

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: 22/04

A BAN AT WEST HAM UNITED

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 the IFO's investigation of this complaint, cooperation from West Ham United FC has been less than expeditious, with long delays in responding to the IFO's enquiries.

The complaint

3. A West Ham supporter complained that he had been unjustly banned by the Club after he had inadvertently been caught up in a disturbance at Leeds United following a last minute winning goal. He further complained that his subsequent appeal against the ban had not been given due consideration. Making representations on the complainant's behalf, the Football Supporters' Association (FSA) told the IFO "The main point of concern is that while [the complainant] was offered the opportunity to appeal by WHUFC we do not believe the process was in any way meaningful and that [the complainant's] appeal quite simply was not given real or proper consideration".

The facts of the case

4. On 18 October 2021 the Club wrote to the complainant informing him of their decision to ban him from the London Stadium, and from all away matches and Club events, for the rest of the season, following events at Leeds United on 25 September when he was arrested for assault. They said that the ban would be reviewed pending the outcome of the police investigation. The Police Dedicated Football Officer for Leeds United confirmed to the FSA that there was no police investigation and that information was passed to the Club. On 20 October the complainant appealed against the ban. He said that the matter had been dealt with on the day by way of Community Resolution, in his case a simple apology and West Yorkshire Police considered the case to be closed. He said that he had been a West Ham supporter all his life and a season ticket holder for almost ten years. He attends all home and many away games and has never been involved or associated with any trouble previously. He said that he was not writing to justify the alleged incident, but to put an accurate account of the day's events that were, at the time, unjustified. As the winning goal was scored by West Ham in the closing seconds of the game, the complainant states that the crowd surged forward and he was lifted onto the barrier; with the forward momentum from the surge, he was going over the barrier and tried to stop himself from falling. By then the stewards and police officers were in front of the West Ham supporters to keep them in the stand at the end of the game and he tried to push against them to support himself. He said that he was pulled out of the crowd by the officers while, at the same time, West Ham supporters were pulling him back toward the stand. Several officers pinned him to the ground face down and handcuffed him. He did not resist, and had no clear recollection of assaulting a police officer, which must have happened during the melee. The police had held him at the back of the stadium for about an hour. He thought that the officers involved recognised that any assault had been accidental; hence they dealt with the matter by way of a simple Community Resolution. The officers had told him not to worry as he had been ejected to calm the situation. They had even commented that he would not be banned. The complainant hoped that the Club would understand that he was simply in the wrong place at the wrong time.

5. On 3 December the Appeal Reviewer wrote to the complainant saying that he had reviewed details of the incident at Leeds and had noted the following points:-

- "You were arrested for assaulting a police officer.
- At the police station you received a community resolution and supported the police officers who investigated the incident.
- You were in the middle of a large crowd movement by West Ham fans where many of them invaded the pitch. Police officers and stewards had to take serious action to stop the situation escalating. Your actions hindered that operation.
- You are an experienced fan and have attended many stadiums throughout the country and must be fully aware how seriously West Ham see any involvement in this type of behaviour.

From my investigation I believe your behaviour was unacceptable and constitutes a criminal offence. It was also a clear breach of the behaviour expected by West Ham FC.

Normally I would expect a ban for such behaviour to be 3 or more years. I believe the stadium ban imposed on you for the rest of this season was correctly justified (sic) and should continue."

6. On receipt of that letter, the complainant replied saying that he did not believe that his appeal had been considered in any meaningful way. and would be grateful if they could advise whether they would consider his letter as a further appeal. He pointed out that he had not been charged with any offence; he had received a community resolution and supported the officers who looked into the incident. He was not taken to the police station; the entire matter had been dealt with within the confines of Elland Road. For the Reviewer to state that there had been an investigation was exaggerating what had taken place as the situation had been resolved very quickly by way of a simple apology. The complainant said that a Community Resolution is an informal, flexible response to a reported incident; it does not constitute a criminal record and is not recorded on the Police National Computer. He did not feel that the Reviewer realised that assaults against emergency workers, including the police, are taken extremely seriously and had there been a deliberate assault on a police officer, the complainant would surely have been charged with such an offence. The "serious action" taken by police and stewards comprised them doing no more than pushing fans back into fans falling forward, an action in itself dangerous. The complainant failed to see how the Reviewer could have concluded that his actions hindered that operation, or that his behaviour constituted a criminal offence.

