

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: 21/05

ASSOCIATE DIRECTOR ISSUES AT NORWICH CITY

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 Norwich City.

The complaint

3. A Norwich City Associate Director (AD) made a number of complaints to the IFO which are outlined in paragraphs 7-12 below.

Background

4. In 2002 the Club launched a share offer. Page 4 of the prospectus listed the subscriber benefits. The purchase of 1,000 shares entitled a subscriber to a free membership, various incentives to be delivered in 2003 and 2004 and "appointment as an Associate Director of the Club" which entitled that subscriber to "a season ticket for life", amongst all other benefits which were available to those with lesser shareholdings. The prospectus said "By offering these benefits the Board intends to encourage potential investors to subscribe and retain Ordinary Shares subscribed under the offer. Accordingly, the benefits are personal to the subscribers for Ordinary Shares and may not be transferred." In 2011 the Club, in consultation with the ADG, agreed a new set of terms to better reflect the way the Club wanted to take forward into future seasons the relationship between them and the ADs. The Club wrote to all ADs saying that the ADG had agreed, amongst other things, the following terms:-

"On the death of an Associate Director the title of 'Associate Director' shall be entitled to pass to one beneficiary of the deceased Associate, should that beneficiary hold 1,000 ordinary shares. Any qualifying beneficiary shall have a right of first refusal over the deceased Associate Director's seat for life at the full rate then charged for the seat in question."

Although the ADG had already agreed the revised terms, each individual AD was asked to sign consent to the changes.

5. Article 8 of the Club's Articles of Association, adopted on 4 November 1999, provides that "Each member holding one or more shares Shall be entitled to free full membership of Norwich City Football Club" At that time the Club ran a membership scheme only for home match tickets, thereby giving shareholders a home membership free of charge. At the beginning of season 2018/19 the Club introduced an away membership loyalty points based scheme under which the Club sell tickets to away members on the basis of past attendance. The full price of away membership is £35, but ADs are charged only £25 if joining by a specified date.

6. On 4 May 2020 the IFO adjudicated on a previous complaint from the complainant (IFO 20/10). The IFO concluded that "a season ticket for life" was intended to be personal to the life of the subscriber and the benefits were not transferable, for example to an inheritor of the shares. The IFO found that by electing to exchange his corporate seat for two general admission seats, the

complainant had ceded access to away tickets through the corporate hospitality team and needed to purchase membership to be part of the away ticket scheme. The IFO also advised that the issue of prejudicial treatment of some shareholders was a matter for the courts, as being outside the IFO's remit.

The complainant's account

7. He said that, as an AD with season tickets for life he does not qualify for a refund for matches missed. 1,000 fans attended the opening match of the 2020/21 season but he was not invited. He contacted the Club's Chief Operating Officer (COO) who conceded that ADs should have priority attendance rights. He also said that the Club "would be making it up to ADs going forward". The complainant took that to mean there had been a re-think over his complaints in IFO Adjudication 20/10 following his further probing of the issues as part of the Club's AGM process, when he had corresponded with one of the Club's majority shareholders. The complainant had been invited to submit further comments but when he did so, the majority shareholder had not replied.

8. The complainant did receive a response from the Customer Care team (CCT). Regarding his request that minority shareholders be added to the list of parties in the Club's Equality Statement, the CCT said that the Statement applies to everyone in the Club and was not related to whether a seat for life should have transferred to the daughter of his late AD friend. With regard to the rights of inheritor shareholders, the CCT pointed out that the right to a seat for life of an original subscriber of 1,000 shares in the 2002 offer was a right personal to the subscriber. The situation was different to the right of membership of the Club to the inheritor of ordinary shares. Regarding the complainant's assertion that an AD was still acting as an AD despite having less than 1,000 shares, the CCT said that, although membership was a matter for the ADG itself, they would look into the matter if the complainant supplied further details.

9. The complainant sent two further submissions to the Club. He could not see how equality existed when a 60 years old male subscriber and a 30 years old inheritor, each owning 1,000 shares in the Club, could be treated differently. He contended that a change to reflect an equalities matter must be achievable. With regard to the AD with less than 1,000 shares, the AD had died in December. Despite owning only 1,000 shares between them, the late AD and his son had been using two commercial seats, the second one being owned by an AD who did not attend. He asked what the non-transferable clause in the 2002 offer meant in practice. The complainant also asked for clarification of why his AD status did not override his general admission customer status in relation to the away tickets scheme. Finally, he suggested that there should be discussion at supporters' panel meetings about how AD season ticket for lifers should be treated in relation to limited capacity at matches. The complainant did not receive a reply to either submission, which prompted him to refer his complaints to the IFO on 6 May.

