throat gestures and one finger salutes. The main agitator had been the man whom by then he knew to be the complainant. On two separate occasions the Officer saw the complainant make Nazi salutes; three metropolitan police officers also witnessed his actions. The police reported the matter to the German police, but the match commander did not want to remove English fans during the match. The German police reviewed CCTV which showed the complainant making Nazi salutes. At the end of the game the complainant's son, who had been seen swearing at German fans, was spoken to by German police, but he had not been making Nazi salutes and no further action was taken against him. The Police Officer said that the complainant could consider himself to have been treated leniently as making a Nazi salute is a criminal offence in both Germany and the UK. Both the complainant and the Club responded to subsequent IFO queries.

Findings

7. Arsenal are to be commended for having a clear statement about the sanction applicable to "the use of racist, homophobic, sexist or other discriminatory language/behaviour/chanting", which is a three year ban for a first offence. While the Club admits that these regulations are primarily for use in and around the Emirates Stadium, it believes they provide "helpful reference for breaches...committed at away matches". The Club's Membership Terms and Conditions require supporters "to behave appropriately at all matches" and the Club "does not tolerate abusive, discriminating or intimidating behaviour". Even if the complainant's assertion is accepted that paying the fine did not constitute admission of guilt, there is the compelling police evidence supplied by the Club's Liaison Officer. The IFO finds that the Club was well within its rights to apply the sanction.

8. The IFO notes that the Club has offered a goodwill gesture by allocating both tickets to the complainant's son, whereas they were both initially suspended. This is a very reasonable concession and suggests that the Club has taken some account of the circumstances of the case. The question arises as to whether the mitigating circumstances merit any further concession. Clearly a spitting

incident involving his son must have been upsetting, and the IFO sympathises with the complainant, faced with the dilemma of defending his innocence after a night in custody and leaving his son in distress or paying the fine to secure his immediate release and rejoin his son. It is likely that most people would have made that same parental choice. In addition, the complainant has had no opportunity to view or contest the evidence used against him. However, in the light of the damning information contained in the Police Liaison Officer's witness statement (which contradicts the complainant's assertion that his arrest was based on a single misinterpreted altercation), the IFO finds Arsenal were justified in applying the standard sanction in this case. In pressing for a reduction in the ban, the FSA have told the IFO that the complainant is prepared to undertake an educational session with FSA officials. Although finding no grounds for the ban to be reduced, the IFO considers that attendance at such a session would be of benefit to the complainant and successful completion might give grounds for the complainant to request a review of the length of the ban.

Conclusion

9. While the IFO sympathises with the complainant's difficult parental choice, which he felt gave him no option but to accept the charge and secure his release, the Police Liaison Officer's evidence is of critical importance. The IFO concludes that the Club was justified in applying its standard sanction and the complaint is not upheld.

Professor Derek Fraser, Ombudsman
Alan Watson CBE, Deputy Ombudsman

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