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THE INDEPENDENT  
FOOTBALL OMBUDSMAN

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**IFO COMPLAINT REF: 14/15**  
**A FIVE YEAR BAN AT ARSENAL**

**The Role of the Independent Football Ombudsman (IFO)**

1. The office of the IFO was established by the three English football authorities (The Football Association (FA), The Premier League and The 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 operates a system of non-binding arbitration. 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 confirms that in investigating this complaint he has received the full cooperation of the Arsenal Football Club and the Premier League.

### **The complaint**

3. An Arsenal supporter who has followed the Club since childhood complained that he was given a wholly unjustified five year ban, following what he deemed to be a non-football related public order offence. He argued that the Club had acted on what he contended was tainted police advice without fully investigating his case. He further argued that he had been given no opportunity to present his side of the story, nor a right of appeal, and that the Club had not responded properly or promptly to his correspondence, nor to the submissions made in his support.

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

4. On the evening of 17 November 2012 the complainant attended a birthday celebration for a friend at a pub in North London, which is a favourite venue for Arsenal supporters. Some hours earlier (12.45 kick-off) he had attended the Arsenal v Spurs match. Banter at the party got somewhat out of hand and a disturbance occurred, during which he punched someone which led to the police being summoned. Around 9pm he and a lawyer friend were arrested, then charged and released on bail. No proceedings followed for the lawyer, but the complainant was required to attend court in May 2013. On the advice of his lawyer and believing this to be a minor public order offence, the complainant pleaded guilty to "using threatening, abusive and insulting words or behaviour with intention to cause fear or provoke violence". He was given a 12 week suspended prison sentence and required to do 180 hours of Community Service. The complainant reports that a specific police officer (not the arresting officer but a member of the police liaison team for the Club) indicated that a Football Banning Order would be sought, but in the event no such order was issued by the court.

5. Subsequently in June the same police officer approached Arsenal FC with the recommendation that the Club should impose a ban because of this conviction. [*The complainant asserts that this request to the Club was a direct consequence of the police failure to secure a Football Banning Order*]. As a result of the evidence presented to the Club by the police, on 2 August 2013 Arsenal wrote to the complainant to inform him that he was not permitted to attend home matches, purchase away tickets from Arsenal, nor organise or attend events at

the Emirates Stadium. The letter referred to the police belief that "due to your history of violent offences relating to football matches they believe that you pose a danger to public safety". The ban was imposed immediately "until otherwise notified".

6. On 17 August the complainant wrote to the Club strongly denying that he was a danger to the public and arguing that the Club's action amounted to defamation. When this and subsequent correspondence went unanswered, the complainant submitted a Personal Access Request under the Data Protection Act. He submitted a similar request to the Metropolitan Police. In October the Club responded to the data request, much of what was supplied being related to the complainant's activity as the events organiser for a local boxing club which held charity evenings at the Emirates Stadium. The complainant was dissatisfied with what Arsenal had provided so he appealed to the Information Commissioner, who concluded in January 2014 that "it is likely that AFC has complied with the requirements...we have seen no evidence that it withheld information to which [the complainant] is entitled." In April 2014 the local MP as well as a local councillor wrote to the Club to say that the ban should be rescinded or that the complainant should be granted a personal hearing. In June 2014 the lawyer who had been present at the original incident submitted a long letter to the Club arguing that the complainant had been unfairly treated and offering to facilitate a meeting to seek to resolve the matter. This and a subsequent letter elicited no reply, since the Club at that time assumed that this was part of a concerted lobbying campaign by the complainant which had led to a significant number of messages of support. When it was clarified that the lawyer was now acting at the formal request of the complainant, then the Club did respond to the specific points made.

