

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
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IFO COMPLAINT REF: 20/16

DISPUTED EXECUTIVE MEMBERSHIP REFUNDS AT MANCHESTER 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. The IFO must make clear that in investigating this complaint he has received full cooperation from Manchester United FC.

The complaint

3. A man complained that he had been unfairly treated by Manchester United by the Club's refusal to part refund his executive club membership to reflect the matches missed because of the pandemic. He claimed that the action of the Club in making an insufficient goodwill offer was in breach of their legal obligations to him. [*The IFO has adjudicated a similar complaint (IFO 20/15), but this complaint raises separate issues*]. The complainant also cites delays in communications between the parties

The facts of the case

4. The complainant is an executive club member at Manchester United. For the 2019-20 season he had two tickets at an annual fee of £3078 each, which included a 5% discount to reflect the Club's failure to qualify for the Champions League. On 19 May 2020 he received a communication from the Executive Club which explained that, because of the impending arrangements to play matches without spectators, all members would receive a 10% goodwill discount, which could be taken as a cash refund or applied to the 2020-21 season. He responded that he did not believe that the refund was appropriate and began a long drawn out and much delayed correspondence with Club officials. He argued that he had been deprived of 7 matches (4 Premier League matches and 3 Europa League ties) and calculated that he was entitled to a 23% refund instead of the 10% offered. His complaint was eventually escalated to the Director of Operations, in line with the Club's complaints procedure. On 9 July the Director apologised for the delay in communications, which was due to staff working from home. He emphasised the critical definition of the Executive Club membership as a seasonal product and not a season ticket and explained that in seasons where the number of games was more than expected there had been no additional charge and hence it followed that there would be no rebate due when the number fell below expectations. Although the Club believed that it was under no obligation to make any refund, "we wanted to make a gesture of goodwill to our Executive Club Members in recognition of their dedicated support". He concluded that the 10% went beyond what was contractually required and the Club's position was unchanged. The complainant was advised of his right to refer his complaint to the IFO and he did so on 12 August. [*The complainant's MP approached the Premier League about the case and the League reiterated the Club's position that as this was not a season ticket a pro-rata refund did not apply*].

Investigation

5. The IFO carefully reviewed the complainant's submission and the responses from the Club. The complainant updated his initial submission to take account of the previous IFO adjudication and to stress the distinctive issues he wished to raise. Irrespective of the outcome, the IFO wishes to commend the complainant

for his model submission, comprising a thorough and well-argued case, together with 60 pages of appendices citing the relevant regulations, legal aspects and correspondence. The Club provided a copy of the Executive Club Terms and Conditions and correspondence. The Club explained that delays in contacting the complainant were the result of problems adjusting to working under the new pandemic conditions. The gulf between the two parties was illustrated by the complainant's calculation based on the number of matches he had missed, while the Club's offer of a rebate was wholly a goodwill gesture unrelated to the specific number of matches played behind closed doors.

Findings

6. The Club are adamant that the complainant has no contractual entitlement to a refund and cites the Terms and Conditions as justification for their position. The relevant clause is as follows:

Where any match is cancelled, abandoned or postponed the Club shall have no liability whatsoever to Ticket Holders or any Authorised Representatives in respect of any such match except that, following any cancellation, abandonment or postponement of a home match, a Ticket Holder or any Authorised Representative shall be entitled to attend the rearranged match (if any).

It is the case that in a successful season when Manchester United had a long run in the cup competitions and made progress in Europe, Executive Club members would have been able to attend a significantly higher number of matches than normally expected. The Club reminded the complainant that in such circumstances he had not been charged a supplementary fee and by the same token a lower number of matches did not entitle him to a refund. The goodwill gesture offered was not contractually required, but was provided in recognition of the Executive Club members' continuing support. It was not based on an arithmetical calculation of the matches missed.

7. The complainant quotes this same regulation, stating that it gives him an entitlement to attend the rearranged games, which he was then prevented from doing. Hence, the very regulation which the Club uses to justify its action is the same regulation which, the complainant asserts, supports his case. The complainant cites three other elements which, he argues, entitle him to a proportionate refund

- Breach of contract in not implementing the Club's own terms and conditions
- The terms and conditions being "an unfair contract" under the 2015 Consumer Rights Act
- The Club's public announcement of season ticketholder's pro-rata refund

These are discussed in turn.

8. The complainant quotes Paragraph 31 which obliges the Club to compensate the ticket holder for breaches of the contract which were "foreseeable". While the complainant accepts that the pandemic was not foreseeable at the time he entered into the contract in March 2019, his potential loss was foreseeable on the dates that the matches were played. He compares this paragraph with the corresponding Paragraph 54 in the terms and conditions for regular season ticketholders and finds them to be identical. It follows, he argues, that since season ticketholders were compensated under this regulation then executive members should be entitled to the same compensation, since the regulations are the same for both schemes. The complaint has to be considered in the context of the pandemic which could not have been planned for and which posed severe challenges throughout football. The IFO finds that the complainant's arguments about foreseeability are specious, since the regulation clearly applies to events which were foreseeable at the time the contract was entered into. In any event the Club excludes any liability for members' non-attendance 'caused by any circumstance outside its reasonable control'. The complainant may be factually correct that the two paragraphs are the same, but this does not address the critical difference between the two schemes. Season ticketholders are entitled to attend a *specified* number of Premier League matches. However, the Executive Club provides an entitlement to an *unspecified* number of League, cup and European matches. Since the schemes are inherently different products then the IFO finds that it was reasonable for the Club to use different criteria for each scheme.

