

# IFO

**THE INDEPENDENT  
FOOTBALL OMBUDSMAN**



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**IFO COMPLAINT REF: IFO113/114**

## **A 12 Month Suspension Involving Two Supporters at Newcastle 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, The Premier League and The English Football League) 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 Club in replying to enquiries.

## **The Complaint**

3. An incident on 12 November 2022 transpired outside a pub ("the Pub") in the vicinity of the Ground. Two individuals who have raised their disputes as cases with the IFO (referred to as "Supporter 1", "Supporter 2" and collectively "the Supporters") were involved in this incident, following which they were both convicted of an offence contrary to Section 4A of the Public Order Act 1986. As the cases have been brought simultaneously by a representative of the Supporters ("the Representative"), it has been decided to deal with both cases in one single adjudication since this is the most efficacious and proportionate means to review the cases. Where circumstances do differ, this will be highlighted by reference to the relevant individual.

4. The Representative has set out the case on behalf of the Supporters in an email to the Club, dated 2 June 2023. The Applications provided by the Supporters to the IFO broadly concur with this summary to which the IFO will therefore refer as a summary of the issues under consideration.

### **Email dated 2 June 2023: Summary of events and complaint**

5. The Representative outlines how the Supporters believe that the Club has *"failed in their duty to follow proper procedure, applicable professional codes and follow recognised regulations and advice of the Club's Police Liaison Officer, as directed by the Football Intelligence Unit"*. The Supporters further contend that two individuals at the Club dealt with the issue and that they have not encouraged *"openness and transparency, and for ease have referred [the Supporters] to the Independent Football Ombudsman without exhausting the Club's complaints procedure which [the Representative] ha[s] now been directed to by the police and the Football Supporters Association. It is clear in reading the guidance that the employees complained about have not followed the Club's Complaints Procedure."*

6. The email explains that the Supporters *"were convicted of a low level public order offence from an incident which occurred on 12<sup>th</sup> November 2022"* prior to the match. It references conduct on the pitch between the players after the match to which the Representative refers as relevant as there was no consequence to that for the players involved. It is noted that the Club have challenged the relevance of the conduct of the players on the pitch and disagree with the Representative's

contention in this regard. As the IFO has not relied upon this in coming to its conclusions, no further comment will be made on this submission on behalf of the Supporters. The Representative states that the Supporters, *"whilst sitting in the [Pub], eating a meal and enjoying a few drinks with family, friends and children, the pub was attacked by offenders unknown who used weapons to smash the windows and attack those within the premises. My clients, completely unaware of what was happening, heard an autistic youngster screaming for help. Themselves covered in glass from the windows left their seats to defend themselves and others within the premises. Whilst outside they both accepted by way of a guilty plea, that their actions momentarily went beyond self-defence, having seen red at what had happened. They accepted their behaviour broke the law, but upon calming down a matter of seconds later, they returned to their seats and the incident came to an end"*.

7. The Representative states that *"It was accepted in the Magistrates Court during cross examination of the Officer in Charge of the case that [the Supporters] were within the [Pub] which was the subject of an unprovoked attack, where windows were smashed, and normal members of the public were showered with glass. After the incident the pair returned to their respective parties. It was confirmed under oath that the incident was not a meeting of two sets of risk supporters, or known football hooligans, and that the actions of [the Supporters] was a moment of madness. It was further accepted that neither of my clients had been involved in any similar episode of low level disorder previously and it was accepted that no police were present at the scene and that therefore it was a leap of faith to conclude that the matter was relevant to football. It is also confirmed that there is no evidence that this incident took place at a time when either [the Supporters] were travelling to or from [the Ground], and the incident happens inside licensed premises. Neither [the Supporters] have been banned from the establishment by the establishment, despite the licensee being aware of the incident, and [the] Council, have not taken any action against the licensee"*. However, upon the Supporters pleading guilty an ancillary order was made of a Football Banning Order ("FBO") preventing them from attending regulated football matches in England and Wales and from entering the city centre on a match day. It is noted that the Club refute that the Supporters were not travelling to or from the Ground, given the location of the pub to the Ground and have noted that both season tickets were scanned at

the turnstiles on the day. For the purpose of clarification, the submissions are made by the Representative and have been considered and weighted in more detail below.

