

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
Standards Institute
ADR Competent Authority

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: 18/21

THE IMPROPER AND ALLEGEDLY DEMEANING USE OF A PHOTOGRAPH BY LEICESTER CITY

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 the full cooperation of Leicester City FC.

The Complaint

3. A Leicester City supporter complained on behalf of himself and five friends that they had been demeaned by an unauthorised photograph of themselves which appeared in the Leicester City programme. They were dissatisfied by the way the Club had dealt with their complaint.

The facts of the case

4. On 5 May 2018 Leicester City hosted West Ham United in their last home match of the season. The programme for the match contained an article highlighting a Type-2 Diabetes initiative the Club was joining, under the heading "LCFC Backs Community Schemes For Healthy Fans". The article was accompanied by a photograph of six men in football kit whose shirts were emblazoned with the logo "MAN v FAT FOOTBALL". Fans were offered the opportunity to have a diabetes risk assessment at the stadium on the day of the match. On 9 May the complainant wrote to the Club to complain about the distress and embarrassment caused by their inclusion in the article. The Communications Director replied on the following day, apologising that the photograph had been included by mistake and confirming that a full apology would be printed in the next edition of the programme. As a goodwill gesture all of the party were offered hospitality tickets at a future game at the King Power Stadium. The complainant replied on the same day rejecting the offer and asserting that financial recompense was appropriate. On 15 May the complainant reported that the team had met and concluded that a payment of £2000 per person would be a suitable and reasonable settlement for the distress caused. He also claimed that copyright had been infringed by the unauthorised use of their image. On 5 June the Club's General Counsel sent a formal letter to the complainant rejecting the claim for compensation. She denied that there had been any copyright infringement since the Club owned the copyright to the photograph and claimed that it showed the members "participating in an active and healthy lifestyle". The complainant referred the matter to the IFO on 18 June, claiming that the Counsel's reply had "insulted our intelligence".

The investigation

5. The IFO noted that the complaint was submitted from a lawyer's office and explained that the IFO, like other Ombudsman schemes, could not investigate if legal action had been commenced. The complainant replied that he was acting in his personal not official capacity and that no legal action had yet been taken. In turn the IFO queried whether he had permission to act on behalf of the five other members and in due course they all confirmed to the IFO that they were happy for the complainant to speak for them collectively. The IFO carefully reviewed the correspondence submitted by the complainant, along with his summary of the issues of concern. Because of annual leave arrangements there was some delay in the Club's response which was submitted on 23 July. The General Counsel provide a time line of the complaint, copies of all correspondence and a summary of the Club's position based on external specialist legal advice.

Findings

6. The whole case rests on what may be reasonably inferred from the picture in the context of the words of the article. Perception is very personal and the IFO has no reason to doubt that the complainants may have been genuinely distressed by their inclusion, which, they claimed, implied they were diabetes sufferers, a cause of great embarrassment to themselves and of unwarranted concern to their family and friends. However, it must be asked if others would draw the same inferences. The context is critically important and this picture appeared under the heading "**LCFC Backs Community Schemes For Healthy Fans**" – in short a positive health education initiative. It is well known that exercise and weight loss can contain or even reduce Type-2 diabetes and it may be inferred that the members of the team are indeed participating in a healthy exercise-based life style, just as the article is recommending. Neither the IFO nor the Deputy IFO, on seeing the picture for the first time, drew the conclusion that the members of the team were themselves suffering from diabetes, but even if that inference was drawn, the message was that they were doing something to address this. Hence, one might equally infer that this was a positive message rather than a negative one as the complainants assert. The IFO is doubtful whether those having diabetes are demeaned in the public eye because of it. It is more likely to invoke a sympathetic rather than a critical response. Moreover, the MAN V FAT FOOTBALL is itself a Club weight-loss initiative, so the health improvement message might be interpreted as doubly reinforced by the picture. Without in any way challenging the perceptions of the complainants, the IFO concludes that the so-called demeaning message is not the only one which could be inferred by the inclusion of the picture in the article.

7. The Club asserts that it owns the copyright to the picture which the complainant disputes. The IFO is not a legal tribunal and can offer no opinion on this aspect of the complaint. However, it is patently obvious that the members of the team did not give their permission for the image to be used in the programme. The Communications Director immediately admitted it had been done so in error and apologised for the failure in their review process, which had been revised as a result of this case. The photo will not be used again and a full apology will be given in the next issue of the programme. Because of the close season that cannot take place until the start of the season and, while this delay is unavoidable, **the IFO recommends that the correction and apology must be included in the first programme of the 2018-19 season.**

8. What of the complainant's request for financial compensation? The complainant has claimed that the sum of £2000 be paid to each of the players (£12,000 in all, later raised to £18,000, to include the other members of the team not in the photo). Financial compensation must be based on some material or reputational loss and the IFO cannot find evidence to justify the claim. The Club has offered a hospitality package as a goodwill gesture which the claimants have twice rejected. The offer, to all six of the team, comprised

- Premium seats in the West Stand Media Observation Area

- Pre-match, half time and post-match hospitality
- Access to the post-match press conference

All of the members are Leicester City supporters and the IFO considers this to be a reasonable offer in settlement of the dispute, particularly the last point, considering that this is normally limited to accredited media representatives. For Leicester fans this would be a worthwhile experience. The Club gave the complainants seven days to accept the offer, which has now been withdrawn. **The IFO recommends that the hospitality package (as above) be reinstated, with the complainants free to choose collectively which match they wish to attend.** (The complainant to communicate the choice of the group, who are to attend the match together)

Conclusion

9. The IFO accepts that the complainants were surprised and distressed to see their picture in the programme, but does not accept that this entitled them to monetary compensation. The IFO finds that the Club's goodwill gesture is a reasonable and attractive hospitality package and is pleased to learn that the group is now willing to accept this as a resolution of the complaint.

Professor Derek Fraser, Ombudsman
Alan Watson CBE, Deputy Ombudsman

21 August 2018