9. The 2015 Consumer Rights Act defines an unfair contract as one which "causes a significant imbalance to the parties' rights and obligations under the contract to the detriment of the consumer." The complainant argues that the terms and conditions of his scheme were unilaterally imposed by the Club with no opportunity for an individual to renegotiate them and so the protection of the Act comes into play on behalf of the consumer. He claims that 'the refund and remedy clauses of the terms and conditions...are unfair'. He also cites the Act's provision that when entering into a contract the consumer has a legitimate expectation of what will be delivered, in this case all the matches played at Old Trafford. Where the trader fails to deliver what was expected then the consumer should receive a full or partial refund. The complainant accepts that he attended some matches and so is not seeking a full refund, just a partial refund to reflect the actual matches he was prevented from attending. He believes that not only does the Consumer Rights Act justify his case, but also a statement from the Competition and Markets Authority which advised that consumers were entitled to "a refund for the services that are not provided". The IFO is not a legal tribunal and if the complainant believes his legal rights as a consumer have been infringed then he must seek redress in a different quarter. It nevertheless remains the case that the IFO can only adjudicate on the terms and conditions which the complainant accepted when he purchased his executive club tickets. Despite the provisions cited in this paragraph, it is the IFO's view that the Club

was not in breach of contract and the IFO finds that the complainant was not entitled to more than the goodwill gesture offered to all the members. The complainant is disparaging about the amount of the rebate offered, but overall it equates to a significant transfer of funds from the Club to the executive members.

10. The third element in the complainant's case is the statement about refunds which appeared on the Club website on 27 March 2020. The Club confirmed that it would offer season ticket holders "a pro-rata rebate...based on the number of games still to be played". The statement also includes the words "a rebate will also be offered to seasonal Executive Club members". The statement appeared in the Executive Club members' area and the complainant argues that this raised the legitimate and reasonable expectation that it would apply to his product, since nothing was said about a different regime for his membership. He asserts that both schemes apply to a "season" and both have a "ticket" and therefore there is no justification for the differential treatment of the schemes. He and fellow members believe they had purchased a "season ticket", albeit at a higher price and delivering more benefits than the regular season tickets and he describes as disingenuous the Club's distinction between a "season ticket" and a "seasonal product". There are a number of ways the level of refund could have been calculated and there is nothing in the schemes to suggest which method would be used. Although the Club statement specifies a "pro-rata rebate" for season ticketholders and simply a "rebate" for executive members, the IFO finds that the statement was likely to have raised the complainant's expectation that both schemes would be treated in the same way. It was unfortunate that the Club did not clarify in the statement the distinction between the schemes which it later relied on to justify its action. Given that there will be further matches played without spectators in 2020-21, **the IFO recommends that Manchester United explicitly clarify the basis for any future rebates for executive members, so that they may make an informed decision on whether to renew their tickets.**

11. The complainant expressed concern about delays in communication and particularly promises to call him which were not followed up. The IFO upholds this aspect of the complaint and the Club has accepted that its normal standards were not maintained and has apologised. The IFO suggests that the Club should consider offering the complainant a modest goodwill gesture (such as complimentary tours or shop discount) to reflect these shortcomings. The IFO understands that the 10% rebate has not been paid to the complainant in respect of his two tickets, perhaps because he is disputing the amount. **The IFO recommends that the rebate be paid forthwith** and does not believe that the payment would compromise the complainant's right to pursue a claim for a supplementary amount in any further action he may choose to take.

12 The complainant has submitted a well-argued and well documented case and has indeed raised different issues from those considered by the IFO in its

previous adjudication. However, the IFO finds that, contrary to the complainant's view, there was no obligation on the Club to pay a pro-rata rebate, since no particular number of matches is specified in the executive membership, in contrast with season tickets which specify 19 home Premier League matches. The complainant has put a strong case based on his calculation of the number of matches missed and it is true that different modes of calculation could have been used. Yet his calculations are unfortunately irrelevant *for his scheme*. The Club has offered a rebate as a goodwill gesture, (unrelated to the number of matches) and, in exercising that discretion, it wished to thank its most prestigious ticket holders for their ongoing support. While this adjudication has considered different issues, the IFO is obliged to repeat the previous conclusion:

The Club is correct that there was no contractual obligation to offer a refund and it is in the nature of a goodwill gesture that it is within the gift and discretion of the provider.

Conclusion

13. The complainant may be correct that a "common sense" view would regard Executive Members as holding a "season ticket" and thus to be treated in the same way as other season ticketholders. At the heart of the complaint is the clear differences in terms and product between the regular season ticket and the executive membership, which the Club defines as a "seasonal product". The Club would be well advised to differentiate the two schemes more clearly in the future. Although the complainant has submitted a well-argued case, the IFO is unable to uphold the complaint.

Professor Derek Fraser, Ombudsman

22 September 2020

Alan Watson CBE, Deputy Ombudsman