



IFO COMPLAINT REF: 08/003

NOTTINGHAM FOREST TICKETING POLICY FOR DISABLED FANS

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.

The Complaint

2. On 27 November 2008 a man (the complainant) complained to the IFO about disabled access at Nottingham Forest FC (Forest), with specific reference to his nephew. He said that for the previous five seasons Forest had provided free season tickets for his nephew and an escort, as his nephew is only partially sighted because of Cone/Rod dystrophy, which will eventually render him totally blind. The complainant said that for season 2008/09 Forest had decided that unless disabled supporters were on high level benefit, they would not receive any complimentary tickets; Forest had refused his nephew a season ticket and a concession for an escort as he was receiving only mid-rate benefit. The complainant said that he had escorted his nephew for five seasons and shared his devastation at Forest's decision. He said that Forest had consistently refused to reconsider their "radical move".

3. The complainant said that he had been in touch with the National Association for Disabled Supporters (NADS) who agreed that Forest's revised policy was harsh, and who said that Forest were not clear regarding their obligations under the Disability Discrimination Act (DDA). NADS said that they had previously provided all clubs with guidelines to avoid such conflicts. The complainant also said that the Football Association had issued documentation entitled "Addressing the requirements of Part iii of the DDA 1995", extracts of which he had sent to Forest. He quoted those extracts:

Page 37: Withdrawing concessions (especially where they already exist) would prevent many disabled people from attending matches and the resulting bad publicity would do the club no good either.

Page 38: There are some disabled people who may not be seated in designated seating areas to whom concessions should apply. These would include people with learning difficulties or people with progressive conditions who require personal assistance support. In both cases these people should be encouraged to bring a personal assistant (PA) with them.

"Page 40: Clubs should review their charging policies to ensure they do not discriminate either between disabled and non-disabled people or between disabled people themselves.

Page 41: Offering different concessions to people with different impairments may be illegal.

Page 41: Charging the disabled person and their PA in total more than the full price of a SINGLE ticket is likely to be unlawful if the disabled person could not access the stadium without a PA. The provision of a PA to enable access is likely to be regarded as a reasonable adjustment.

Page 42: Clubs should recognise that the service they are providing is to the disabled person and good practice should then mean that PAs should be admitted free and should be regarded as an auxiliary service. This will be of direct benefit to the club.”

4. The complainant maintained that Forest were contravening the DDA by making it unreasonably difficult for disabled people on mid-level benefit to attend matches, even though they may require the same level of daytime assistance as those on high-level benefit.

The Investigation

5. During the close season Forest’s Safety Officer wrote to all those visually impaired season ticket holders, including the complainant’s nephew, who had been housed in a dedicated area of Z block of the Lower Bridgford Stand at the City Ground. The Safety Officer said that changes in place for the 2008/09 season would address some of the safety concerns which the club had had previously and would enable visually impaired supporters more flexibility on where they could sit. “Soccer sight” portable units would be provided for the reception of a dedicated match commentary. The Safety Officer said he was sure fans would appreciate that the section previously used was in an area allocated to visiting supporters which on occasions could be volatile and had caused occupants to be distressed and concerned about safety. With that in mind, Forest had allocated an area in the Trent end so that visually impaired supporters could purchase a seat in an area with facilities for disabled supporters; but could also purchase a seat in another area if they wished. A free escort ticket would be issued in the name of anyone in receipt of the higher rate of Disability Living Allowance (DLA). He said that the changes ensured that Forest complied with the requirements of the DDA, and provided a more suitable area for visually impaired supporters.

6. On 15 July 2008 the complainant wrote to Forest about the matter of a concessionary season ticket for his nephew and a free escort ticket, and he subsequently had discussions with Forest's Safety Officer and Finance Director. On 28 July Forest's Finance Director wrote to the complainant about the club's policy in relation to disabled supporters. He said that there were three factors central to their policy:

- ❖ The overarching requirements of the DDA for reasonable adjustments for supporters of varying disabilities.
- ❖ The mobility and care allowance categories of DLA as defined by the Department for Work and Pensions (DWP).
- ❖ Forest's desire to be fair in its dealings with all supporters.

As a result of those factors, Forest's ticket pricing policy was:

- ❖ Any disabled supporter receiving high-rate mobility or care DLA was permitted a concessionary ticket and a free ticket for an escort. The pricing applied to all who qualified regardless of disability.
- ❖ For those on medium or low-rate DLA Forest offered a concessionary ticket.

