



THE INDEPENDENT
FOOTBALL OMBUDSMAN

IFO COMPLAINT REF: 08/004

THE FOOTBALL LEAGUE'S TREATMENT OF LUTON TOWN 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 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. The IFO must make clear at the outset that he has received full cooperation from The Football League and has been provided with some unpublished information which must remain confidential.

The complaints

3. A Luton supporter of 30 years standing and a season ticket holder, complained about a number of issues surrounding the penalty of 20 points imposed on Luton Town FC (Luton) by The Football League. He submitted to the IFO a list of 10 complaints relating to the treatment of Luton, when the club went into administration and re-entered the League under new ownership. The list may be summarised into four main arguments. He contended that

- The procedure and policies under which the Football League dealt with Luton were flawed, for example in the denial of a right of appeal.
- The terms imposed on Luton's new owners were harsh and unfair, threatening the club's survival, penalising the fans and making it difficult for the club to recruit new players.
- The treatment of Luton was not consistent with other similar cases (Leeds, Bournemouth and Rotherham).
- The new Luton Town club (Luton Town 2020 Ltd) is a separate legal entity with new directors and should not have had any liability for the actions of the previous directors.

He made several comments on the views expressed by League officials, both in his summary and in correspondence with the League which was submitted to the IFO. Although he complained in his correspondence that his complaints and communications were not being treated properly, in the summary document he admits that the League replied 'promptly and with courtesy'. The way the League handled his concerns is not, therefore, formally part of the complaint under investigation, though the complainant remains dissatisfied by the outcome, asking plaintively "What have the fans done wrong?"

The events

4. In November 2007 Luton Town Football Club Limited went into administration and the Football League imposed a 10 point penalty in line with Regulation 12.3 of the League Regulations. Having been put up for sale by the administrator, it was proposed in January 2008 that the club would be bought by the consortium known as Luton 2020. In February 2008 the League met with the administrator to discuss progress on a Creditors Voluntary Arrangement (CVA) and on 11 March the League met with Luton 2020. The 2020 consortium had proposals for staggering creditor payments, depending on the extent of any penalties arising from the League's insolvency policy. In April 2008 the CVA proposals were rejected by creditors, the largest of which was Her Majesty's Revenue and Customs (HMRC). HMRC had warned that it would vote against any CVA because of the large sums owned by Luton for PAYE, NI and VAT. In May the League and Luton 2020 met to discuss the formal application submitted by the potential new owners of the club. The Board of the Football League met on 9 June and resolved that they would not accept any application which was based upon a structured payment linked to any possible points deduction. On 10 July, as a result of the consortium abandoning the structured payments proposal, the Board agreed to accept the application for membership, subject to conditions. On 18 July Luton 2020 accepted the terms of re-entry and were readmitted to League 2 with a penalty of 20 points for the 2008-09 season, the FA having already imposed a 10 point penalty for quite separate breaches of FA regulations.

5. As soon as the terms of the re-admission were announced, the complainant (along with many other Luton fans), began to bombard the Football League with messages of protest and complaint. The volume of complaints was such that it was not realistic for each complainant to have a full response, though all messages did receive a reply. In fact, the present complainant did receive from the Chairman of the Football League (letter dated 22 July 2008) a full explanation of the League's policies and actions. The complainant expressed scepticism about whether the Chairman had personally composed the letter and pressed on with his protests, partly through League officers and partly by contacting outside agencies. On 11 August the complainant wrote to the Secretary of State for Culture Media and Sport (DCMS). A DCMS official in reply explained that football was self-governing and that the Government had no role to play in the Luton

case. On 23 September the complainant wrote to the Chairman of the Football Association. In reply the FA explained its action on the Luton case, but pointed out that the Football League had dealt with Luton under its own rules. The complainant was advised of the option to contact the IFO, which was taken up by the complainant, initially in the form of a collation of previous correspondence. On 25 November 2008 the complainant formally requested that the IFO consider the case. The IFO met with League officials in January 2009 and confirmed to the complainant on 17 January 2009 that the IFO would conduct an adjudication on the complaint. The complainant submitted a supplementary letter on 18 February 2009.

