



IFO COMPLAINT REF: 16/07

RESCHEDULING OF ARSENAL V LEICESTER CITY FOR TV PURPOSES

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 at the outset that he has received full cooperation from the Premier League.

The complaints

3. Three people complained that the rescheduling of the Arsenal v Leicester City match from 13 to 14 February had caused them financial loss of travel costs related to bookings for the original date.

The events

4. Complainant A and his daughter complained separately that, as travelling home supporters, they had bought train tickets five weeks in advance of the fixture, a couple of weeks after the TV fixtures for the relevant weekend had been announced. They posed the question as to when it is safe to make plans. They contended that Leicester fans with bookings on coaches arranged by the club, or with East Midlands trains, had transport on the Sunday at no extra cost, but in their own case Virgin trains had said that there was no ticket acceptance in place for the revised date. Complainant A accepted that, legally, the Premier League had probably done nothing wrong, but morally people like him had suffered a loss of travel costs, in his case of £45.65. (The full price flexible ticket would have been £90.) The League had told him that they were in discussions with Arsenal and Leicester to see what could be done to help fans affected by the fixture change. After the IFO had accepted the complaints for investigation, the daughter reported that she had contacted Sky, the League and Arsenal but none of those bodies was prepared to offer any compensation. However, Virgin Trains had offered her and her father refunds. Although they were no longer financially disadvantaged by the change, they wanted the complaint to go forward to see if Sky and the League could agree a deadline beyond which they should not re-arrange fixtures, and if they do they should compensate those inconvenienced.

5. Complainant B said that his friend was coming from Hawaii to see the match and they were due to go to Paris on 14 February, the rescheduled date of the match. The friend was joining him in London specifically to see the match; a refund for the tickets was not acceptable as if the fixture date had been known in advance, the friend would have flown direct to Paris. Complainant B had had to pay £140 to change their Eurostar booking to enable them to catch a train after the game. Given that Leicester had been title contenders for months, it should have been recognised that the fixture against Arsenal would have great significance.

The Premier League Response

6. The League said that match dates and kick off times can change for a variety of reasons, including UK TV broadcasts. For that reason, it is a longstanding practice that policy, communications and guidance to fans on kick

off times properly reflect the reality that the schedule as announced is always subject to the possibility of change. The League website also contains more detailed guidance on the potential impact of fixture changes. The League recognises that any disruption should be minimised and generally aspires to give fans a minimum of six weeks' notice of any alterations arising from the broadcast selection process; it is only on rare occasions where that aspiration is not met. In general terms the broadcast selections for 2015/16 were announced between 5 and 17 weeks ahead, with the usual truncated timetable at the end of the season. The selection of four matches for the weekend 13/14 February was announced on 17 December. When the Arsenal v Leicester match was identified for broadcast by Sky Sports, with all other broadcast slots filled, and in order to ensure that the match could remain on the same weekend, it was rescheduled for 12 noon on the Sunday. The information was confirmed with both clubs and announced publically on 21 January, only 23 days before the match. The League said that both clubs had sold out of tickets quickly and broadcasting the game had presented a larger number of fans with the opportunity to enjoy the top of the table clash live. Viewing figures were 1.6 million, 34% higher than the average for that timeslot. The League's view was that the circumstances which resulted in the rescheduling of the Arsenal match were exceptional and highly unlikely to recur.

7 League guidance states "Refund requests for travel, accommodation or other related expenses can only be made through the company that sold you the product or service. With this in mind, we recommend only booking flexible travel or hotel accommodation, or obtaining suitable insurance to protect against any changes." That approach is reflected in club ticketing terms and conditions. In terms of ticket sales, Arsenal's terms and conditions state "Please note that all fixture dates and times are subject to change and revised details will be posted on Arsenal.com. It is the responsibility of all supporters to check these details for every game purchased." In line with Premier League guidance, both clubs offered match ticket refunds to those no longer able to attend the game. Refunds were also provided for official coach travel to the match where this could no longer be used. The League said that they had every sympathy with supporters who had been inconvenienced by the rescheduling. However, given that matches have the potential to alter throughout the season, the position of the Premier League and their clubs is that they are unable to consider refund requests for travel or accommodation bookings made through third parties, as such were outside their control. The League referred to the inflexible ticketing arrangements of rail companies which exacerbated the problem.

The investigation

8. The IFO found that on the weekend in question there were already four matches selected for broadcasting before the Arsenal match was rescheduled:

Saturday 13 February 12.45 Sunderland v Manchester United on BT Sport

17.30 Chelsea v Newcastle United on Sky Sports

Sunday 14 February 13.30 Aston Villa v Liverpool on Sky Sports

16.00 Manchester City v Tottenham on Sky Sports

The rescheduling meant that the two Sky matches already selected for the Sunday were put back to 14.05 and 16.15 respectively.

