

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
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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: 20/01

A BAN AT SHEFFIELD WEDNESDAY

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 Sheffield Wednesday FC.

The complaint

3. A Sheffield Wednesday supporter complained, through the Football Supporters' Association (FSA), that the sanction imposed on him by the Club was not proportionate to the offence, which he had admitted and apologised for at the earliest opportunity. He maintained that the Club were not entitled to prevent him from attending away matches and were not entitled to share information about his ban with other clubs and the police.

The facts of the case

4. On 25 September the Club wrote to the complainant saying that during an investigation into his conduct while attending Club fixtures, he had been accused of using foul, obscene and aggressive language towards female members of staff at the home match against QPR on 31 August 2019. That was in addition to his unacceptable conduct at the away fixture against Rotherham on 28 August. The Club said that when he had met with them on 18 September, he had been shown the evidence and admitted the accusations against him. They said that the Club would not tolerate such behaviour, which was in breach of their high standards. He had clearly demonstrated that he was unable, or unwilling, to adhere to rule 7 of the ground regulations (that should have been rule 9). Consequently, the Club were banning him for two years and, if he attempted to buy tickets for any Club fixture, the ban would re-start from the relative date. They said that, for clarity, he was precluded from attending matches at Hillsborough or any regulated fixture involving the Club. The Club would also be informing South Yorkshire police of the ban and the police would be monitoring his potential attendance.

5. On the following day the complainant submitted an appeal against the ban saying that he felt that there were mitigating circumstances which had been overlooked. He said that at the Rotherham match two stewards had told him to sit down; when he had asked why he was being singled out, they had been unable to answer. Minutes later several stewards had ejected him, and his partner had been jostled, pushed in the back and forced onto the track around the pitch, before being grabbed around the throat by stewards. Several people had posted the incident on social media. On entering the ground at the following home game several fans had warned him that the stewards were out to get him. Stewards had appeared to be laughing at him and he saw red, totalling losing control of himself because of what had happened at the Rotherham match. He said that he could not condone his actions or bad language, which were out of character. He said that when he had met with Club officials he had apologised and explained that there would be no repeat of such behaviour. He said that he had followed the Club, and England, all over the world and had never caused any problems; he offered to provide character references. He felt that the ban of two years was unduly harsh. He said that he was confused by the reference to ground regulation 7 as he had never taken dangerous items into a stadium. He offered to undertake unpaid work around the stadium or in the community as a

gesture to show that he wanted to make amends for his poor behaviour, and asked the Club to suspend the ban.

6. On 22 November, after the complainant had attended a personal hearing at the Club, they notified him of the outcome of his appeal. Although the panel agreed that some consideration could be given to the mitigating circumstances he had explained, which related to the Club using the same security company with which the complainant had had trouble at Rotherham, the panel remained of the view that his actions on 31 August had been unacceptable and had no place in a family club. His comments had not only caused distress to the member of staff concerned, but no doubt had been heard by other fans, including children, making a negative impact on their enjoyment of the match. They also noted that he had been refused entry at the away match at Middlesbrough, which the panel found in clear breach of his ban. Having taken everything into account, the panel had reduced the ban to one year, commencing from the date of the Middlesbrough match. A condition of the reduction was that he would comply with a given list of conditions. On 29 November the complainant emailed the Club expressing disappointment with the outcome. He did not believe, given his previous good record and character, that the sanction was proportionate to the offence as they had no evidence that other fans had been distressed by his behaviour, that bringing "shame" on the Club was an emotive opinion unsupported by facts, and that they had no power to ban him from away games. In such circumstances it was not logical or reasonable to take into account his attendance at the away match against Middlesbrough. He asked them, given the number of games he had already missed, to suspend the remainder of the ban subject to his continuing good behaviour. He confirmed that he would abide by the ground regulations, would sign an acceptable behaviour agreement and would dress appropriately at all times within the stadium.