8. This decision was appealed as the Supporters considered that it was disproportionate based on the circumstances outlined and given the fact there was no evidence that the incident was relevant to the regulated football match taking place later in the day at the Ground. The Court of Appeal at [the] Crown Court overturned the decision of the lower court and Recorder Nolan KC quashed the order. The Representative confirms that *"during his remarks in open court, he concluded that despite a match taking place in close proximity later that day the incident had no correlation to football. Their Appeal against sentence was successful and the Football Banning Order was quashed. Both clients were told by the Court that they were free to attend football matches as before without consequence"*.

9. Following this, representations were made to the Club for the interim bans which had been put in place to be lifted, and for the Supporters' season tickets to be reinstated. The Supporters received confirmation as follows:

*"Just by way of update and clarity, both [the Supporters] remain subject of Club bans at this time. The police and CPS are in discussion, in relation to why there wasn't any police representation at the appeal process, and I have referred your enquiry to our legal team for advice. Once I have any further update, I will be in touch."*

The Representative states that *"having discussed this matter at length with CPS lawyers and the Officer in Charge of the case, we are satisfied that at no stage were the Club told that any such discussions could change the outcome of the appeal procedure, and in fact the police liaison officer told the Club that Northumbria Police's stance was that the case was at an end, and there was no reason whatsoever to leave a stadium ban in place as the court has made a legitimate finding. It is known from discussions with the Football Intelligence Unit that the police have told the club that both men should not be banned from [the Ground]"*. This information has been provided by the Representative and whilst the IFO understands it remains in dispute between the parties, it will be considered and weighted in the IFO's findings below. It is understood that this was the subject of a data subject

access request, however, the Supporters have stated that the text is redacted and therefore they cannot confirm what was said.

10. It is asserted that a decision was made *“without due process or legitimate appeal process” in a ‘behind closed doors’, untransparent manner”*.

Correspondence makes reference to a referral to the Club's Legal Department, however the Representative contends that this did not occur.

11. The decision was issued to the Supporters identifying the following reasons for the imposition of a full season ban (season 2023/24) for both home and away matches:

“Reasons

*The terms and conditions (relevant section show below) make it clear that Season Tickets can be withdrawn for those supporters travelling to a match, who are fighting or engaging in and/or inciting violence.*

*This incident took place very near to the stadium on a match day and was between the two rival sets of supporters. Both men are season tickets holders and both season tickets were scanned at the turnstile that day.*

*They have both been found guilty at court, of violent conduct.*

*If your clients are not happy with the outcome, the matter can be raised with the Independent Football Ombudsman”.*

12. The Representative has clarified that *“both clients were convicted of a section 4a of the Public Order Act Offence which essentially amounts to disorderly behaviour towards another intending to cause harassment, alarm or distress. The pair pleaded guilty at the first opportunity to do so. The CPS charged them with a low level offence, and had this been considered more serious, the pair would have been charged with an Affray or Violent Disorder. They were never charged with anything more serious, and this is important as had this been dealt with by the police as violent conduct (Affray/Violent Disorder), both men would have been facing a prison sentence of 18 months or more. This was never a consideration for the Court”*.