The Investigation

6. The IFO considered carefully all the evidence submitted by the complainant, together with some comments made to the IFO by other Luton supporters who were not party to this formal adjudication. The IFO and Deputy IFO met with senior League officials, who were able to explain in detail the way in which the League had handled the Luton case. They also discussed the League's insolvency policy and its rationale. The League provided to the IFO a collection of news reports on the Luton case, some confidential material submitted to the FA at the time of its hearing of Luton's breach of the regulations and a detailed chronology of the Luton case from the time the Club entered administration until it was re-admitted to the League. The League confirmed that its formal position and justification for its actions were well summarised in the Chairman's letter of 22 July 2008 to the complainant. In reviewing the case the IFO, therefore, took the Chairman's letter to be the definitive statement about the treatment of Luton during the relevant period in 2007-08.

The findings

7. The IFO fully appreciates the strength of feeling of the complainant (and many other Luton fans) who contend that the fans have been punished unfairly for mistakes of previous owners. While the IFO understands that the Luton fans feel deflated and demoralised by the unprecedented points penalty (compounded by the concurrent FA penalty), it is not part of the IFO's role to evaluate the reasons for the fans' distress. The task facing the IFO is to adjudicate the complaint, by investigating whether the League operated its policies properly and fairly and whether the outcome was reasonable in the light of the evidence.

8. The central plank of the complaint is that the process was flawed. In investigating this assertion, the IFO finds that:

- There is no evidence that the insolvency policy was not clear, nor was it imposed retrospectively. The Football League insolvency policy was widely discussed and publicised. Its sporting sanctions policy and its requirement for clubs in administration to exit administration via a CVA were formally agreed by the members of The Football League, all of whom were bound by the same regulations.
- The League's position and approach was confirmed by the FA arbitration judgement in the Leeds case, which upheld the legality of the process and the legitimacy of the League's handling of readmission by imposing conditions. The members of the League have, in effect, delegated to the Board the power to decide on the substantive application for re-admission **at the same league level** and to impose such conditions that the Board believed were merited in the individual case.
- Much has been made of the denial of a right of appeal. From the Football League perspective, Luton 2020 was a new legal entity, in effect applying for League membership for the first time. Technically this was not a re-admission but an application from Luton 2020 to "stand in the shoes of" the previous League member. Of course, Luton Town as a football club had long been a member, hence there was scope for a compromise agreement by utilising the exceptional case option, designed to keep clubs within the League if at all possible. As in other walks of life, parties are free to accept or reject the terms of the compromise agreement and if parties accept the terms offered, they cannot then use "buyers' remorse" to seek to change the terms. As the League Chairman explained, Luton 2020 was free to pay the creditors in full, in which case there would be no penalty, or to seek membership lower down the football pyramid as a re-formed club. Since neither option was acceptable, Luton 2020 accepted the terms for readmission to League 2 and in accepting those terms they agreed to pay football creditors in full, to pay unsecured non-football creditors 16p in the £, to accept the

20 point penalty and to forego the right to challenge the terms of that agreement at a later date.

- The Football League has confirmed that the Board decision to accept Luton back subject to special conditions was unanimous. The subsequent remarks of two clubs have, it is alleged, cast doubt on this assertion. The IFO is persuaded that that Board decision was indeed unanimous and that only the level of the penalty was subject of some debate within the Board. The 20 point penalty was agreed by the Board with a large majority.