7. The complainant asked if the Reviewer had viewed CCTV of what happened or had spoken directly to any police officers or stewards involved in the "serious action" to ascertain what his part in the dynamic actually was. He was also keen to understand exactly what criminal offence he had committed and on what basis the Reviewer had drawn such a conclusion. He believed that his original appeal more than adequately explained what had happened and, if any assault on a police officer had occurred, it had been completely inadvertent. The complainant also said that the Reviewer had taken no account of how he had been treated by the police and the injuries he had sustained when they bundled him to the ground. He said that if the Reviewer had access to material such as CCTV, steward or police reports that clearly identify him, he would like copies of

that material; his request should be treated as a formal Subject Access Request (SAR).

8. The Club replied that all SAR requests should be sent to the Club's Data Protection Officer or Supporter Services as advertised in the Club's privacy policy. The information put before the Reviewer had included a police issued photograph, the crime reference number, the offence (assaulting a police officer), and the outcome (community resolution). (The Club have since confirmed that there was no police photograph of the complainant at the time of the incident.) The Reviewer's comment about attendance at a police station appeared to be a miscommunication – the Reviewer was referring to the report from the police station. The Club advised the complainant by email that they appreciated that this may have been confusing, but it was a "small point that would not have any bearing on the outcome of [the] appeal". [NB The IFO does not regard this as a "small point". It is incorrect basic information which has the effect of undermining the whole process.] The Club acknowledged the complainant's views on Community Resolution, but pointed out that the police had not deemed as appropriate the less serious outcome of "no further action". The ban to which the police had referred would have been a Football Banning Order, which is quite distinct from a Club ban. The Club understood that the complainant had sent a letter of apology to the police officer involved in the incident. The outcome of the seasonal ban had been upheld and the appeal process was complete.

9. The complainant replied pointing out that he had specifically asked for copies of any material that the Reviewer had relied on, not a list of the documents he had referenced. He asked the Club either to provide copies of such documents or advise what exemptions they were relying on if not minded to disclose them. The complainant did not recall a personal letter of apology to the officer concerned, nor could he find any evidence that he sent one. [Another example on incorrect basic information.] While the Club said that it was a "miscommunication" that the Reviewer was under the impression he had been taken to a police station, that made two pieces of information held on him which were untrue. Given that, he considered it entirely legitimate to question the veracity of the information acted upon in reaching the various conclusions the Club had made about his case. Even taking into account that it was a busy time for the Club, the complainant found it really disappointing that he had been dealing with the matter since October.

The investigation

10. In their comments to the IFO on the complaint, the Club were satisfied that the ban was justified by the evidence and had been upheld on appeal. The Club told the IFO that they are in the process of reviewing their offences and sanctions policy and have committed to discussing this with the West Ham United Supporters' Trust and the FSA ahead of publication on their channels before the start of the 2023/24 season. The review will include the appeals process, which is being conducted by an independent party this season.

11. The IFO and Deputy held a virtual meeting with the Club's Head of Operations, the Head of Supporter Services and the Supporter Services Manager. The IFO expressed concerns about the appeals process, which the Club acknowledged is simply desk top consideration of information already provided by all the parties. In the complainant's case, the arrest for assault was paramount in the Reviewer's consideration of the appeal. The Club have no direct relationship with the independent Reviewer, who is hired by the stadium operator. (West Ham is a tenant and therefore do not own the stadium.) The IFO welcomed the fact that the Club are to hold a comprehensive review of their offences and sanctions policy, including the appeals process, although this clearly does not come soon enough for the present complainant.

12. The IFO tried to obtain relevant CCTV footage from Leeds United in order to identify the complainant, who had provided a photograph of himself, but that did not prove possible. However, Leeds did provide the photographic evidence attached to this report showing the gap between the seats and the barrier, and the height of the barrier the complainant crossed to arrive on the pitch.

Findings

13. The appeal was the last stage in the process, immediately prior to the IFO's involvement. It was that appeal that should have tested whether the ban was fair in the first place. It is the appeal (not the appropriateness of the ban) that the IFO shall deal with here. For the complainant to succeed in this case therefore, the IFO must be satisfied on the balance of probabilities, that the complainant did not receive a fair appeal hearing following the Club's decision to ban him.

14. It is well observed that a meaningful appeal can help to cure defects in the original process. A robust appeal should leave the parties satisfied that all relevant aspects have been considered objectively and that any decisions made are fully justified. This helps everyone involved to move on with certainty. Even the perception that an appeal could have been unfair, is sometimes enough to undermine its reliability.

