



THE INDEPENDENT
FOOTBALL OMBUDSMAN



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IFO COMPLAINT REF: 18/34

THE ENGLISH FOOTBALL LEAGUE AND BLACKPOOL FC

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. In investigating this complaint, the IFO has been in ongoing dialogue with the EFL.

The complaint

3. A Blackpool supporter (along with many others) complained about alleged shortcomings in the EFL's treatment of Blackpool FC. He cited the EFL's failure to act in the face of what he viewed as transgressions by the Club's owners and what he considered to be the EFL's failure to enforce

the Owners' and Directors' Test. He claimed that the EFL had not responded to his concerns properly. [There were many others who contacted the IFO about the same issues, including the Blackpool Supporters' Trust. The complainant was the most persistent and this Adjudication Report is based around his complaint, in the context of and with reference to the concerns expressed by many other supporters.]

The background to the case

4. Some Blackpool supporters have been conducting a long running campaign to seek a change in the ownership of the Club. This is ongoing with, for example, meetings with other fans and MPs, a continuing boycott of Blackpool's games, a vigil at home matches, and in March 2018 a demonstration at the EFL office. At the end of the 2014-15 season this involved a pitch invasion which led to the match against Huddersfield being abandoned at half-time. This produced many complaints from travelling Huddersfield supporters on which the IFO Adjudicated (IFO 15/07). The IFO has received correspondence from Blackpool supporters intermittently since then, with the complainant pursuing his complaint persistently up to the present time.

5. The Blackpool complaints essentially crystallise into four main allegations; that

- The EFL failed to respond properly to the concerns of supporters
- The EFL failed to exercise its powers as the governing body in the face of maladministration at the Club
- The EFL failed to enforce the Owners' and Directors' Test effectively
- The EFL failed to follow up financial impropriety by the Club's owners as revealed in the public record of litigation.

These allegations are discussed in turn below.

The investigation

6. In response to the many messages Blackpool supporters sent to the IFO in 2017 and 2018 the IFO was in regular dialogue with the EFL. The complaints procedures agreed with the Football Authorities make it clear that the IFO may act only when the previous stages have been completed. The EFL assured the IFO at a meeting on 20 February 2018 (and on many other occasions) that it was still dealing with Blackpool issues and it was therefore not appropriate for the IFO to take any action at that time. It was not until the summer of 2018 that the EFL clarified that they had provided as much information as possible to those particular complainants in question. The IFO and Deputy met League officials on 9 August and it was explained that there would be a further delay, while the EFL reviewed what evidence it could disclose to the IFO, since this was limited by the requirements to restrict information that was

personally or financially confidential. The IFO investigation has been necessarily based on the evidence made available by the EFL. [*The IFO acknowledges with regret that the complainant has had to wait much longer than normal and in turn this has delayed the submission which the complainant and the Trust wish to make to the International Court for Arbitration in Sport.*]

The findings

7. In this complex dispute the matter of **response to correspondence** is the most straightforward of the issues to be investigated. The EFL received many messages from disgruntled Blackpool supporters, sometimes with identical texts as part of a concerted campaign. In the circumstances, there were some holding replies. Sometimes there was a delay in responding while the issues were investigated and sometimes the response was a reference to a public statement already on the EFL website. EFL officials are adamant that all correspondents have received a response. It is noteworthy that when the IFO sought to follow this claim up by asking the Trust to forward copies of correspondence, there was no reply. In the case of the complainant there were a number of complaints submitted which did not yield what he deemed to be a satisfactory response, so he switched tack. He argued that he and the EFL were locked in an unresolved dispute and therefore the matter should be settled by using the formal EFL arbitration process. It is true that supporters are important stakeholders and an essential lifeblood to clubs, to whom they give their loyalty. Yet they are not “participants” in the sport and the EFL arbitration process is intended for players, managers, coaches and other employees in dispute with their clubs or the governing body itself. Hence the IFO concludes that the EFL was justified in rejecting the complainant’s request for arbitration, much to his disappointment. This neatly illustrates a more general point – the EFL did reply to correspondence, but the recipient did not receive the desired response.

8. When the IFO met with officials in February it was explained that the EFL was preparing a comprehensive response to the concerns of Blackpool supporters, which in the event led to a meeting on 20 March with a range of supporters’ representatives. This was a significant departure from normal EFL practice, which had been based on collective meetings with supporters either nationally or locally. On this occasion the CEO and two of his senior colleagues discussed with supporters the Blackpool issues and the EFL’s powers and procedures in relation to them. The meeting demonstrated the EFL’s willingness to listen to supporters’ concerns and its desire to do what it could to promote stability at the club and ensure

its survival. The CEO subsequently responded fully to queries raised by the Chair of the Supporters Trust.