13. The Representative has outlined the following complaints which they asked the Club to respond to which include the process which they deem to have been *“impractical and unfair”* and made *“without consideration of the full facts of the*

case including the binding decision made by a Court of Law based on the individual circumstances." Further *"the decision was taken contrary to advice from the police, or without taking proper legal advice"*. The Representative stated: *"the decision is perverse and has no support from recognised professional bodies i.e. the police, and in terms of a ban from other stadia, is not binding"*. Further, the Representative identifies that the Club do not have a *"clear, cogent, fair or reasonable appeals process"* and that a *"decision has been made by a deputy security officer and then ratified by another more senior Security officer, both of whom work closely together"*. The Representative feels that the Supporters have been denied a face-to-face appeal in which they could have responded and provided mitigation. It is denied that the behaviour breached any of the terms and conditions of the season ticket as it does not amount to violent conduct.

14. The Representative makes reference to the fact that the Supporters have been subject to an interim ban from the Ground since December 2022. It was also stated in that email that should their season tickets be reinstated for the forthcoming season, they would provide assurances about their behaviour.

15. In summary, the Supporters have stated that the Club: *"have not complied with their own complaints procedure. Two individuals acting in their capacity as 'Head of Safety and Security' have made their own decisions based on information provided at the outset of the case that this incident related to football, when the Court of Appeal concluded that it did not. The individuals concerned have not given the matter full consideration, and have not dealt with the matter in a way befitting of an elite Football Club. The Complaint has not been dealt with fairly, and the outcome is perverse under the circumstances"*. The Supporters deny that they are in breach of the terms of their season ticket, further highlighting that *"it is unjust and unfair, given that the Club, and the police are aware that many supporters within the stadium have previous convictions, and the Club do not have a policy of conducting a DBS check on season ticket holders, therefore I am being victimised due to negative publicity..."* It is noted that the Club have stated they do not believe DBS checks to be relevant.

## **The Complaint**

16. The IFO understands that the Supporters are challenging the process and the way in which the decision was reached and considered, specifically that:

- The FBO was quashed on the basis that the incident was unrelated to football.
- The view of the Police and Court were not taken into account by the Club; now the FBO has been quashed, they should be free to attend football matches.
- The Club did not follow the Complaints Procedure.

The process was handled behind closed doors and was not transparent; the Supporters were not given an opportunity for a face-to-face hearing in which to state their case and challenge any evidence relied on by the Club.

Thereby, the Supporters have concluded that they were not dealt with fairly and the outcome was perverse.

## **The Response**

17. The Club does not feel the complaint to the IFO is justified and that it has followed its Complaints Procedure in dealing with this matter. The Club has stated that their Complaints Procedure has four stages, as follows:

Stage 1: Informal resolution;

Stage 2: Formal investigation;

Stage 3: Appeal; and

Stage 4: The Independent Football Ombudsman.

18. The chronology provided by the Club broadly concurs with that outlined in detail by the Supporters above. The Club refers to the circumstances arising out of an *“incident of violence between multiple supporters of a visiting club and supporters of [the Club]”* and that it was *“in the immediate vicinity of [the Ground] on the day of the Premier League match between those Clubs”*.

19. With regards to the interim ban, the Club have confirmed that temporary bans were imposed on the Supporters' attendance at matches pending sentencing for that offence. The Representative wrote to the Club on 10 January 2023 requesting

that the ban be reviewed pending the outcome of the sentencing hearing, however on 11 January 2023, the Club informed the Representative that the ban would remain in place and would be re-assessed following the conclusion of the court proceedings. The Club consider this to be a response to Stage 1 of the process "*in which a practical way forward was articulated*". It is noted that on 11 January 2023, the Representative responded asking how they could appeal, but no further complaint or appeal was received at that time.

20. Following termination of the FBO, the Representative wrote to the Club on 15 May 2023 and requested that the Club's decision be "reversed". On 15 May 2023 and again on 18 May 2023 the Club confirmed it was considering the matter. Then, on 30 May 2023, the Club informed the Representative that, notwithstanding the termination of the FBO, the Supporters would be subject to a full season ban for the season of 2023/24 for both home and away matches, in accordance with the Club's Season Ticket Terms of Use. The Club confirmed this was Stage 2 of the Complaints Process.