7. The Finance Director said that Forest realised that their responsibilities extended further than pricing and had accordingly made additional facilities available to disabled supporters regardless of category. In addition, for visually impaired supporters, Forest offered Soccer Sight commentary throughout the stadium. He said that he could arrange for the complainant's nephew to sit in an area which the complainant had specified. Stewards in that area could collect the nephew from the entrance, assist him to and from his seat and provide assistance to facilities. The Finance Director said that in previous seasons Forest had offered visually impaired supporters seats in Z Block of the Bridgford stand along with the opportunity to be accompanied by a free escort, but a safety review had deemed that area unsuitable. The Finance Director considered that through both pricing and adaption of facilities Forest were making reasonable adjustments to encourage the attendance of disabled supporters.

8. On 4 September the complainant spoke with the Football League and then sent them an Email, outlining his complaint. He believed that discriminating against disabled people on the basis of their level of DLA was unfair as the DDA required that the focus should be on a person's ability to access a service. As his nephew needed an escort, Forest were making it unreasonably difficult for him to attend. The

complainant indicated that in a telephone conversation earlier that day Forest's Finance Director had told him that the policy change had been implemented following instructions from the Football League. The complainant said that he was surprised to hear from his conversation with the Football League that they had not issued such instructions.

9. The Finance Director told the Football League that what he had said to the complainant was that Forest had been guided by a framework provided by the Football League, which included provision for clubs to use the DLA categorisations for the purposes of defining benefits/concessions available to disabled fans in the context of them being reasonable adjustments to their facilities to enable all fans to attend matches safely. The framework suggested by the FL included a provision that they should not distinguish between one disability and another within DWP's categories.

10. On 11 September the Football League sent an Email to the complainant. They said that, having taken up the matter with Forest, they considered that the club were acting in a fair and reasonable manner. They said that when the final part of the DDA had come into law, clubs had had to consider the implications, particularly as it is not possible to discriminate between disabilities. Although the FA had offered advice and made recommendations to clubs to ensure that their policies satisfied the requirements, it was a matter for each club to determine the level at which it will provide an escort ticket free of charge. The Football League suggested that the complainant might like to seek a view from NADS.

11. On 12 September the complainant Emailed NADS. NADS replied saying that they believed that his nephew should be entitled to a free carer ticket as he was in receipt of medium-rate DLA, but that was not a legal entitlement. NADS had had a discussion with the Football Authorities who had referred to an FA guide available on the internet. The Authorities were aware of the issues and were looking into them in the hope that they could hold workshops with clubs in the spring.

12. On 16 September the complainant Emailed Forest outlining what he had been told by NADS in a telephone conversation. NADS had suggested that Forest may not be aware of the difference between high-level DLA (requiring assistance during the day and through the night) and medium-level (daytime only). He contended that his nephew required the same level of personal assistance during the day as those on

high-level DLA and, as such, should receive the same treatment when accessing services. The complainant also quoted from the FA guide (as shown in earlier paragraph).

13. On 26 September Forest replied saying that they had spoken with NADS, who were seeking clarification from other organisations and authorities. Forest did not wish to pre-empt the possible outcome.

14. On 17 October the complainant Emailed Forest contending that it would be wrong for them to maintain their position while there were ongoing discussions about the issue, particularly as spring was a long way off.

15. On 27 October Forest replied saying that they were comfortable with their policy until such time as they were ordered or advised to change it. If they were to change their policy in favour of the nephew they would be open to a charge of discrimination which they were not prepared to risk.

16. Further correspondence between the complainant and Forest saw no change in their respective positions. Forest considered that their policy was compliant with the DDA guidance and were prepared to await the outcome of any meetings which discussed the issues. The complainant considered that some supporters who needed escorts were being penalised wrongly; escorts were having to pay £400 for a season ticket and the complainant was not even an avid fan. As a result, he had been to only a single home match in 2008/09.

Evidence from Forest

17. The Deputy IFO visited Forest and had discussions with the Safety Officer and the Finance Director. The Safety Officer explained that there had been **no change** in Forest's general policies in relation to disabled fans. What had happened was that prior to the 2008/09 season Forest had housed visually impaired supporters in an area of the ground which they regarded as unsaleable – it had severely restricted views, and was in an area allocated to away fans, sandwiched between them and the most vocal area of Forest's support. The visually impaired fans (there were 64 season ticket holders) and carers had all been admitted free. There had been safety concerns surrounding the use of that area and several fans had complained about the situation.