9. When the Trust learned of the intended IFO August meeting with the EFL, it sent briefing documents to the IFO, the gist of which was that the EFL had not addressed their concerns. At the August meeting EFL officials again asserted that all correspondents had received a reply and subsequently the IFO received a transcript report of the meeting with supporters. There remained one bone of contention between the parties. In the briefing material sent to the IFO there was a letter purportedly having been sent to the EFL CEO, to which there had been no reply. The content of the letter suggested that it had been written after the meeting with supporters. Subsequent to the IFO meeting, EFL officials trawled all correspondence received by the League and found no trace of the letter, which, it was noted, was unsigned and undated. Hence the EFL concluded that the letter had never been sent to the League.

10. More complex is the issue of whether the EFL has properly **exercised its jurisdiction as the governing body (or as the relevant football authority, which is the term the EFL prefers)**. The EFL runs the Football League's competitions, both league and cup, and its 72 members are bound by its rules and regulations. These run to well over 400 pages and demonstrate that the EFL is much more than a mere "trade association", as it is denigratingly described by some supporters. The EFL argues that it is the Football Association which is the national governing body, while admitting that it does exercise some governance functions in support of the rules introduced to protect the integrity of its competitions. From time to time the regulations and powers of the League are strengthened. For example, in the wake of a string of clubs going into administration where HMRC was the main creditor, the League introduced regulations which required clubs to disclose whether they are up to date with PAYE and VAT payments. Similarly, the League introduced the Financial Fair Play Rules, with powers to fine or deduct points where clubs are in breach of them. In one instance the regulations were changed as a result of an IFO investigation. When lax selling arrangements by Blackpool for the 2012 Championship play-off match led to many West Ham supporters having tickets in the Blackpool section at Wembley, the IFO recommended that the League needed to control the selling arrangements more closely (IFO 12/10). As a result, new regulations were introduced which specified how tickets should be sold, to minimise the risk of disruption caused by supporters in the "wrong" section of the

stadium. More recently regulations have been introduced to promote a more collective spirit of fair dealing between clubs.

11. The point about the foregoing discussion is to illustrate that the EFL in its governance role can only exercise powers or enforce rules in the manner prescribed by its regulations and authorised by the clubs themselves at their annual meetings. To the complainant and his allies, it appears patently obvious that Blackpool FC has been badly managed and that its best interests have been sacrificed to the advantage of the family owners, exemplified in the alleged diversion of the Premier League payments from the club to its owners. This perceived maladministration has been confirmed, in the minds of many supporters, by Blackpool's successive relegations down the football pyramid. The EFL has explained to supporters that all clubs are private companies, whose owners make their own judgements about their clubs' sporting ambitions in the context of their financial ability to realise them. Supporters often bemoan to the IFO of their inability to influence affairs at the clubs they support, which are controlled by sometimes faceless but powerful corporations or, as increasingly the case, foreign owners. The handful of clubs run by Supporters Trusts do give their supporters more say, but it is interesting to note that probably the most successful recent example, Portsmouth FC, has now been taken over by an American corporation. Hence the vast majority of supporters of EFL clubs, like those of Blackpool, are subject to the policies adopted and funding provided by their private owners. While there is much rhetoric in the supporters' persistent accusation that the EFL has failed to act in the face of perceived transgressions, it is not clear to the IFO what regulations Blackpool FC is alleged to have breached and what specific powers the EFL has failed to exercise.

12. The most consistent accusation by the complainant and others is that the EFL has been derelict in its **enforcement of the Owners' and Directors' Test** (previously called, and often still referred to as, the "Fit and Proper Person Test"). Supporters argue that one of the family owners has a criminal record which should debar him from having any role or influence at the club. Quite properly the EFL refuses to disclose the personal or financial information on which it applies the Test and neither the supporters nor the IFO has been supplied with this information. The EFL cites examples at Leeds United and Leyton Orient (in 2009) where failure to meet the test's requirements has led to individuals being excluded. It also refers to cases where prospective investors or putative directors have withdrawn in the face of an inability to pass the Test. The Fit and Proper Person Test was originally introduced in 2004, at a time when there was much concern about the financial plight of clubs going into administration under the management of