21. An email was sent on 31 May 2023 in which the Representative outlined their client's case and raised its concerns regarding due procedure by the Club in considering that case in an email dated 31 May 2023. In reply on 1 June 2023, the Club explained that the internal procedure had been exhausted and informed the Representative of their client's right to refer the matter to the IFO. Further correspondence was exchanged and the complaint was acknowledged on 6 June 2023. An update was requested by the Representative on 16 June 2023, in light of the new season ticket sale date. The Club replied on 19 June 2023 to confirm the ban remained in place but that the Supporters' season tickets would not be re-sold until a formal response had been provided to the complaint from the Club in due course. A further email was received on 20 June 2023 and the Club issued a final reply on 29 June 2023 confirming that the full season ban for 23/24 is upheld and that the Complaints Procedure has been exhausted. The Club have stated that this was Stage 3 of the Complaints Process.

22. The Club believes that the consideration of the correspondence and complaints followed by the Club has been fair, reasonable and proportionate throughout, and has followed the first three measured stages of assessment set out at paragraph 2 of the Complaints Procedure. In summary:



Stage 1 - the decision to maintain a temporary ban during the currency of the court proceedings was taken by the Safety and Security Department.

Stage 2 - the Safety and Security Department consequently elected to uphold the ban, as was notified to the Representative on 30 May 2023.

Stage 3 - following the further representations by the Representative in June 2023, the Club's Legal Department has undertaken a full review of the correspondence, the complaints contained within the correspondence and, the facts of this matter. Following the initial review by the Legal Department, the matter was then further escalated within the Legal Department. The Legal Department then wrote to the Representative accordingly on 29 June 2023 to confirm that the Club's decision remains to uphold the ban, and referred the Representative to the next available stage in the Complaints Procedure, the IFO. The IFO has noted in that correspondence that the Club confirmed that the purchase and cancellation of a season ticket is at the Club's discretion which it had exercised in these circumstances. The Club have further referred to this in its response to the IFO, that is the Club reserves a general discretion in its Complaints Procedure: *"The Club reserves the right to refer issues raised under the Complaints Procedure to alternative processes where these are deemed more appropriate to the issue under consideration."* Further, the Club have added that *"should the IFO believe this complaint has not been dealt with in compliance with the procedure set out above, which the Club believes it has, the Club is entitled to deal with the issues raised at each stage of this matter to alternative appropriate internal processes"*.

23. It is noted that the Supporters refute any breach of the Season Ticket Conditions of Issue and 10 Year Season Ticket Terms & Conditions which are applicable to their season tickets. The Club have stated the Supporters are in breach which gives them the right to withdraw that ticket accordingly. The Club's decision in this regard is based upon its 22/23 Season Ticket Conditions of Issue which, the Club states, provide expressly at clause 8.1.9 that a season ticket may be withdrawn for a serious offence being committed whether at the Ground, or, travelling to or from a Match to include fighting or engaging in and/or inciting violence. Further, and notwithstanding paragraph 3 above, having checked its records, the Club confirms that the Supporters are also bound by its 10 Year Season Ticket Terms & Conditions which provide expressly at clause 8.1.12 that the Club shall have the right to "cancel

*and withdraw your Season Ticket for any serious... breach of these Terms & Conditions and the following actions shall constitute serious breach: ... any other criminal offence in or near the Ground". Further, the Club have stated that, (i) both Supporters were on 10 year deals and were in direct breach of contract in respect of which the Club can cancel and withdraw the ticket (ii) a criminal conviction does not need to amount to 'violent conduct' for it to constitute a breach of the Club's terms and conditions, s4A of which relates to use of "threatening, abusive or insulting behaviour ... or disorderly behaviour" causing "harassment, alarm or distress".*

The Supporters have been convicted of a criminal offence which took place near the Ground, which involved violent disorder and have, the Club state, therefore committed a breach of each of clause 8.1.9 of the 2022/23 Season Ticket Conditions of Issue and clause 8.1.12 of the 10 Year Season Ticket Terms & Conditions. The Club is therefore satisfied that it is entitled to withdraw the 22/23 season ticket. The Club has elected to uphold the attendance ban for season 23/24 which, in the circumstances, it considers to be fair and proportionate to the offence committed and the breach.