9. The complainant contends that the penalties were unduly harsh and the 20 point penalty was indeed unprecedented in insolvency cases (though clubs have been expelled or demoted a division for other serious breaches). However, the IFO finds that:

- Luton 2020 were fully aware that a range of penalties was possible and had prepared a staggered payment strategy dependent on the severity of the penalty. It was certainly, therefore, not the case that the club had no warning of how severe the penalty might be.
- The financial condition (payment of 16p in the £) imposed was at the level of the proposed CVA offer –ie if the CVA had been accepted, the 16p would have been implemented. Since the 16p in the £ offer had been made as part of the Luton 2020 consortium’s proposal to buy the club, it could hardly be described as an excessive demand from the League.
- The points penalty included a deterrent element and was never likely to be less than that imposed on Leeds United, even though cases are (and should be) decided on their own special circumstances. Of specific relevance to the Luton case was that this was the club’s third administration (and hence re-entry) in 10 years. It was thus not unreasonable for the severity of the penalty to reflect the club’s history of regular insolvency.
- The League was not obliged to mitigate the penalty because of the concurrent FA deduction for separate regulatory offences. The severity of the League’s penalty

was indeed exacerbated by the FA 10 point deduction for serious breaches of the FA regulations. However, each body acted under its own powers of jurisdiction and were free to exercise their unfettered authority. The League did advise the FA against a concurrent points penalty, but it would have been unfair to reduce any penalty which the League under its own powers deemed appropriate to the breach of its own regulations. The duality of the penalties reflects the scale of the deficiencies in the club's practices under previous ownership.

10. The complainant alleges that the Luton penalty was inconsistent with the way others were treated. In this respect the IFO finds that:

- The Football League quite properly considers each case on its merits and the League must have discretion to reflect the particular circumstances of the case.
- The League had demonstrated a willingness to explore the admission of Luton Town under its new owners by using the exceptional case option, where a club is unable to exit from administration via a CVA. The level was predictably to be not less than 15 points. Insofar as the points deductions varied between Leeds, Bournemouth, Rotherham and Luton, this reflected the previous history, as already mentioned. Leeds were penalised 15 points but had not been in administration previously. In the Leeds case the Football League Board had consulted their member clubs, who had endorsed the penalty, thereby also endorsing the League's approach to such situations. Rotherham and Bournemouth were each penalised 17 points, having previously been in administration once.
- The Luton 2020 group clearly anticipated the possibility of severe penalties by virtue of its staggered payments scheme.

11. The complainant argues that the present owners should not be punished for the sins of their predecessors. The IFO appreciates that the vast majority of football fans have no influence over the way in which their clubs are run and that loyalty to the club transcends changes in legal ownership. In this case the belief exists that the new owners are "real supporters" who are being punished for the shortcomings of previous regimes. The IFO finds that it is not realistic to ignore previous failings. Wishing to take the place

of previous owners and seeking to replace those owners and stand instead of them within the Football League (rather than outside it), Luton 2020 could not reasonably expect to escape the consequence of previous financial and regulatory failings. As the Football League Chairman explained, 'it is the club which secures a competitive advantage from wiping out debt through insolvency' and it is the club, regardless of new ownership, which is 'made subject to any conditions'.

Conclusion

12. At the heart of this complaint lies the Football League's insolvency policy and its requirement that member clubs must exit administration via a CVA. As the complainant points out, this has proved impossible because of the opposition of HMRC and the club's indebtedness to HMRC reflects dereliction in meeting its obligations, evidence that the club had been paying wages it could not afford. The IFO has some sympathy with the complainant's plea that the League should take a more proactive role in helping clubs avoid going into administration. The Independent Football Commission (IFC), the precursor body to the IFO, argued regularly that the football authorities 'collectively and individually, can and should do more to control financial excesses'. The Ombudsman Service, therefore, welcomes the steps which the Football League are seeking to introduce to monitor the level of club debt and, in particular, to set up an early warning system to identify clubs falling behind in their payments to HMRC. If these proposals are adopted, this may prevent clubs from going further into debt and avoiding the fate of Luton Town. Yet clubs are free standing legal and business entities which make their own choices about living within their budgets or beyond them. They operate with the risk of going into administration and suffering the consequences of the Football League's insolvency policy. In exercising their powers under this policy in the Luton case, the Football League acted within their legitimate jurisdiction and operated fairly in imposing conditions on Luton 2020's admission to League 2.

In the light the findings the IFO declines to uphold the complaints.

Professor Derek Fraser, Ombudsman

Mr Alan Watson. Deputy Ombudsman

14 March 2009