persons of doubtful integrity. The EFL cites the 2003 Annual Report of the Independent Football Commission (the predecessor body of the IFO) which called for enforcement of "proper corporate and financial governance". At the time, it was specifically stated that the Test would not apply retrospectively. While the Test has been renamed, reviewed and extended, the EFL has confirmed on many occasions that it still does not apply retrospectively, except in the case of insolvency events; its prime purpose is to prevent undesirable elements from gaining influence at clubs. The EFL maintains that their inability to apply the test retrospectively is not a matter of discretion, but due to the legal status of the test. Supporters have argued to the IFO that the Premier League applied their test retrospectively when Blackpool had its sole year in the Premiership and, therefore, there is no reason why the EFL cannot do the same. This assertion is based on a misunderstanding. From discussions with the Premier League, the IFO understands that the Owners' and Directors' Test Operated by the Premier League *at that time* reflected the statutory position that some crimes are so serious that the conviction could never be regarded as "spent", notwithstanding if the convicted person had completed their period of incarceration. Hence it was the nature of the contemporaneous test (on Blackpool's entry into the Premier League) not its retrospective application which explains the arrangements the Premier League imposed on Blackpool during the 2010-11 season. While the club is a member of the EFL it is subject to that organisation's approach to the Owners' and Directors' Test. In any event, it is worth noting that the Premier League did not actually secure the removal of any individual during the club's season in the top flight. The procedure and application of the EFL Test (including in which is a right of appeal) have to be a matter for the League itself and the IFO has seen no evidence that it has been improperly administered. The EFL believes that it has applied the test correctly, but that it is not designed to achieve the outcome the supporters seek.

13. The final theme of the supporter's complaints is that the League has failed to follow up evidence of **financial impropriety**. The club's owners have been in discussion with a potential overseas investor who, it is thought, has loaned/invested significant funds to the club. Interestingly in the light of the previous paragraph, the person concerned has failed to meet the requirements of the EFL's Owners' and Directors' Test and cannot act in a substantive capacity within the Club. Following a falling out between the parties the family owners were sued for the return of funds and the investor won his case in court. The written judgment (over 150 pages) revealed evidence of malpractice, including the diversion of club funds to other family owned businesses, and the plaintiff was awarded a significant sum. The supporters believed that the revelations

in the judgment confirmed that the club's family owners were wholly unsuitable and that the EFL should act to remove them. The CEO accepted that the judgment made depressing reading and was concerned that the financial penalty imposed by the court might put Blackpool FC's future at risk. Yet he also stressed that this was a civil and not a criminal case and would not therefore be covered by the Test itself.

14. The EFL also commented that, while the judgment revealed worrying management practices at the club, they were not actually in breach of EFL rules. The supporters' response was to say that if such practice had been going on for some time and yet was still in compliance with the rules, then there was patently something very amiss with the EFL's regulatory regime and it should be changed. The IFO finds there is merit in this argument. The EFL informed the IFO that rules were adopted at their 2018 AGM, including an amendment to the Owners' and Directors' Test and introduction of a new policy on taking direct action against individuals. The EFL is now further considering the practical application of the policy and the circumstances in which it should be applied. The IFO believes that such changes may address some of the Blackpool issues. The EFL also assured the IFO that the running of Blackpool FC was subject to ongoing monitoring and that it would assist in ensuring that the Club had a stable and financially sound future.

Conclusion

15. The complainant and those of like mind are explicit in their wish to bring about a change in the ownership of Blackpool FC and believe that the demonstrably egregious failings ought to have prompted the EFL to effect that change of ownership. However, forcing a change of control in ownership at any club is not within the EFL's powers, nor in the IFO's view should it be. Given that the EFL was never going to be able to assist the disgruntled supporters in achieving their objective, then it is hardly surprising that they remained perpetually disappointed with any response the EFL gave. Hence, they kept shifting the argument from one issue to another, to try to force the EFL to act or to hold it up to ridicule for its failure to do so. The IFO recognises the strength of feeling and the frustration of the complainant in what he sees as intransigence or "opaqueness" by the EFL. Nevertheless, the IFO is unable to uphold the complainant's complaint. This will not be the outcome the complainant had hoped for, but it is based upon a detailed objective analysis and evaluation of the available evidence.

Professor Derek Fraser, Ombudsman

23 January 2019

Alan Watson CBE, Deputy Ombudsman