



THE INDEPENDENT
FOOTBALL OMBUDSMAN

IFO ADJUDICATION 12/08

The Cancellation of a Membership Card at Liverpool

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 Football League) 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 operates a system of non-binding arbitration. In exercising its jurisdiction, the IFO does not seek to question the merits of judgements made by properly constituted Regulatory Commissions and Appeal Boards, unless there were shortcomings in the administrative processes which led to those judgements. It is not the role of the IFO to retry cases, but it is its role to explore and review the procedures under which complaints have been decided 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 received full cooperation from Liverpool FC and the Premier League.

The Complaint

3. A long-standing Liverpool supporter based in Dublin complained that he had been unfairly deprived of his membership card after it had inadvertently come into the possession of another person. He claimed to have no knowledge of this, other than that the card had been disposed of by a family member without his knowledge. He maintained that he had not sold his card. He regarded the breach in the membership terms and conditions as minor, stating that it had occurred "in absolute innocence", and he believed that Liverpool was behaving in a draconian and inflexible way by cancelling his fan card and depriving him of club membership indefinitely.

The Context: Liverpool's Membership and Ticketing Arrangements

4. Liverpool, like many other clubs, operates a membership scheme which, *inter alia*, regulates the sale of tickets. Membership, for which an annual fee is payable, gives an entitlement (though not a guarantee) to purchase tickets for matches at Anfield, together with club benefits, such as a special newsletter and events. For virtually every home match the Anfield Stadium is sold out and the Club manages the high demand by regulating the membership scheme. The data held on the members' purchase history enables the Club to specify a minimum number of matches attended when putting tickets on sale. Instead of the traditional practice of visiting the ticket office with a clutch of ticket stubs from previous matches, supporters who are members may apply in person, online or by phone, with the Club able to verify immediately whether they meet the criteria for purchase for a specific match. When a ticket is purchased against a particular membership card, the computer system registers the authorised sale and the member gains admittance on matchday by swiping the membership card through a reader. The "Fortess system" then verifies that a legitimate ticket purchase is registered to the membership card and the supporter enters the ground.

5. The context of and background to this complaint is the excess of demand over supply which creates an inducement to some supporters to sell on their tickets without the authorisation of the Club. For example, in the recent especially sensitive and high profile match against Manchester United tickets were changing hands at many times their face value and most of those tickets

will have been originally purchased by member supporters. Some non-members purchase hotel packages which include a match ticket and Liverpool believe that there is a steady stream of visitors collecting and returning membership cards to local hotel reception desks. Liverpool officials admit that where a ticket has been legitimately bought against a current membership card, they have no means of verifying if the person admitted is indeed the member. However, there are usually a number of instances where entry is refused by the electronic Fortress system and the ticket office is staffed up with extra customer service staff to deal with such cases. Where it is felt that the person in possession of the membership card has been the victim of a ticket tout, then the service staff try and allow the innocent purchaser of the invalid membership card to purchase another ticket from the customer service window, but those who have purchased a ticket through an unauthorised channel or from an unauthorised source run the risk of being refused entry. The membership scheme terms and conditions make it clear that the resale or transfer of membership cards without the express consent of the Club is forbidden. Furthermore, the Club is under a duty to report instances of unauthorised sale or disposal of tickets to the police, when requested by them as part of any investigation, as the unauthorised sale or disposal of tickets may be a criminal offence under section 166 of the Criminal Justice and Public Order Act 1994 as amended.

The Facts of the Case

6. On 14 January 2012 Liverpool played Stoke City. On that day a woman used a membership card to seek to gain entry to the ground, whereupon the Fortress system denied entry. The woman visited a stadium access operator with a handheld device which issued a statement (like a credit card slip) which recorded the card number and the fact that no ticket had been purchased against it. The woman was referred to the ticket office, where the customer service adviser ran through a standard questionnaire to establish the source of the membership card and the customer's complaint. At this stage the woman got very irate at not being granted entry. The card in her possession had a sticker on it which identified which turnstile to use and the row and seat number. The woman said she had paid for the ticket through the website of a Dublin travel agent and had collected the card from a hotel reception desk as instructed. She was informed

that she had paid for a ticket from an unauthorised source, namely the travel agency in Dublin (known to the Club from previous cases), but that actually no ticket existed against the card in her possession. At this point the woman left before she could be offered any alternative. The card was retained and the owner's identity established.