9. In discussions with the Deputy IFO, League officials said that Sky had realised their misjudgement about the importance of the match and had asked to screen it. Although the League and either club could have refused, they had decided that it would be of benefit to a vastly larger number of fans interested in it, than those likely to be inconvenienced by the change. All League clubs sign up to the broadcast deal and can refuse to change a fixture, but obviously have a financial interest in agreeing. Arsenal have arrangements to make refunds on home tickets for rearranged matches; Leicester sell away tickets on a non-refundable basis but agreed to make refunds for the Arsenal match. A total of around 200 refunds were made by the clubs. Although the officials sympathised with the complainants and accepted that they had suffered a financial loss, they stood by the line taken in their response at paragraphs 6 and 7 above. Their view was that "caveat emptor" is relevant and that, in any event, any scheme of reimbursement would be difficult to administer. The League did not receive any complaints about the change to kick off times in the other two matches played on 14 February. In an effort to improve communications, the League is setting up a working group to consider how best to communicate information about fixtures.

10. The League reported that in the light of this IFO investigation they had 'set in train significant changes to our procedures for agreeing kick-off times with the broadcasters and communicating the relevant information to fans.' The League subsequently announced their broadcast selection dates for 2016/17 as follows: -

<u>Fixture selection period</u>	<u>Selection date</u>
August and September	11 July
October and November	12 August
December and January (missed)	12 October (Target)
February	12 December
March	25 January
April	27 February
May (first fixture programme)	6 April

May (second fixture programme)	13 April
May (third fixture programme)	20 April
May (final weekend)	N/A

The League made clear that "All dates are subject to police and displacement due to participation in other competitions."

Findings

11. The issue of match rescheduling is regularly the subject of complaints submitted to the IFO and has been commented on in IFO Annual Reports. Another case has been investigated in a published report (IFO 16/02). Rescheduling in that case was unavoidably caused by a cup replay and the IFO found that suitable warnings had been given in advance about the possibility of a change of date. The IFO has sympathy with all fans who face the dilemma of whether to book travel and accommodation in advance in order to get the cheapest deals or secure their arrangements, against the possibility that a match may be postponed or rescheduled. Match rescheduling is a familiar enough event. The risks of making travel arrangements at an early stage should be well known – but what is a reasonable time frame? Many supporters seem to think that the six weeks' target is an absolute, rather than an aim. More informed supporters probably believe that the most economical way to make plans and still avoid the loss of travel/accommodation costs is to make arrangements only after TV fixtures have been announced. That may not enable them to get the cheapest deals, but generally avoids having to pay top prices required for fully flexible arrangements. In this case the rearranged date was announced only just over three weeks before the match.

12. In the case of the complainants, they made their arrangements only after they understandably believed that the weekend matches for TV had been finalised – three for Sky and one for BT. It is unusual for three matches to be shown on a Sunday and not possible, without additional rescheduling, where matches are already allocated to the 1.30 and 4pm slots. Given that all the available TV slots, two on the Saturday and a further two on the Sunday, appeared to have been filled, the IFO can well understand why the complainants felt safe to make their travel arrangements. However, as we have seen, that scenario can backfire, because even though the Premier League aspire to give six weeks' notice of rescheduling, it remains the case that there are occasions, however rare, when less notice is given. In this case, the additional match for broadcasting actually meant that a further two matches, already selected for television, had to be rescheduled, although only the Arsenal one resulted in a change of date. Although the underlying reason for the change lay with Sky, the League, or indeed either of the respective clubs, could have refused their request. Instead, the League decided that screening such a potentially key match was for the good of a great number of fans, even though in doing so they

knew it would inconvenience or disadvantage some, and the clubs agreed to the change. Although the IFO recognises the fact that the League warn that all matches are subject to change, and have not given a guarantee that six weeks' notice will be provided, the IFO considers that in the circumstances described above, **the complainants had a legitimate expectation** that the match would take place as scheduled. As a consequence, they suffered a quantifiable financial loss, albeit in the case of the father and daughter, they managed to recover their loss through the generosity of Virgin trains. **The IFO recommended to the League that they make good by ex gratia means complainant B's loss of £140, subject to the production of suitable evidence of actual expenditure. The IFO also recommended that the League and all their clubs ensure that ticketing terms and conditions are made absolutely clear and given maximum prominence.**

13. The IFO is also sympathetic to the arguments put forward by the complainants, other supporters and the Football Supporters' Federation, that the rather vague approach to rescheduling needs to be tightened and that a balance needs to be struck to ensure that supporters who invest time, commitment and a great deal of money in attending games are treated fairly. The IFO recognises that the League have binding contractual agreements and that, exceptionally, there can be circumstances which render rescheduling as unavoidable, necessary or desirable, for example because of postponements, cup replays, European commitments or police advice. However, the IFO can see a case for not permitting rescheduling simply for TV purposes after the six weeks' point. The IFO therefore recommended to the League that where, other than for matches on the final day of the season, a match is chosen for broadcasting with less than six weeks' notice of any rescheduling, for no reason other than the desire of a television company to screen it, the League should arrange reimbursement of reasonable evidenced out of pocket expenses for travel and accommodation costs.