7. On 5 December the Club replied saying that the appeal panel had assessed not only the information he and eyewitnesses had provided, but also complaints from other fans following his eviction at the QPR game, which confirmed that there had been a negative impact on the enjoyment of other fans. The incident had been reported on social media due to a post he had made regarding his ban and comments he had made which had been published by the Sheffield Star. The panel had given a huge amount of consideration to the sanction and it remained the view that it was fair and proportionate. With regard to his visit to Middlesbrough, although it was for the home club to decide whether to allow entry, it was a condition of his ban that he did not represent the Club as a fan at any match. Any such attendance would result in his ban re-starting from the respective date. His ban, which the panel had reduced to one year, would accordingly start from the date of the Middlesbrough match.

Investigation

8. The IFO carefully considered the evidence provided by the complainant, the FSA and the Club. Under FA and EFL guidance clubs are responsible for the behaviour of their fans both home and away. Clubs generally have simple information agreements, and information shared with home police is generally shared with away police through the Police Liaison Officer network. Clubs cannot technically prevent a supporter from attending an away match; it is up to the away club, in light of the seriousness of the offence leading to a ban, to decide whether to refuse entry.

Evidence from the FSA

9. The FSA said that there was no doubt that the Club had a good and thorough appeal process in place, including allowing a personal hearing, albeit that the process is not clearly advertised on their website, nor do they have a pre-determined array of sanctions. The FSA reiterated the point that, beyond not selling the complainant away tickets, the Club could not ban him from away matches. The FSA contended that the Club could not impose a condition that the complainant would not represent them at any of their matches; also it was questionable as to whether the complainant actually "represented" the Club. The terms and conditions fans agree to in buying a season ticket put no onus on individuals to represent their clubs in any way, nor do clubs give supporters any capacity to do so.

10. The FSA said that it was reasonable to assume that the Club had taken into account the "negative impact on the Club" that the incident and subsequent media reports had on them in making their appeal decision. The FSA maintained that there was nothing in the complainant's contract with the Club which denied him the right to speak to the media whatever the circumstances; a club imposing sanctions should take into account only whether or not someone has breached the terms and conditions. If peripheral incidentals or consequences are to be taken into account they should be included in the terms and conditions, subject to them being compatible with consumer rights legislation.

11. The FSA also asked if the complainant is being banned from away games purely as a sanction, or because the Club have genuine concerns that there will be a repeat of the behaviour that led to the ban being imposed. If the latter, the Club should be able to provide reasoning and a risk assessment that brought them to that conclusion. If the former, the Club have no power to do so or to share information with other clubs. The complainant nevertheless accepted that, subject to strict application of data protection legislation pertaining to the transferring of sensitive and personal data, the Club could inform an away club that he is banned from their stadium and leave it to the away club to make an informed decision as to whether or not to allow entry; that is what appeared to have happened when the complainant went to Middlesbrough. The complainant did, however, question the validity of the Club informing the police of his ban

with the intention that they "monitor" any attendance at away matches and report back any breach of the condition imposed by the Club.

Evidence from the Club

12. The Club provided the IFO with copies of contemporaneous statements by the female steward involved, and a second female steward who said that she had subsequently been verbally abused by the complainant. Much of the language allegedly used by the complainant was vile and personal. The Club also provided a copy of a report sent to them by Rotherham United surrounding the circumstances of the complainant's ejection; aggression, prolonged abuse of stewards and a refusal to follow instructions were common themes throughout the lengthy report. The incident had also caused other fans to turn on the stewards and one steward had been removed for his own safety. The Club also provided evidence from other fans who had complained about the complainant's behaviour at the Rotherham, QPR and other matches.