7. Having reviewed the attempted entry by an unauthorised person, the Club's Fan Manager wrote to the complainant on 31 January, cancelling his membership because of the misuse of his card at the Stoke City match. The letter also withdrew the right to renew membership in future and stated, "The assignment, sale, transfer or lending of a Membership Card ...is expressly prohibited by the LFC Official Terms and Conditions". The complainant replied at some length in an undated letter (later recorded as sent 13 February) in which he explained that he had been ill, during which time a family member had "lent" the card without his knowledge. He admitted that "what occurred was in breach of our membership conditions", but pleaded that it had been "in absolute innocence" and that no money had changed hands. He requested reinstatement in the light of his explanation and his promise that such an event would never recur. The complainant received no response and, by his own account, he sought, without success, on many occasions to speak by phone to someone at the Club and also sent an unanswered email on 2 March. In some desperation, he sent a personal letter to the Managing Director on 9 March. Finally, the Fan Manager wrote again on 18 April stating that the case had been reviewed, but the cancellation of the card and the withdrawal of the right to renew would remain.

8. On 29 April the complainant submitted his protest to the Premier League via the website and received a very short response on 25 May, which said that this was a matter which he would have to discuss with the Club and the Premier League could not help. Since he had had no success in speaking to anyone at the Club, he approached the IFO on 3 June and was advised that the IFO could not act until the governing body stage had been completed. The papers were forwarded by the IFO to the Premier League on 4 June. On 11 June Liverpool FC informed the Premier League of the circumstances and reasons for the cancellation of the card. By now another person had become involved, having

been requested to act on behalf of the complainant, and he reported to the Premier League on 25 June that the complainant had been trying to phone the Club for two days before finally speaking to someone, who could offer no explanation of why the card had been cancelled. The complainant's agent considered that Liverpool had been "grossly unfair and their dismissal of any attempt at reasonable contact or dialogue" was "unacceptable to any governing body". On 29 June the Premier League again responded that it was unable to assist, since the complainant had misused his membership card. In the light of this response, the IFO sought confirmation that the governing body had completed its stage, which elicited the reply that the Premier League was still reviewing the case.

9. The Premier League renewed its dialogue with the club on 13 July, requesting further clarification. Liverpool now replied through its legal department on 27 July, explaining how the complainant had broken the terms of the membership scheme and explaining that their procedures are intended to be applied consistently for all supporters so that all membership card holders whose cards are sold, assigned, transferred or lent are treated in the same way. On 31 July the Premier League confirmed that it was satisfied with the Club's position and would advise the complainant that he would need to revert to the IFO if he wished to take this further. The IFO was advised by the Premier League that it had completed its stage on 10 August and thereafter received the Complaint Resolution Form on 21 August. On 24 August 2012 the complainant confirmed that he wished to refer his complaint to the IFO for adjudication. Three days later the complainant's representative submitted an overview of the case and the IFO investigation began.

The Investigation

10. The IFO carefully reviewed all the correspondence to and from the complainant (and his representative), Liverpool FC and the Premier League. Regular further correspondence was received from the representative claiming that the complainant had been denied access to the relevant documentation and eventually a formal request was made to Liverpool FC under the terms of the Data Protection Act. The representative requested that the IFO's Adjudication be delayed until that request was fulfilled. On 4 October the Club requested

confirmation of identity from the complainant and explained to the IFO that once the identity documents had been received, it had 40 days to comply. The IFO judged that this would cause an unwarrantable delay. The IFO visited Liverpool FC on 27 September, a meeting delayed somewhat by Liverpool staff being unable to meet the IFO earlier. There he met the Fan Manager (now Stadium Access Manager) and the Club legal representative, who had become involved in the dialogue with the Premier League. The IFO was provided with a full dossier of all correspondence related to the case (including previously unseen exchanges between the Club and the Premier League). He was able to inspect the disputed membership card and the Fortress slip issued when access was refused. The complainant was offered several opportunities to meet with the IFO; such offers were declined, pending the complainant's receipt of full documentation from the club.