24. In its further comments, the Club have asked the IFO to note that it does not tolerate violence and the decision has not been taken lightly, having received due consideration. The Club refute that the incident was not relevant or connected to football, stating that it was not involved in the criminal proceedings and so cannot comment on what may or may not have been said regarding (amongst other things) the termination of the FBO. However, the incident (of which there is video footage accessible on YouTube which has been supplied to the IFO for consideration) was, in the Club's opinion, *"a violent affray between [the Club's] supporters and the supporters of the visiting club which took place outside a known [Club] supporters' pub in close proximity to the stadium and prior to kick off of the Premier League match between those two clubs. Whilst the circumstances are such that a Football Banning Order against [the Supporters] is no longer in place (on which [the Club] can make no comment) the incident was indisputably related to football, and the conviction of the Public Order offence against [the Supporters] for their involvement in this incident remains"*.

25. With regards to the suggestion that the Club has acted contrary to Police advice in arriving at its decision, the Club has stated that the Police do not advise it as to

who it should or should not admit to the Ground or why. The Club explained that it and the Police work where necessary in close co-operation for the safety and security of all supporters and visitors attending games, reiterating that a decision was made on the basis of the breaches of the season ticket terms and conditions.

26. Following the end of the 23/24 season, the Club has stated that the Supporters will be able to buy general sale tickets and attend matches, and they will be able to apply for a new season ticket along with other supporters if there are tickets available. They will lose the loyalty points attached to the previous season ticket and the seats they previously occupied.

### **The Investigation**

27. The IFO has spoken to the Club's Legal Department and the Representative individually, by virtual means.

28. The IFO has reviewed the correspondence and documentation supplied which is referred to in detail respectively in the Complaint and Response sections above. The IFO will not comment exhaustively on each point. The IFO has also reviewed the YouTube video of the incident which the Club has sought to rely upon and additionally the correspondence with Northumbria Police which confirms that the incident was considered "*violent disorder*".

29. The IFO has also had regard to the relevant terms and conditions and Complaints Processes provided by the parties.

30. The IFO has shared the Club's response with the Representative at their request and has noted the comments with regards to confirming the identity of those involved at the Club. For the reasons set out below and notwithstanding the Supporters' contention to the contrary, the IFO is satisfied that the Legal Department have had involvement, however the IFO will not be naming any specific individuals or job roles as part of this adjudication. With regards to any comments upon the content of the data subject access request, the IFO is not the relevant forum for these to be addressed to.

## **IFO Findings**

31. The IFO has noted the chains of correspondence following the termination of the FBO on 12 May 2023 when the Club was contacted on behalf of the Supporters requesting that the Club's decision be reviewed and the Supporters' season tickets and associated loyalty points be reinstated. On 15 May 2023 the Club confirmed that it was considering the matter, but then on 30 May 2023 the Club wrote, confirming that, notwithstanding the termination of the FBO, the Supporters would be subject to a full season ban for the season of 23/24 for both home and away matches, in accordance with the Club's Season Ticket Terms of Use. Subsequent correspondence was entered into regarding the process and the Club explained that this was an internal procedure which had been exhausted as outlined above.

32. Correspondence regarding the application of the Complaints Process has also been noted and the IFO has been sighted on this. It is understood that this is a three-stage internal process that has as its final (fourth) stage, referral externally to the IFO. However, upon speaking with the Club, the IFO also understands that the complaints process is separate to the appeals process and whilst the Club has provided information that confirms the appeal itself has been through a three-stage internal process, it is noted that this sits separately from the Complaints Process which the Club has confirmed cannot be used as a means of appeal. The IFO has considered the process that has been undertaken by the Club and the comments from the Supporters regarding the transparency surrounding this.