10. The complainant said that in March the Club held an online fans' forum at which it was announced that a new supporters' panel would be formed to address non-footballing matters. The forum was non-interactive but the complainant was able to put a question in advance. He had taken the reference to non-footballing matters to mean that the issue of rewards for inheritor ADs could be back on the table, but when he progressed the matter further, the Club's Legal Officer told him that such proposals will not be considered. The complainant contends that the Club's equality policies state that an individual's worth should be respected, yet heirs are shown zero consideration in their own right.

11. The complainant said that as the season was drawing to a close, no consideration was given to whether to accommodate the 25 AD owners of 1,000 shares although it was clear that two directors who own only 100 shares each have at times attended matches with their partners. The complainant believed that the Club should compensate him for the loss in value of his seat for life.

12. The complainant said that the sale value of the commercial seat he conceded is £1,520 while the value of the two ordinary seats he now has is £1,120. There had been only an oral agreement over the exchange of seats and, despite numerous requests, the Club had failed to confirm in writing the terms and conditions attached to the change. As a friend had given up the seat next to his, he asked if he could purchase it using a credit of £400 to put himself in economic parity with the other original ADs. The Club had not responded to his request.

The Club's comments on the complaint

13. The Club said that their Equality Statement contains their stance against victimisation, harassment, bullying and unlawful discrimination. They did not accept the complainant's contention that refusing to grant a seat for life to an inheritor shareholder was discriminatory or an equality matter. Even if it could be argued that there is indirect discrimination, the Club's actions were wholly proportionate to the legitimate aim of compliance with the terms to which ADs signed up. The rights of inheritor shareholders had already been adjudicated in IFO Adjudication 20/10.

14. With regard to the AD with less than 1,000 shares, the Club said that the late AD had personally held 108 shares and his son had held 920 shares on trust for him. The AD had invested the money for the shares and therefore had the benefit of the seat for life. The son was in the process of having the shares transferred to him and had accepted that the seat for life had ended. The Club said that the seat occupied by the son was owned by a lady who was unable to attend, and she allowed the son to use it, as was her right. That was a

completely different scenario to a seat passing to an inheritor, as no transfer was involved.

15. Regarding the supporters' panel, members are required to present the views of all supporters and should not address issues of a purely personal interest. The Club already engages with a number of special interest groups, including the AD Group and the supporters' panel is not the place to raise issues which affect 25 ADs who already have an outlet to contact the Club.

16. As far as the matter of refunds for matches missed was concerned, the complainant was the only AD to make a request. The Club believed that ADs had invested their £25,000 through their love of and support for the Club in a time of need, as well as for obtaining a seat for life. The Club did not feel it right to consider in a financial purely manner. If they did, they would take the value of a commercial seat at around £1,500 and say that an AD's investment bought a seat for 17 years, which would mean that it has now been fully paid and ADs would need now to pay on a seasonal basis for the seat. That is not the way in which the Club views the seats or the promises made to ADs. The Club had committed to providing a seat in the AD's lifetime in return for his investment, which meant that no monetary refund attached to the seats for matches missed. Despite having no obligation to do so, and making no financial gain, the Club, as a gesture of goodwill, had prioritised ADs for the three matches where 2,000 attendees had been permitted.

17. The Club said that when the complainant asked to trade his commercial seat for two general admission seats, he made no mention of the relative value of the seats. The Club had gone out of their way to accommodate his request and, for the reasons already given above, they did not consider it right to consider the seats on a purely financial basis. The Club said that allowing the complainant to occupy two general admission seats is a derogation from his right to one corporate seat, granted in goodwill by the Club. There is no general right to such a trade off and something which the Club would consider only on a case by case basis. The Club are hesitant to put the complainant's arrangement in writing as they do not wish to set a standard where one corporate seat is the equivalent of two general admission seats.

18. With regard to the complaint about non-replying to the complainant, the Club said that the complainant's constant queries on the same topics had taken up a lot of staff time at the Club and their Legal Officer had reluctantly had to advise staff not to contact him further, so as to avoid getting drawn into protracted correspondence.