The Findings

11. Before looking into the substantive issues, the question needs to be addressed of how the complaint was handled and the answer has to be that this was less than satisfactory. There were significant delays in dealing with the complaint by the Club and, to a lesser extent, by the Premier League. The complainant made many attempts to contact the Club by phone and his frustration was expressed in his reference to the Club's "pretend Email, the pretend fan charter and the useless and expensive phone system". The complainant was left in a limbo for two months before he received a response to his letter of 13 February, in which he cited the mitigating factors and pressed his case for reinstatement of his membership. Only his letter to the Managing Director seemed to prompt a reply and the Club suspects that his original letter (confirmed as having been received by recorded delivery) was mislaid somewhere within the Club administrative system and was thus initially ignored. The Club Charter states that the Club will "seek to respond within 10 working days", so it patently failed to meet its own Charter obligations.

12. There are also question marks over the mode of response. A persistent feature of the complainant's case was that at no stage did the Club explain the details of his offence. From his point of view he was without his fan card and had no idea where it was, though he did admit that it had been "lent" by a

family member without his knowledge. In a situation where the Club was imposing in effect a life ban from membership, (described as “draconian” by the representative), it is not unreasonable to expect that the case against him would be substantiated by more than a bald statement that the card had been misused. Moreover, while the IFO has been assured that the Club did consider his submission, the complainant himself has received no reply which directly addresses his case for mitigation. In the 2012 Annual Report the IFO has drawn attention to the negative effects of using standardised letters and in this case that was a feature which caused particular distress. The last sentence of the letter cancelling his membership card and withdrawing his right to reapply for membership states, “The unauthorised sale or disposal of a ticket is a criminal offence and the information regarding this has been passed to the police”. The complainant reports that he is employed in a role which could be jeopardised if any criminal charges are pending. According to the Club, the sentence is merely a version of the clause already in the Membership Terms and Conditions (and is commonly found at other Premier League clubs). Nevertheless, the Club now admits that the sentence is aimed at persistent abuse by supporters or professional touting, as referred to above in Paragraph 5 and that information is only disclosed to the police where requested by the police as part of their investigations or if they have strong and substantive information regarding the continued sale, assignment, disposal of transfer of tickets. The Club has now dropped the sentence from the standard letter. The IFO welcomes that development and understands that the Club does not believe the complainant has committed a criminal act. The Club has now (somewhat belatedly) informed the complainant that no details regarding this incident have in fact been disclosed to the police and has apologised for any distress caused to the complainant.

13. In the light of the foregoing discussion, the IFO **strongly recommends that Liverpool FC conducts an urgent review of its procedures for supporter liaison (including contact by phone) to ensure that it meets its Charter commitments to respond in a timely manner and to permit supporters to have an informed dialogue with the Club when disciplinary sanctions are imposed.**

14. The representative also complained about long delays in his dealings with the Premier League and it has been admitted that the processing of this complaint did take some time, partly because of dealing with both the complainant and his representative. The Premier League was first approached on 29 April, but this was not apparently recorded, though there was a short reply. Effectively, the Premier League commenced its review on 4 June when it received the papers which were forwarded by the IFO. The reply issued on 29 June appeared to have completed the governing body stage, since it informed the complainant that the Premier League could do nothing further. However, the IFO was informed that the complaint was still under review. Hence it was not until 21 August 2012 that the Premier League confirmed that its stage of the complaints procedure was completed. During this 11 week period the representative frequently protested to the IFO about slow progress and understandably became frustrated at the lack of contact. This was across the summer period and staff leave arrangements may have delayed things. The IFO trusts that the Premier League will process complaint reviews expeditiously and where there are unavoidable delays will keep the complainant informed.