33. Whilst the IFO is satisfied that the matter appears to have received due consideration, having a published process is considered good practice, ensuring all parties know what to expect from the process, including timescales and criteria that will be applied. Further, it is noted that there was no opportunity for a face-to-face hearing where the Supporters could have made their case, responded to specific points and offered mitigation. When questioned specifically on this point, the Club has stated that it does not publish an appeals process to enable flexibility on a case-by-case process. It is noted to this end that the Complaints Procedure states "*the Club reserves the right to refer issues raised under the Complaints Procedure to alternative processes where these are deemed more appropriate to the issue under consideration*". It is noted that appeals under the sanctions regime are not specifically excluded from the Complaints Procedure and it appears that the Club

have used the Complaints Process as a way of documenting the way in which it has considered the appeal, which has caused some confusion. If the Complaints Process and the Appeals Process are separate, the IFO considers that this should be made more explicit and the IFO will be recommending that the Club gives consideration both to adopting a specific appeals process and to publishing more information around its approach to the consideration of sanctions, for transparency. The potential perception regarding the fairness of the process undertaken is exacerbated by the lack of clarity and transparency surrounding which process was, in fact, undertaken. The IFO considers that, in the circumstances, consideration of other factors would have been helpful and may have removed the need for escalation to the IFO, for example during the investigation the Supporters could have been interviewed to get their side of the story, present evidence, such as that they may have obtained from witnesses, and provide assurances regarding future behaviour.

34. Notwithstanding, the Club issued a final reply on 29 June 2023 which, by reference to an email of 30 May 2023, confirms that the full season bans for 23/24 were being upheld. The Club has confirmed that the matter was considered by the Safety and Security Department and the Legal Department prior to reaching a final decision on the matter. The Supporters' comments regarding the personnel involved at the Club are duly noted and whilst the IFO will not be providing any personal data, it is satisfied that the Legal Department had involvement in the decision making process, at what the Club are describing as stage 3. The IFO has interviewed members of the Legal Department as part of its investigation process. In its rationale for upholding the ban, the Club cite a breach of the Season Ticket Conditions of Use and 10 Year Season Ticket Terms and Conditions which the IFO has had regard to. The Club have noted that for such breaches it has the right to withdraw that ticket. In particular the Club refers to the Season Ticket Terms and Conditions, clause 8.1.9 that a season ticket may be withdrawn for a serious offence being committed whether at the Ground, or, travelling to or from a Match to include fighting or engaging in and/or inciting violence and also the 10 Year Season Ticket Terms & Conditions which provide expressly at clause 8.1.12 that the Club shall have the right to "cancel and withdraw your Season Ticket for any serious... breach of these Terms & Conditions and the following actions shall constitute serious breach: ... any other criminal offence in or near the Ground".

35. Having considered the ticketing terms specifically, the IFO has noted that the Season Ticket Terms and Conditions consider it a breach if a serious offence is committed at or on the way to the Ground which, arguably, is not the case here. The court were entitled to consider whether this amounted to a 'violent affray' and concluded otherwise. The Representative has sought to rely on the opinion of the Police, however as the information received as a result of the subject access request was inconclusive, the IFO is unable to consider this due to the lack of objective evidence. However, the IFO has sought counsel from its Advisory Panel and understands that the offence was not one which would usually be considered "a serious offence". The IFO considers that the Club could have been clearer in explaining how the ticketing terms applied. In addition, whilst it is noted that a criminal offence was committed for the purposes of the 10 Year Season Ticket Terms and Conditions, the drafting of these terms is very wide and, if the Club wishes to rely on them, they would be interpreted narrowly against them. Further clarity as to the types of offences that this is designed to cover would therefore have been helpful.