7. In June 2014 the Club wrote to the complainant to advise that the ban had been reviewed and would now be for 5 years, rather than indefinite as in the earlier letter. The ban would be reviewed in 2018. The complainant now submitted a second Personal Access Request, with a particular interest in the review meeting which had amended the ban. In its response in August the Club confirmed that no meeting minutes or papers existed. There followed a tortuous exchange of correspondence between the lawyer and the Club, during which

Arsenal accused the complainant of having breached his ban by attending away games in both Europe and England. In his evidence to the IFO the complainant said that he had attended matches as the guest of a friend. He had not purchased any tickets from Arsenal FC, nor did he believe that the Club had the power to ban him from visiting grounds other than the Emirates Stadium.

8. Also in June the complainant referred the matter to the Premier League which conducted its own enquiry into the case. There was the possibility that the Premier League could mediate and the complainant's offer to dispense with legal representation in return for a meeting was conveyed to the Club. Arsenal declined to hold a meeting, confirming that consideration had been given to all the points made in support of the complainant, and that there were no plans to change the Club's position. The Premier League concluded that "the matter has been given appropriate time and attention by Arsenal ...in line with the club's own procedures". By the late summer of 2014 it was clear that the Governing Body stage of the complaints procedure would not resolve the complaint and a reference to the IFO was now requested. By this time a strong body of support for the complainant had developed and some 3000 people have signed a petition for "The Archway One". Season ticket holders have written to the Club claiming that violence was not to be tolerated, but that the Club should behave fairly and transparently when disciplining supporters. The IFO investigation was delayed at the request of the complainant while he awaited further information from the Club under the Data Protection Act. In November 2014 the Premier League submitted its summary of the case to the IFO and the formal IFO adjudication process began.

### **The Investigation**

9. The IFO carefully reviewed the very large dossier submitted by the complainant, which included both correspondence to and from the Club, as well as a large number of documents obtained through the Personal Access Requests to Arsenal FC and the Metropolitan Police. The IFO also studied the comprehensive summary submitted by the Premier League. On 23 January 2015 the IFO and Deputy met with senior Club officials, comprising the Club Secretary, the Stadium & Facilities Director and the Legal Counsel. The meeting reviewed the history of the relationship between Arsenal and the complainant

and the Club's stance on the complaint. Four days later the IFO and Deputy met with the complainant for over two hours, when he was able to explain his strongly held view that he had been unfairly treated. Subsequent to the meeting the complainant supplied further documentation requested by the IFO. Towards the end of the investigation on 18 March, the IFO and Deputy met with Arsenal's Legal Counsel for further discussion of Arsenal's case. In investigating this complaint the IFO also considered the views of the IFO Advisory Panel whose members reviewed and commented upon a draft of this report.

### **The Findings**

10. There are many aspects to the complainant's case and in his submission to the IFO he identified no less than 14 separate points of grievance. The primary question is of course **whether Arsenal FC was right to issue the initial ban** and this is addressed first. A close relationship between a high profile professional club and its local police force is a common and necessary feature of modern football. Clubs will usually have a regular match commander who develops a close relationship with the safety officer and the stewards. Similarly, there will normally be a police liaison officer with a team who attend home and away matches. All this is conducive to the good management of matchdays in the interests of the safety and security of all who attend. The risk of violence and disorder which seems to attach itself to football has necessitated national initiatives such as the Football Intelligence Unit and court approved Football Banning Orders. At the local level there will be a close dialogue and a sharing of intelligence, for example to warn the club of the likelihood of flares being discharged or to identify potential troublemakers through plain clothes spotters in the crowd. In the context as discussed it is not unusual or surprising to find the police advising a club about high risk individual supporters.