Forest had reviewed their use of the area and had decided to relocate the fans to a more secure and better appointed area of the ground, and use of the Soccer Sight system meant that jack points were no longer needed for sound commentary. In addition, the DDA required Forest to bring their visually impaired fans into line with the conditions applying to other disabled persons, as they were not allowed to discriminate between categories. Therefore, only those on the high rate of DLA would qualify for a free carer, as was the case in the rest of the ground. The Safety Officer said that before implementing the change Forest had consulted with the local branch of the RNIB who were satisfied with the arrangements; and there had been no complaints about the changes other than from the complainant.

18. The Deputy IFO toured the ground with the Safety Officer to put into perspective the evidence taken. He was satisfied that the area previously used for visually impaired supporters was unsuitable.

The Football Authorities

19. The Deputy IFO held discussions with the FA's Equality Manager. Her view was that it was necessary to determine what reasonable adjustments were required to enable access to a service, rather than make a determination based solely on the level of DLA, which was more appropriate to determining whether a ticketing concession should be given. However, she considered that what Forest had offered by way of stewarding was a reasonable adjustment under the DDA for the complainant's nephew; the club's responsibilities under the DDA do not stretch to arrangements for a person to get to or from the ground. The Equality Manager said that the Football Authorities were to hold a seminar to discuss issues arising from the DDA, to which she would invite the Deputy IFO. On 23 March 2009 the Deputy IFO attended the seminar, entitled "Updating the DDA", organised by the Football Authorities. It was clear that there is a wide divergence of ticketing policies in operation throughout football, with some clubs prepared to allow free escort tickets for all those receiving DLA. The Deputy IFO raised the matter of differentiating between DLA categories as a means of determining eligibility to free escort tickets. The legal expert attending thought that such a situation might well constitute discrimination under the DDA, but did not give a definitive opinion.

20. The Premier League guidance to their clubs says:

“Who is a disabled person under the DDA?

The club is entitled to seek evidence from the person. Typical evidence would be one of the following:-

- Entitlement to the medium or higher rate care component of DLA.
- Entitlement to the mobility component of DLA.
- Holder of a Blue Badge.
- Letter of confirmation from Social Services.
- Letter from a person’s GP”

“Clubs ticketing policies should provide for personal assistants and carers to be admitted without charge, where a disabled supporter requires a PA in order to attend a match, on condition that the PA provides support to the disabled person as required.”

21. After the seminar the Football League’s Customer Services Manager told the Deputy IFO that, in the light of the discussions which had taken place in the seminar, the League would be taking steps to consider revision of the guidance which they issue to member clubs, and Forest’s Safety Officer said that in the close season the club would be reviewing their policies in relation to disabled fans.

Conclusions and recommendations

22. Although there remains considerable doubt as to whether Forest’s general policy of differentiating between DLA categories is in accord with the requirements of the DDA, the IFO is nevertheless satisfied that the stewarding arrangements which Forest have offered to the complainant’s nephew represents a reasonable adjustment to enable him to access the service at the City ground. To that extent **the complaint is not upheld** by the IFO. However, this complaint has raised the much wider issue of the inflexible use of DLA categories to determine the need for reasonable adjustments, particularly when it comes to the provision of tickets for escorts, irrespective of the individual needs of the person concerned. The IFO welcomes the fact that the Football League intend to review the guidance which they issue to their member clubs, and **recommends** that, as part of that process, definitive legal opinion is sought in relation to entitlement to free escort tickets. The IFO also welcomes the

fact that Forest will be reviewing their policies in relation to disabled fans. No doubt they will liaise closely with the Football League.

23. There is no doubt that the implementation of the requirements of the DDA is not a straightforward matter and it is hardly surprising that there is such disparity between the policies of individual clubs. At the seminar there was a strong desire from certain clubs, and from NADS representatives, for uniform ticketing policies throughout football to achieve consistency in relation to disabled fans. The IFO **recommends** that the FA, the Premier League and the Football League take appropriate steps to introduce uniform policies in order, as far as possible, to ensure that there is no possibility of discrimination under the DDA, and to eliminate the variances and anomalies which currently exist. At the very least the guidance given to clubs should be definitive and unequivocal.

Professor Derek Fraser Ombudsman

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