36. Notwithstanding the above, the IFO acknowledges that that the sanction is one which the Club are entitled to impose, having considered a strict application of its terms and conditions. However, the IFO has also noted that the Supporters were subjected to an interim ban which was significant in length and which was referenced in mitigation which suggested that time served – i.e. the balance of 2022/23 season - was sufficient punishment. Objectively, the IFO notes that although the Club is entitled to apply their own sanctions and review the incident in light of their terms and conditions and are not bound in this instance by the determination of the criminal court when it lifted the FBOs. Objectively, conclusions drawn by a court can be persuasive and, as the court was assessing the same incident and whether it was deemed appropriate that the FBO was terminated, it brings in to question the reasonableness of the Club's position that the decision of the court was discounted as not being relevant, particularly as to be able to refuse to impose an FBO, the judge must state their reasons in open court. This includes either an explanation as to why the offence was not football-related, or if it was, why a FBO will not prevent future football-related disorder. Even though the Club is entitled as a private business to control the threshold of its Ground and ultimately can decide who it admits, the IFO recommends that it exercises this control in a way that is demonstrably fair. This duty of fairness should appropriately extend to giving proper

consideration to all evidence available and it remains unclear why the findings of the court were discarded as irrelevant and not at least considered as grounds for mitigation. The IFO considers that an in person hearing would have given the Club the opportunity to respond specifically regarding its deliberations in this regard.

37. The IFO has sympathy with the Supporters' frustrations in this instance, given that a tribunal of fact came to a different decision upon consideration and subsequent quashing of the FBO, however, the IFO has insufficient jurisdiction to compel the Club to overturn the suspension as its remit is only to make non-binding recommendations in this regard. The Club have also provided a detailed response to the complaint and have satisfied the IFO that the matter has received due consideration, however the IFO cannot make a determination as to whether the Club has followed any process as nothing is published in this regard and the Club have been clear that the appeals process is not the same as the Complaints Process. The IFO considers there is a possibility that this could be perceived as having been detrimental to the outcome. **The IFO therefore, recommends that the Club reviews its processes with a view to adopting and publishing a process which is a more transparent approach, based on the suggestions made above. The Club should also consider an independent element which will provide an additional layer of objectivity when considering matters such as these. If the Club accepts this recommendation, the IFO would encourage that the present case be re-evaluated in line with the published process, which should consider a face-to-face meeting and explicit consideration of any mitigation, at the earliest possible opportunity.** There are several examples of good practice as to which the IFO is willing to engage with the Club.

38. It is noted that following the end of the 23/24 season, the Supporters will be able to buy general sale tickets and attend matches, and will be able to apply for a new season ticket along with other supporters if there are tickets available. They will lose the loyalty points attached to their previous season ticket and the seat they previously occupied. **The IFO considers therefore that there is an opportunity for the parties to engage positively in view of an ongoing relationship and recommends that both parties give consideration to a good behaviour agreement or the like which could be persuasive in the Club's deliberations as to the proportionality and sufficiency of the current period of the ban enabling them to reinstate the Supporters' respective season ticket allocation.**

## Summary

39. The IFO has had regard to the response provided by the Club, a copy of which has been provided to the Representative, and has noted that notwithstanding the Club's contention that Complaints Process sits separately to the application of the sanction for the breach of the Season Ticket Terms and Conditions, an internal policy has been followed in making the decision to apply and uphold the sanction. The difficulties of a solely flexible process, reliant upon discretion, is that there is nothing for a supporter to measure their expectations against and the IFO has made a recommendation accordingly in order to cure this deficiency.

40. In reaching its conclusions, the IFO has reviewed the comments made by both parties and have sought counsel from members of its Advisory Panel, Alan Watson CBE, Mark James, Professor of Sports Law at Manchester Metropolitan University and Head of Research at Manchester Law School and Sue Watson.

## Comments of the Parties on the Draft Adjudication

41. Both Parties have made comments on the draft adjudication which have, where appropriate, relating to clarifications or where the IFO believes amendments to the original are reasonable based on the submissions of the relevant party, been incorporated into the text above. In addition, the parties have raised the following for additional consideration.