The investigation

19. The IFO carefully considered the complainant's submission, further information submitted by him, the Club's comments and the relevant correspondence between the complainant and the Club. The Deputy IFO also spoke with the complainant. The complainant said that it appeared to him that the complimentary seat arrangement appeared to him to be a "quasi-dividend" and he had no knowledge that his heirs would be expected to take on 1,000 shares for no ongoing return. The complainant said that in December 2018 when he had first approached the COO about changing seats, he had referred to sacrificing £400 which he was willing to do out of personal preference **and** (his emphasis) in seeking a suitable solution to the inheritor situation for his late friend's daughter. In the absence of the latter condition, he thinks it perfectly reasonable to ask for reinstatement of the £400 credit. He said that he would be sympathetic to the Club's position on ADs not claiming refunds if he believed that ADs had been treated fairly relative to Directors. He had missed 25 matches of his ticket for life which he cannot get back, yet other supporters got refunds, other than Directors who retained a right to attend despite in some cases owning less than 1,000 shares.

20. The complainant supplied certain correspondence from 2019. On 7 May he asked the COO to provide a confirmatory letter supporting his revised seating arrangement in having surrendered his commercial seat in favour of two standard season tickets on an ongoing basis. He said that in recognition of his financial contribution in freeing up a valuable commercial seat and "in accordance with the principles of loyalty and putting the shareholder first, I trust you will be able to find a way to offer [the daughter of his late AD friend] the same deal." On 9 May the complainant emailed the COO thanking him for the offer to refer to the Board the policy decision concerning the withdrawal of a complimentary seat for inheritor ADs, which would provide an effective benefit in kind for ADs. He said that the general entitlement for ADs could be expressed in terms of the commercial seat or suitable "in kind" alternative arrangements to the same value to cover the situation to which he had recently agreed. On 26 May the COO replied saying that the Board had unanimously concluded that there would be no change to ADs benefits. On 29 May the complainant told the COO that, because there had been no change of stance regarding the inheritor AD, he wanted his commercial seat to be restored. That proved not to be possible because it had been sold.

The findings

21. The IFO has seen nothing in the submissions or the evidence produced to alter the previous IFO adjudication on matters surrounding inheritor rights and away membership; nor anything to suggest that the complainant has been misled into believing that the Club were proposing to readdress those issues. The Board did, of course, consider the matter in May 2019 but unanimously

agreed that there should be no change. The IFO also accepts the Club's stance on inheritor rights not being an equality issue.

22. As far as a refund for matches missed is concerned, the IFO is satisfied that the provision of seats for life in return for a one-off investment did not require the Club to make refunds, where matches could not take place. Similarly, the exchange of his commercial seat for two general issue seats at the complainant's own request, was not a financial transaction and no financial terms were attached to it. It follows that the IFO sees no compulsion on the Club to accede to the complainant's request for a £400 credit towards the purchase of another seat.

23. As far as not having been invited as part of the 1,000 attendees at the first match of the season is concerned, the complainant's AD status did not specifically entitle him to an invitation. Following his intervention, the Club, although under no obligation, did invite ADs to the three matches in December where 2,000 attendees were allowed, but it does not follow that they were wrong not to invite the complainant to the earlier match. Club Directors are obviously in a different position to ADs. The IFO also accepts the Club's explanation at paragraph 14 regarding an AD's shareholding and the use of a vacant seat.

24. It is clear that the complainant is a prolific correspondent with the Club, not only over his long running campaign over the rights of inheritors and away tickets for ADs, but also on a range of other topics. In the circumstances, the IFO can well understand why the Club's Legal Officer advised staff not to correspond with him further. The IFO hopes, nevertheless, that the Club will apply that instruction sensitively if the complainant, a loyal longstanding supporter of the Club, has a legitimate query relation on a different topic. The Club has assured the IFO that any future communications from the complainant on different issues will be given due consideration.

25. Finally, although the IFO has not found in favour of the complainant, it is fair to put on record comments he made on the IFO's draft adjudication report. He said that the Club's claim that it respects the worth of the individual, is committed to fan engagement and that the supporters' panel is open to any non-footballing issues strengthens his belief that the Club must be seen to treat the owners of 1,000 shares far more favourably. He also continues to contend that his status as an AD should override his general admission status in relation to away tickets.

Conclusion

26. Most of the aspects of this case surround the complainant's longstanding concerns about the rights of those inheriting 1,000 shares, and the away ticket membership for ADs. The IFO has not found the complaint justified and hopes the complainant can now move on from those issues.

Professor Derek Fraser, Ombudsman

10 June 2021

Alan Watson CBE, Deputy Ombudsman