11. The Club's view is that it was imperative to take action once the police had identified the complainant as being one who was a potential risk to the safety of other supporters. Had they ignored the advice and trouble had followed, then the Club would have been justifiably accused of not taking spectator safety seriously and ignoring clear police warnings. Though the public order conviction explains the timing of the police advice, it was not the sole reason for the request. It is not often that the IFO has access to police evidence, but in this

case the complainant submitted to the IFO a significant amount of police comment which he had obtained under his data request. It is therefore reasonable for this to be quoted. The evidence shows that the complainant was known to the Football Intelligence Unit as someone with a record of "football violence" as far back as 1995, with a previous banning order (in 2005) and who organised away coach trips for high risk supporters. He was described in March 2013 "as a senior member of our risk group" and in June as "known to have played a prominent role in organising disorder with rival fans". In summary, the Metropolitan Police concluded that he "is known to the police for his involvement in activities which have not been conducive to the code of conduct expected at sporting events...his general behaviour has brought him to attention".

12. Moreover, this police evidence was no real surprise to the Club, since Arsenal had itself banned the complainant for 5 years following disorder before the UEFA cup final in Copenhagen in 2000, such ban having actually been extended because of a breach. The Club was aware that he had been given a banning order in 2005 for fighting after the Cup Final. In one of the newspaper cuttings submitted by the complainant the headline reads "I admit I am no angel, but I'm not a hooligan". Nevertheless, the complainant admits that his track record counts against him, with a previous club ban, a previous banning order, a public order conviction and the much publicised violent incident in Copenhagen which led to his dismissal by the Post Office. *[The complainant reports that he won a subsequent case for unfair dismissal.]* Hence a request from the police was not inconsistent with what was already known and in the context of the personal history of the complainant, the ban was understandable and a reasonable response to the police information provided to the Club. The IFO is satisfied that Arsenal FC was justified in considering a ban appropriate in the light of police advice, which was reconfirmed later by the Metropolitan Police after the initiating officer was moved to other duties.

13. If the ban itself was in the IFO's judgment justifiable, given the context and circumstances, its **severity and subsequent review** are much more ambiguous. It was a prime element in the police advice and in Arsenal's defence of their position that the complainant's 2013 conviction was in effect football related. Whether the putative request for a banning order was "thrown out" (the

complainant's term) or withdrawn because the court indicated it would not be granted (possibly because the court did not view the incident as football related), the fact remains that no football banning order was issued. The public order conviction was the trigger for the banning request, yet the IFO has seen no persuasive evidence that it was football related. The gathering in the pub did not take place for football reasons, the disturbance took place some 6 hours after the Arsenal v Spurs match had finished, the venue was some distance away from the stadium and the argument which produced the fighting was not about football. Conversely, Arsenal reaffirms strongly that the complainant was convicted of a serious and violent offence which was football related since it took place on a matchday, within the local area and in a pub which was full of Arsenal supporters. The complainant argues that he has been punished by the accident of geography because he lives so near to the ground. Arsenal officials admitted that they do not seek out the conviction record of fans who live further away, but maintain that they would take similar action if the police drew their attention to a violent offence by an Arsenal supporter no matter where he resided.

14. It is not for the IFO to comment on the complainant's assertion that the police officer was conducting a vendetta against him, which has been rejected by both the Metropolitan Police and the Independent Police Complaints Commission. Although the officer was absolved of any accusation of intention to mislead, the enquiries did reveal two relevant issues. There was some ambiguity over the reference to the putative banning order (the IPCC confirms that it was initially intended to apply for the order, though no such application was made). It was also factually wrong that the complainant had breached his bail conditions in organising a coach trip to Reading in 2012, the officer admitting that the date of the match had been misrecorded. These enquiries did confirm that it was Arsenal and not the police who were responsible for making the ban a total one and not just for football fixtures. The Club took the view that if a person was a risk to supporters then he was an equal risk at any other Emirates event and this was a normal part of any Club imposed ban. The complainant does feel keenly that this unreasonably impairs his capacity to organise charity events which he has done frequently in the past.