13. The Club said that the appeal panel had comprised four senior members of staff who had not been involved in imposing the initial ban. They said that the Club take very seriously discrimination, bullying and abuse of any nature and the complainant had not disputed that he had shouted not once, but a whole torrent of foul and abusive comments to a female steward. He had not known her and there had been no previous interactions between them. That incident had occurred only three days after the complainant had been ejected at Rotherham for similar abusive behaviour involving stewards. The regret expressed by the complainant did not excuse his behaviour, which had humiliated and deeply distressed the lady. The Club did not want to see such scenes in the stadium or want them to be witnessed by other supporters, some of which were children. The Club said that the panel had not paid attention to media activity and would have done so only if it had been harmful to others or unlawful. While banned, the Club did not want the complainant to attend any Club function or match. Although they did not have the power, other than preventing the purchase of tickets through them, to ensure that he did not attend away matches, they had explained to him that if he is found to have attended away matches, his ban would re-start.

14. The panel considered that the sanction was befitting of the complainant's behaviour and the sanction was both a punishment for what had occurred and a preventative measure to try to prevent any recurrence either home or away. The Club added that, through his historical media activity, the complainant has a small following of fans and the Club were concerned that if he continued with any level of threatening or abusive behaviour, more fans would follow his example. The Club have a responsibility for the behaviour of their fans; misbehaviour by fans could result in a sanction against the Club; in that sense travelling fans are representing the Club. The FSA contend that it is unlikely that the FA would take action against a Club for the behaviour of a single supporter.

Nevertheless, FA Rule E20 makes clear that a club's fans must behave in an orderly fashion and refrain from, among other things, abusive, insulting or provocative words or behaviour while attending a match.

15. The Club said that sharing of information with other clubs and the police is encouraged by the EFL to help ensure the safety, security and enjoyment of other fans. They would be falling down on their duty were they not to warn of potential problems.

Findings

16. The IFO considers first the complainant's contention that the ban was not proportionate to the offence. As far as the length of the ban is concerned, the IFO considers the complainant fortunate not to have received a longer ban in light of the seriousness of the abuse directed at the female stewards, and the fact that he had also been ejected at the Rotherham match when abuse of stewards had also featured. To his credit, the complainant has admitted to, and apologised for, the behaviour which led to the ban; and the Club appear to have accepted that and taken account of the complainant's loyalty in accepting his plea of mitigation and halving the length of his ban.

17. What is more problematic for the IFO is the sanction banning the complainant from attending away matches and the FSA's contention that he does not represent the Club. Clearly the Club can legitimately refuse to sell him away tickets, but they are unable to prevent his attendance away; that is a matter for the home club. The question is, therefore, (and this is closely linked to the matter of "representation") whether the Club are entitled to impose a condition which will result in the length of the complainant's sanction being extended should he attend an away match. Clearly the complainant does not have a formal representational role; however, given that the Club are responsible for the behaviour of their fans at away matches, they are entitled to be concerned, in light of the complainant's known behaviour, about the potential for repeat performances which would bring the Club into disrepute and risk a sanction against them. In such circumstances, the IFO is satisfied that the Club's fears were well founded and that they were entitled to impose such a condition.

18. As far as the sharing of information is concerned, in line with recommended Safety Officer advice and practice, clubs do share information about risk supporters, particularly if a club has imposed a sanction. The IFO sees that as reasonable provided the reasons for the imposition of a ban have been thoroughly investigated and are reported accurately, so that the away Safety Officer can make a properly informed decision on whether to refuse entry to a fan. The complainant has, in fact, accepted that (see paragraph 11). The FSA have argued that this raises important issues relating to data protection legislation. If the complainant believes that his rights under that legislation have

been compromised, then that is a matter which should be submitted to the Information Commissioner for determination.

19. The IFO recommends that the Club publicise the appeal process on their website and consider the introduction of a schedule of official Club sanctions for particular offences.

Conclusion

20. The IFO cannot uphold the complaint that the sanctions imposed were not proportionate to the offence and is satisfied that the Club were entitled to share information about the ban with other clubs. The IFO hopes that the complainant adheres to the conditions surrounding the reduced ban and returns to support the Club once the ban has expired.

Professor Derek Fraser, Ombudsman

6 February 2020

Alan Watson CBE, Deputy Ombudsman