15. Although there are no grounds to believe that the Reviewer acted in bad faith in this case, there do appear to be deficiencies with this appeal. In reassessing the case, it would have been reasonable for the Reviewer to have discussed the points made by the complainant in mitigation or other factors that might be relevant. For example, that the complainant apologised soon after the offence was committed, that he has no antecedents that bring his character into disrepute and that he sought to explain his version of events at Elland Road. The appeal fails to consider and/or dismiss any mitigation put forward by the complainant. This omission has the potential to undermine the fairness and balance of the appeal, failing therefore to weigh up the competing views of the parties. If these matters were in fact considered, they ought to have been included in the appeal document by the Reviewer, so that the complainant could understand their reasoning.

16. It is not clear on what evidence the appeal concludes that the complainant's behaviour was "unacceptable" or how his behaviour "hindered" the police and stewards' operation. It would have been fair and reasonable for the Reviewer to

include the evidence that he was expressly relying on when arriving at these conclusions. The complainant made a very clear request for the information that the Reviewer relied on in rejecting his appeal and that has not been provided, despite the obligation on the Club to respond to SARs in a timely fashion. The Club have confirmed to the IFO that they have complied with the SAR request. The IFO would like to remind the Club of the importance of adhering to their GDPR obligations. Furthermore, the IFO considers it wrong that, in fans seeking to appeal, as in this case, clubs do not proactively disclose information relating to their decisions, leaving the fans to rely on SARs to make their appeals meaningful. **The IFO recommends that Clubs, as a matter of course, disclose reasons for the imposition of sanctions.**

17. Both parties should reasonably expect that the information contained within the appeal document accurately describes what happened. In short, if the Reviewer wishes to rely on information, they should take steps to ensure that the same is accurate. The appeal document contains an inaccuracy which could have the undesired effect of damaging trust and confidence in the reliability of the decision. The appeal document is limited in detail and therefore this error is amplified. The IFO notes that when the complainant drew the Club's attention to this matter after the appeal, it commented that it was a "small point that would not have any bearing on the outcome of [the] appeal". Upon enquiry from the complainant, it might have been appropriate for the Reviewer to have expressed that opinion, but not the Club who are supposed to be independent from the appeal. Although the IFO does not believe that the Club acted with any bad intent in making this comment, it unnecessarily blurs the lines.

18. There is a legitimate expectation that the credentials of the Reviewer are made known to the parties. Not least this can assist with transparency and often helps to engender trust in the process. The appeal document does not make clear the credentials of the Reviewer in this case, such as their relationship (if any) with the parties. It is recommended in all future appeals that this is addressed.

19. The IFO reiterates that it does not believe that this appeal was conducted in bad faith and it recognises the merit in an independent appeal process, but the appeal was conducted in a perfunctory way. The IFO further welcomed the Club's decision to review its appeal process in the future and hoped that revised, more satisfactory, arrangements could be put in place as soon as practicable. The Club subsequently told the IFO that they had consulted with the FSA and their Supporters Trust on a new offences and sanctions policy, and had proposed a change to their appeals process which those bodies were happy with. The FSA confirmed to the IFO that the Club had consulted with them and the Trust and between them they had made numerous recommendations that, in the main, the Club had accepted verbally. As of 13 August (a month on from that meeting) the FSA were still waiting to see the suggestions incorporated into a new policy. The IFO has asked the Club for details. However, the commitment to review the appeal process is of no assistance to the complainant in this case.

20. In light of the comments above, the IFO had reasonable grounds to believe that the outcome of the appeal was unreliable. In subsequent discussions, the Club maintained that the Reviewer had been satisfied from the police evidence that a criminal offence had been committed, but the IFO remained of the view that there had not been a fair hearing. In the circumstances, **the IFO recommended that the Club arrange for the appeal to be re-heard independently, taking into account the IFO's comments above.** The complainant's ban has, of course, by this time expired and he has signed a behavioural agreement which has enabled him to renew his season ticket. However, **if the re-hearing results in the ban being lifted retrospectively, then the IFO recommends that the Club compensate him for the matches he missed and apologise for the time taken to resolve the matter and the resultant stress caused.**

Conclusion

21. The IFO was not satisfied, on the balance of probabilities, that the complainant received a fair hearing of his appeal following the Club's decision to ban him. The IFO has accordingly recommended that the Club arrange for the appeal to be re-heard independently.

Kevin Grix, Ombudsman

15 August 2022

Alan Watson CBE, Deputy Ombudsman