15. The complainant maintains that the ban imposed by Arsenal is longer than that which the courts would have imposed if a banning order had been granted and would have been subject to review. (The Club argues that football banning orders may be up to 5 years). He also points out that 10 years have elapsed since his last football related conviction and that than none of his previous offences has been committed within a football ground; he has never been found to have breached ground regulations. These and the points discussed above might have persuaded Arsenal to consider whether the length of the ban was appropriate. While the Club argues that the 5 year ban is in line with previous practice and that the complainant was a repeat offender with both a previous Club ban and a previous banning order, the IFO concludes that, since it was not truly a football offence and was committed beyond the Stadium, the ban was severe and should be reconsidered. The Club reviews its bans each summer and by August 2015 the complainant will have served two years of his ban (which was the term actually served of his 2005 banning order). The IFO considers that this would be an appropriate point for the ban to be suspended, on condition of future good behaviour by the complainant. **The IFO recommends that the ban be suspended with effect from the beginning of the 2015-16 season, with the remaining 3 years only re-imposed in the event of a disciplinary breach by the complainant. To this end the complainant would be required to sign a suitable behaviour agreement.** *[The Club has indicated that it would wish to take further police advice and consider other evidence before deciding on this recommendation]*

16. The IFO fully understands and accepts that the Club is a private entity and may ban whomsoever it wishes without necessarily giving a reason. The IFO recognizes that there are some supporters whose actions justify them receiving bans. The IFO believes that Arsenal, as a prestigious and respected Club, would wish to exercise that right in a fair and proportionate manner and with an appropriate **procedure**. The IFO accepts that the ban was not imposed lightly, was issued only after a careful review of the police recommendation, and the decision was taken at a very senior level within the Club hierarchy and with the agreement and advice of the legal department. The process by which Arsenal made the decision does not compromise the justification for the ban which the IFO has accepted (para 12). Nevertheless, the case reveals a lacuna in the

Club's disciplinary procedure. The IFO finds it somewhat incongruous that supporters accused of ticketing misdemeanours (eg unauthorized sale of season tickets) are consulted, sometimes face to face, to explain their actions, whereas the complainant has at no time been given the chance to present his views personally. The Club points out that ticketing irregularities are a breach of its own regulations whereas the complainant was banned on the basis of police advice. However even if a 5 year ban had been imposed because of a serious offence within the ground, the IFO has seen no evidence that a personal meeting was part of its disciplinary procedure. Where, as in this case, severe penalties are considered justified, natural justice suggests that an accused should have an opportunity to answer the accusations by way of a right of appeal or a personal hearing; a temporary suspension could be put in place for the duration of that process. **The IFO recommends that Arsenal FC reviews its disciplinary procedure for serious cases (where a ban of more than a year is imposed), with a view to introducing an appeal stage or the opportunity for a personal hearing.**

17. The final element in the complainant's case relates the lack of **communication** from the Club. The Club argues that it did respond to correspondence where that was called for. Yet it was frustration with the lack of any response which led the complainant to make two personal access requests in order to elicit information from the Club. The Club did comply with these requests and when the complainant identified a friend as his legal representative, there were responses during the later stages of the dispute. In effect the complainant only ever received personal substantive correspondence from the Club in the two letters he received, one about the indefinite ban and the other limiting it to 5 years. Even though the ban was deemed to be fully justified the complainant was entitled to some response to the points he made in two long letters disputing the justification for the ban (August 2013 and undated presumably late 2013). The Club should review the history of this case to evaluate whether its communication practice could be more forthcoming.

## **CONCLUSION**

18. The IFO is fully persuaded that Arsenal FC was justified in banning the complainant on the basis of police advice. He admits that his previous record of football related violence counted against him. The IFO has not, however, been persuaded by the Club's strongly held view that the offence which triggered his ban was football related. In this context the IFO believes that the suspension of the ban after two years would be appropriate, subject to future good behaviour by the complainant. The Club quite properly reserves the right to review the risk posed by the complainant in the light of further police advice and other evidence. The IFO welcomes Arsenal's willingness to review its disciplinary procedure for serious cases.

**Professor Derek Fraser, Ombudsman**  
**Alan Watson CBE, Deputy Ombudsman**

**17 April 2015**