

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
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IFO COMPLAINT REF: 20/12

AN ALLEGATION OF UNFAIR TREATMENT IN THE FA DISCIPLINARY PROCESS

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. The IFO must make clear that in investigating this complaint he has received full cooperation from the Football Association.

The complaint

3. A grassroots referee complained that he was unfairly treated by the FA's disciplinary process when it was found that an aggravated breach of FA rules

was proven against him and he subsequently lost his appeal. He alleged that there were shortcomings in the process which was prejudiced against him.

The facts of the case

4. The complainant is an experienced local referee who in April 2019 acted as the senior assistant referee (linesman) in a hotly contested grassroots cup tie. As such, he was responsible for control of the respective benches to ensure that no more than two persons from each was standing. There was a serious altercation between the teams, several red cards were issued and the match was eventually abandoned. In the days following the match one of the teams complained to the local County FA that the complainant had used racist language towards their members, who were predominantly drawn from the Asian ethnic minority community. On 30 July a County Anti-Discrimination Disciplinary Commission found proven the charge against the complainant of making a comment which was a "reference, whether express or implied, to a person's ethnic origin and /or race and/or nationality". The Commission's sanction was a suspension of 49 days, the payment of a fine and the requirement to take a mandatory racial awareness course.

5. The complainant appealed on the grounds that he had not been given a fair hearing, that the rules were misinterpreted and that the Commission came to a decision which no reasonable body could have reached. The Appeal Panel dismissed each of the complainant's assertions and the sanction was upheld. Claiming that he had done nothing wrong, the complainant refused to pay the fine or do the awareness course. He was informed that the FA process was complete and there were no further avenues for him to pursue within the FA's disciplinary process. The complainant reported that the team manager continued a public campaign, drawing attention to the racial discrimination which he alleged the team had suffered. In April 2020, a year after the original match, the complainant sent a video extract of the manager's statements to the FA, which, he claimed, showed that the case should be reopened, as it cast doubt on whether he had ever made the offending remark. The FA confirmed that the "decision is final and binding" and advised the complainant that he could refer his case to the IFO for review. He did so on 17 April.

Investigation

6. The IFO carefully reviewed the complainant's submission, with its several attachments, and the evidence provided by the FA, which included the 49 page report of the Disciplinary Commission. In normal times, it would have been the practice for the IFO to meet with the FA to discuss the case. Travel restrictions precluded a meeting taking place and so the IFO's dialogue with the Head of Judicial Services was conducted by telephone and correspondence. The Head explained that the case had been heard by two independently appointed tribunals, with experienced chairs. While the complainant had cited bias towards him from the CFA, in fact the CFA did not hear the case, but simply presented

the charge, which was then considered by the Commission members appointed by the FA. All the members who sit on Panels and Appeal Boards are trained specifically in dealing with discrimination and undertake an assessment before they are able to sit at hearings. The Head clarified that the appeal stage did not involve a re-hearing of the case, as its purpose was to review whether the correct procedure had been followed and whether the outcome was fair and reasonable. The FA was satisfied that the case had been properly conducted and that there were no grounds to reopen it. In the interests of transparency he was content for the IFO to review the case "within its remit".

7. In response to IFO questioning, the complainant denied ever saying, "*Your kind always make noise*", (as charged) since it was a form of speech he did not use. He may have said words such as "*You* (sic) should sit down", but this was justified by the frequent incursions - some 20 to 30 times - on to the pitch and such remarks were addressed to both benches. He hailed from the Irish Republic and he admitted that he had a strong accent, which might have led to misunderstanding what he had said. He told the IFO that he was prone to use Gaelic words which could have been mis-heard. He alleged that the Chair of the Commission showed prejudice by putting the alleged words to him before they had been presented in evidence and by giving insufficient attention to the conflicting reports of when the offending remarks had been made. The Appeal Panel had refused to look at a witness statement he had obtained and had never informed him why his appeal was rejected. He refused to pay the fine or do the course because he believed that he was blameless and that it was he, "a white Irishman" who had suffered racial discrimination.

Findings

8. It has been explained to the complainant that the role of the IFO in FA disciplinary cases is limited. The IFO has no remit for grassroots football or the activities of the CFAs. Nor is a reference to the IFO to be deemed a further appeal stage and the IFO does not "second guess" the decisions of properly constituted tribunals acting within their powers. The IFO can review the role of the FA itself, to consider whether due process was followed and whether the procedure was fair and reasonable for the complainant. The IFO cannot comment on what was said at the Commission hearing and it published a detailed account of its proceedings. That in turn was considered by the Appeal Panel, duly appointed by the FA. It was not the role of the Panel to say whether a differently constituted Commission might have come to a different conclusion, nor to consider fresh evidence, but to judge whether the grounds for appeal submitted by the complainant had merit. The Appeal Panel found that the complainant had been given ample opportunity to put his case to the Commission and that the proceedings were in line with regulations and the correct charge considered. In particular, the Panel rejected the claim that the Commission had reached "a decision which no reasonable body could have reached". Indeed, once the Commission had decided that on the balance of

probability the complainant had spoken the words alleged, then there was no other reasonable finding than that the charge against the complainant was proven. The IFO cannot envisage any other meaning to the term "*Your kind*" than a reference to the ethnic identity of the team. The IFO finds no shortcomings in the FA disciplinary process in this case.

9. The complainant told the IFO that he is seeking to clear his name. He feels extremely bitter that his reputation as a referee has been tarnished and that he has been made the scapegoat for the team's allegation of discrimination. He resents being deemed a racist, particularly galling since his own spouse is from an ethnic minority and he has mixed race children and grandchildren. The IFO believes that his bitterness over the outcome may have distorted his perception of the process. He has not in fact been charged with racism. The Commission addressed this point head on:

For the record, we wish to state that we were not judging whether or not he is a racist, but we were merely required to decide on the evidence before us and on the balance of probability, that on this occasion he made a comment that is improper and the comment included the reference to a person's ethnic origin and/or colour and/or race and/or nationality

The IFO recognises the complainant's strength of feeling over this matter, such that he has chosen to give up refereeing, but, as explained earlier, the IFO makes no finding on the judicial decisions in this case. The IFO does not believe that the complainant has been pilloried as a racist but, on the evidence available, and on the balance of probability, the Commission found proven the breach of the rules by the complainant having made an improper remark "*on this occasion*". Had he paid the fine and done the course he would have been able to resume his refereeing career. Perhaps that is still possible.

Conclusion

10. The complainant remains aggrieved and still believes that he was treated unfairly by the FA's disciplinary process. It was not the role of the IFO to review the judicial decisions, but to investigate whether due process was followed and to confirm that the judgements were made by properly constituted tribunals. The IFO has found no shortcomings in the role of the FA in implementing its normal disciplinary procedure. The IFO wishes to stress that the process did not brand the complainant as a racist and hopes that the complainant can now derive some comfort from the IFO's confirmation of that outcome.

Professor Derek Fraser, Ombudsman

13 May 2020

Alan Watson CBE, Deputy Ombudsman