14. In considering the matter the League were concerned that such a situation had the capacity to conflict with long established terms and conditions, which are well understood by clubs and used in communications with their fans. The League's view was that the circumstances which resulted in the rescheduling of the Arsenal match were exceptional and highly unlikely to recur. Although the League accepted that the IFO's proposition was worded in order to seek to restrict the application to those very narrow circumstances, they and their clubs have consistently communicated to supporters that matches can move for a myriad of reasons. The League said that to grant an individual refund – or establish a formal refund process which singles out one set of circumstances outside of the established precedent – would dilute the message that fans, when booking travel and accommodation, should always consider the possibility of a fixture moving. The League said that they seek to achieve as much fixture stability as possible, but there are circumstances where six weeks' notice is impossible to adhere to, for example as in this case where the season reaches

its conclusion in an unexpected way. The introduction of the concept of a time limit would, in the League's view, create an expectation that liability could occur once that limit has been passed. In a highly congested football calendar and in a world where complete predictability is impossible to achieve, that is an expectation which on occasions would not be met.

15. The League said that in all cases they feel that it is imperative that the ticketing terms and conditions are clear to supporters from the outset, thereby reducing any uncertainty on the part of the buyer when it comes to factors such as booking travel. As such, the League accepted the IFO recommendation calling for greater publicity relating to the terms and conditions of ticket purchase. They said that they had already begun discussions with clubs to identify options to improve the current level and impact of publicity. Options to be considered include direct communications to individuals at the time of purchase, general communications on websites, and notifications on tickets themselves and/or on related materials. In line with that commitment, the League had shared with fan group representatives target dates for the 2016/17 season monthly broadcast announcements (see paragraph 10). The IFO welcomes that development but notes that from the 25 January selection date to the end of the season, there is the potential for less than six weeks' notice of selections and, of course, there is still the caveat that **all games** are subject to change.

16. The IFO fully accepts that, for a variety of reasons, such as those described in paragraph 13, fixtures need to be rescheduled with less than six weeks' notice. What the IFO takes issue with is where a match is changed at short notice purely at the belated wish of a television company. In paragraphs 14 and 15 the League have given their reasons for not agreeing the IFO's recommendation. In doing so they have highlighted both that the IFO recommendation was worded so as to restrict the compensation requirement to a narrow set of circumstances, and that such circumstances were exceptional and highly unlikely to recur. Why then should there be opposition to the IFO's proposition, which would be a safeguard for those affected should there be a repeat case? Implementation of the recommendation would give supporters considering whether to make early arrangements in order to cut costs some assurance that once the six weeks' stage has been reached, rescheduling could take place only for the sort of reasons which are unavoidable. It would then be for individuals to weigh up the potential for rescheduling without worrying about a late change purely for television purposes. While welcoming the communications options outlined by the League in paragraph 15, **the IFO nevertheless recommended that where a league match is chosen for broadcasting with less than six weeks' notice of rescheduling for no other reason than television purposes, the League should arrange for those supporters affected reimbursement of reasonable evidenced and non-refundable out of pocket expenses for travel and accommodation costs. Having considered representations from the League about their contractual arrangements with broadcasters and the desire for the most**

interesting games to be selected at the end of the season, the IFO considers that matches scheduled for May could be exempt from this recommendation. (The IFO has been asked to clarify what might be included in "reasonable expenses", but takes the view that as in all its case judgement has to be made on the individual merits of the case. So for example, hotel accommodation as a discretionary purchase to permit the supporter to stay in the location would be disallowed, but hotel accommodation arranged because it was not reasonable to return home say after a night match might be accepted. The key criteria are that the costs incurred were reasonable in the light of the logistics of the getting to the fixture and they were proven to be non-refundable.)

17. The League's view was that a refund scheme would be difficult to administer, in terms of time taken, the need for evidence gathering, cost and proportionality. However, if indeed the League are right in saying that the narrow set of exceptional circumstances surrounding the IFO recommendation is unlikely to recur, then the only impact of the recommendation for the League and their clubs will be a requirement for it to be incorporated in the relevant terms and conditions and for the communications options to make abundantly clear that the six weeks' limit applies only to matches rescheduled purely for television purposes, excluding matches in May. However, for supporters it will safeguard any out of pocket expenditure on travel and accommodation should such a situation recur.

Conclusion

18. The IFO has given due weight to the Premier League's views on the case, which have been prominently featured in this report. It is acknowledged that the League has given extended and serious consideration to the IFO recommendations. Although the IFO is aware of the reservations expressed by the League it believes its findings on the individual case are soundly based on the special individual circumstances and its broader recommendations reflect concern widely expressed by supporters generally. **The IFO therefore stands by the recommendations in paragraphs 12 and 16.**

Professor Derek Fraser, Ombudsman

14 October 2016

Alan Watson CBE, Deputy Ombudsman