

# IFO

THE INDEPENDENT  
FOOTBALL OMBUDSMAN



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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: 20/19**

### **DISPUTES AT GILLINGHAM**

#### **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 cooperation from Gillingham FC.

### **The complaint**

3. A long-standing Gillingham supporter complained that the Club had treated him unfairly by refusing his request for a refund for missed matches and by banning him for the 2020-21 season without good cause. A further element in his complaint was the failure of the Club to respond to his messages over several months

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

4. The complainant is a Gillingham season ticket holder of 20 years standing, whose immediate family are also season ticket holders. When football was abandoned in March 2020 due to the pandemic, the complainant expected that the Club would make some arrangements for refunds for the matches missed. He became aware that other clubs were contacting supporters, but Gillingham did nothing. On 18 June the Club Chairman issued a statement about the Club's position but made no mention of refunds. The complainant followed up by writing to the Club to enquire what the position was regarding refunds. His initial letter of 29 July elicited no reply, but his repeat letter of 13 August was responded to by the Chairman, who said that his priority was "saving the club and giving our many true and understanding supporters a club to support". The complainant found the response unduly confrontational and responded to the Chairman and others, suggesting that they might like to use social media to communicate with supporters. The Chairman responded on 3 September saying he did not run the business by social media and a further exchange the same day led the Chairman claiming that the complainant had distorted his comments. On 4 September the Chairman announced that the complainant's application for the current season was being cancelled and a refund cheque was delivered to his home address. The complainant felt "devastated" by being excluded from watching the team he had supported since childhood. Letters from the complainant asking the Chairman to reconsider on 4 September and 13 October were unanswered. Following guidance in the Club Charter the complainant emailed the supporter liaison officer on 2 November, who replied that he would speak to the Chairman and then respond. No reply was received to the message nor to a follow up message on 9 November. The complainant then wrote to the Club CEO and again received no response. On 2 December, having previously discussed the case by phone with the Ombudsman, the complainant referred his complaint to the IFO for investigation.

### **Investigation**

5. The IFO carefully reviewed the 35-page dossier submitted by the complainant, which contained all the correspondence between the parties. The complainant stressed that he had been banned from having his season ticket for no good reason and that his attempts to get the matter resolved had been prevented by the Club's failure to respond to his many messages. For its part the Club replied through the Chairman, referring to the "stream" of emails, (already in the IFO's possession). In a phone conversation with the

Ombudsman, he explained that he had taken great exception to the complainant's accusations that he treated fans as "cash cows" and that he had been untruthful about his use of social media. He declined to provide the kind of detailed report which clubs usually send to the IFO in response to complaints, pointing out that he was "too busy and working too many hours to save our Club for the benefit of all fans to waste any further time" on the complaint.

## Findings

6. Regrettably, this dispute has been bedevilled by misunderstanding and miscommunication, exemplified by both parties seeking redress for perceived offences and by each regarding the other as the guilty party. The complaint originated in a not unreasonable request for the Club to clarify its policy on refunds for the matches unplayed in the truncated 2019-20 season. As he had had previous dealings with the Chairman (who had invited him to contact him directly with any concerns) the complainant wrote to the Chairman personally rather than use social media to raise the issue. He pointed out that the recent Club statement about the serious problems facing Gillingham did not mention refunds. Using perhaps ill-advised wording, the complainant suggested that sending an email on this topic "*would show that we are not just seen as cash cows, something which people are believing at the moment*". It could be argued that the complainant was citing his perception of general opinion rather than aiming the accusation personally. The Chairman took a dim view and took great exception to the "cash cow" remark. Relations deteriorated further when the complainant suggested that the Club should use social media to explain its position, to which the Chairman replied that he did not use social media to run the Club. The complainant regarded, "*your suggestion that you do not follow social media as a blatant lie*", adding that to ignore social media "*highlights how out of touch the gills are*". These remarks did nothing to reduce the tension between the parties whose outcome is discussed below.

7. Given the impact of the pandemic on the financial problems facing clubs, the IFO takes the view that normal consumer rights have to be considered in the context of the parlous state of club finances. Cases considered by the IFO reveal that EFL clubs have offered a variety of options, including donating any refunds to the club or academy or club charity; credit towards future season tickets and cash refunds. Gillingham FC has explained to the IFO that refunds will not be given for 2019-20 "at the moment", pending a clarification of the Club's financial position. No doubt many Gillingham supporters are willing to forgo refunds to secure their Club's survival, but such loyalty should not be taken for granted. The supporters have not been offered any of the options commonly found elsewhere. **The IFO recommends that Gillingham makes a clear public statement of what it intends to do with regard to refunds for matches missed.** The IFO has been assured that the Club will consider special refund requests where there are exceptional personal factors involved. It is to be hoped that the clarification of the Club's position will resolve any future disputes. If

not, disgruntled supporters, such as the complainant, can, if they wish, take action in the Small Claims Court to seek a refund.

8. The deterioration of the relationship between the parties led to the Chairman informing the complainant that the cost of his 2020-21 season ticket was being reimbursed and his application cancelled, *"because I don't in any way wish to feel that by holding your money I would be treating you like the 'cash cow' you suggest"*. The complainant deemed this to be a ban for the 2020-21 season, imposed without justification. In this, as in some other instances, the IFO accepts that football clubs are private entities which are within their rights to exclude named individual supporters without giving reasons. However, given that supporters are the club's lifeblood and that many, like the complainant, make a lifetime emotional commitment to their clubs, it is to be hoped that the clubs' powers to exclude are used sparingly and for good cause. Despite the ill-judged wording used by the complainant, the block on the season ticket purchase seems to the IFO to be somewhat excessive. The Chairman denies that the complainant has been banned from the stadium and hence in the unlikely event that supporters return to the Priestfield stadium before the end of the season, then the complainant would be entitled to purchase matchday tickets. His complaint about the current season has to be mitigated by the fact that he has received a full refund. In response to the IFO's query, the Chairman has confirmed *"subject to my receiving an apology...for his accusations he can purchase a Season Ticket for next year."* The complainant is on the record as wishing to "metaphorically" shake hands and draw a line under this dispute. The IFO welcomes the Club's willingness to restore normal relations. The IFO notes that the complainant has met the condition by sending a written apology to the Chairman.

9. The final element in the complaint is the failure of the Club to respond to several messages submitted in the later stages of the complaint. As has been clear from the foregoing, in the initial stages there were prompt, if growingly hostile, exchanges between the parties. Once the season ticket decision had been taken the correspondence was one-way only. The complainant is justified in citing the Club Charter and wrote to both the supporter liaison officer and the CEO without receiving a substantive reply. Accepting that relations had effectively broken down, it would still have been courteous of the Club to respond to the later correspondence, if only to issue a termination letter, which could have advised the complainant of his right to refer the case to the IFO. The IFO reminds Gillingham FC of its obligation to fulfil its charter commitments.

## **Conclusion**

10. It is always regrettable when a loyal supporter and their club fall out to such an extent that radical action is taken against the supporter. This dispute might have been avoided if the Club had clarified its refund policy for the 2019-20

season and if the complainant had use more temperate language. The complainant, as a long-standing season ticket holder, had the reasonable expectation that he would be allowed to purchase his ticket for the 2020-21 season, though his disappointment is mitigated by having received a full refund. As a result of the IFO involvement the reinstatement of the complainant is now a possibility.

**Professor Derek Fraser, Ombudsman**

**29 January 2021**

**Alan Watson CBE, Deputy Ombudsman**