Submission by the Club:

42. The Club have asked it to be noted that the previous behaviour of one of the Supporters was taken into account when considering the current sanction, specifically relating to two issues:

1) Supporter 1, the Club state, *"was identified and reported to have engaged in 'foul, abusive and homophobic language. [A]complainant also states that he was slapped about the head by the occupant of [Supporter 1's] seat during the game"*.

2) Supporter 1 was also alleged to have attempted to change his season ticket to a different name four days after the incident which the Club believe was a failure "to disclose directly relevant and material information to the Club in the correspondence relating to the reason for the requested change to the Club in



writing", concluding that Supporter 1 would have known about the status of the criminal matter when they made the request. Whilst the IFO notes both points, which were discussed briefly at the call with the IFO during the investigation stage, it is noted that this was not included in either the Response Form submitted to the IFO or the sanction letter to the Supporter. The IFO considers that this could have been addressed in a meeting with Supporter 1 to provide greater context surrounding the application of the sanction, although it is also noted that the same sanction was applied to Supporter 2 where the same concerns did not appear to be present.

43. The Club have asked it to be noted that *"In light of (i) the nature of the incident, (ii) the immediate proximity to the stadium (the pub is directly opposite) and the attendance of both complainants at the match that day, (iii) the evidence reviewed, (iv) the guilty plea and criminal conviction (v) previous Stadium conduct record of [Supporter 1], (vi) the attempts by [Supporter 1] to change the season ticketholder name and (vii) the fundamental direct breaches of each of the Club's 10 year contracts and season ticket terms and conditions, it was considered that an appropriate sanction was a one year Stadium ban"*. The Club, therefore, is clear that it did take the findings of the court into account, however, the decision was made against the backdrop of the matrix outlined in this paragraph 43. The IFO reiterates that this being the case, there was opportunity to make this more explicit.

44. The Club have commented on the suggestion of a good behaviour agreement as follows: *"It is difficult to reconcile a 'good behaviour' agreement approach with (i) the previous conduct complained of, (ii) the video footage observed and (iii) a guilty plea and criminal conviction"*. The IFO, however, considers that the circumstances are such that a good behaviour agreement would be suited to provide certainty to the Parties regarding expectations going forwards. The IFO will be reiterating this recommendation in its conclusions.

45. With regards to the Complaints Process, the Club have also reiterated that *"It is reasonable that the Complaints Process should NOT be capable of being invoked post-outcome of an appeal as a means of having the same case heard again simply because the outcome is not favourable to the complainants. That would be an abuse of process"*. The IFO notes and accept this, however, the IFO reiterates that it appears that the Club have used the Complaints Process as a way of documenting the way in which it has considered the appeal, which has caused

some confusion. If the Complaints Process and the Appeals Process are separate, the IFO considers that this should be made more explicit and the recommendations outlined above remains on that basis.

Comments Made by the Representative:

46. Following circulation of the draft, the Representative asked for sight of the YouTube footage referenced. The Representative, upon viewing the footage, confirms that it is not something he has seen before, he is unable to directly identify his clients in the video and questions why this has been used to justify banning his clients.

47. The Club have commented that "*the Club's decision to ban was based on the criminal conviction (by guilty plea) and the corresponding breaches of the contractual terms. The footage, while contextually relevant of the nature of the incident, is not determinative nor is it to be misconstrued as the basis on which the Club's decision was reached*". The IFO can confirm that it viewed the footage for completeness as this was referenced in the Club's response, however this was not considered as a basis for any recommendation and was used to provide context only.

### **Conclusion**

48. Having considered the complete case file, including the comments made by the Parties following circulation of the draft adjudication, the IFO makes the recommendations set out in paragraphs 37 and 38 above. The IFO acknowledges and welcomes that the Club has expressed an interest to engage more broadly with examples of best practice.