15. The substance of the complaint is that the Club has acted unfairly and unreasonably in cancelling the membership. The Terms and Conditions could not be clearer and refer in several places to the restrictions of the card for the sole use of the member, the prohibition on sale or disposal without prior approval of the Club and the right to cancel membership without compensation for breaches of the regulations. Clause 15, for example, states, that cards "are issued for your sole use. You shall not re-sell, assign, transfer or lend the Members Card...to any other person without the prior consent of the Club". The complainant alleges that the IFO has been provided with a selective version of the terms and conditions and cites Clause 3.3 which allows the member to transfer the ticket "to a natural person *who is known to you personally*". In fact, the Club provided a full copy of the Conditions and it remains a central fact of the case that a stranger turned up at Anfield with the complainant's card to seek entry, which was in clear breach of the Conditions. The representative makes two claims in this regard; that the complainant himself did not breach the conditions (since it was a family member who took the card from his home without his knowledge) and the complainant himself did not sell, assign, transfer

or lend his ticket. Indeed, the complainant is prepared to swear an affidavit that he did not sell nor ever has sold his membership card. Although the IFO has no reason to doubt the complainant's account of events, both these arguments are without merit. The card was issued in the complainant's name and he was responsible for its safe keeping and its misuse was ultimately his responsibility, albeit that it was apparently disposed of without his knowledge. Hence the breach in the regulations was in effect committed by him as the member. The ticket clearly was sold, by a Dublin travel agent, and the ineluctable fact is that the card was transferred from the complainant's home to the person who arrived at the ground. Of course, it is irrelevant whether the complainant actually sold the card in terms of the breach of regulations, because sale or transfer are equally proscribed. In summary, **the IFO cannot uphold** this aspect of the complaint, since the Club was entitled to cancel the card because of the clear breach of the Terms and Conditions.

16. The cancellation of the card was only a part, and perhaps the lesser part, of the punishment imposed. The letter of 31 January (confirmed on 18 April) withdrew "the right of renewal of the Official Membership for future seasons". Since there was no time limit specified, this was effectively an indefinite, potentially life, ban. This was particularly hard for the complainant to take, in view of his long-standing support for Liverpool and the fact that the Club was such an important part of his life. It is reasonable to expect the Club to have a range of sanctions related to the seriousness of the offence. Supporters who systematically abuse the scheme and are proved to be the source of tickets sold through unauthorised channels or those who are regularly found to be touting tickets in the environs of the ground certainly deserve a severe sanction. Does the complainant merit similar treatment? Club officials explained that they have a long experience of Liverpool supporters trying to "pull a fast one" by some doubtful bending of the rules and the family member passing on the ticket without the knowledge of the supporter has been cited many times before. (Indeed, the IFO was approached recently by supporters of another club whose sister had allegedly put their tickets on E-Bay.) In fairness to all supporters, the Club feels it should apply the rules in a consistent manner and stands by the decisions it took. On the other hand, the Club concedes that the complainant is not a ticket tout and has not committed a criminal offence. While the

explanation is shrouded in mystery, the Club is willing to give some credence to the complainant's assertion of personal innocence in the disposal of the card. In the circumstances and in the light of the complainant's previous unblemished record, the IFO finds that the indefinite life ban is excessive. **The IFO recommends that the member should be suspended for 12 months dating from the letter informing him of the Club's cancellation and withdrawal of the right to renew his membership and that he should be permitted to renew his membership on or after 1 February 2013.** In this regard it would be reasonable for Liverpool FC to require the complainant to sign a specific undertaking that he will comply with the regulations of the membership scheme.

Conclusion

17. The IFO believes that there was a breach in the Terms and Conditions of the membership scheme (albeit without any commercial intent) and that a period of suspension was justified. However, the Club could have handled the case better by a timely direct dialogue with the supporter, which would have clarified that the complainant was not, in fact, being accused of criminality. The IFO understands that the Club is willing to accept the recommendations and trusts that the complainant will soon be permitted to regain his membership and return to watching the Club he has supported for so long.

Professor Derek Fraser, Ombudsman

20 November 2012

Mr Alan Watson CBE, Deputy Ombudsman