

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
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IFO COMPLAINT REF: 18/29

THE FA'S HANDLING OF AN APPEAL

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 that in investigating this complaint he has received full cooperation from the Football Association. He has no jurisdiction over non-league football or the County Football Associations. The investigation centres, therefore, on the actions and decisions of the FA.

The complaint

3. On 12 September a grassroots football club complained to the IFO that after the club had been denied promotion, even though they had finished in a promotion place, the FA both failed to inform them of the appeal procedure and requirements, and then gave contradictory information about what they believed to have been their formal appeal. In complaining the club sought official notice of the decision to deny them promotion, the reasons behind that decision, the opportunity to make an appeal and an apology and guarantee of promotion at the end of the current season, regardless of league position.

Relevant FA Rules and Regulations

4. Rule 1.1 of the Regulations for FA appeals states that an appeal shall be commenced by lodging a Notice of Appeal with the Association.

Rule 1.2 states that the Notice of Appeal shall be lodged within 14 days of the date of notification of the decision appealed against.

Rule 1.4 states that The Notice of Appeal must:-

- (1) Identify the specific decision(s) being appealed;
- (2) Set out the ground(s) of appeal and the reasons why it would be substantially unfair not to alter the original decision;
- (3) Set out a statement of the facts upon which the appeal is based;
- (4) (the Notice of Appeal must) be accompanied by any deposit required by the relevant Rules of the Association

Rule 1.6 states that the grounds for appeal available to participants shall be that the body whose decision is appealed against:

- (1) failed to give the applicant a fair hearing and/or
- (2) misinterpreted or failed to comply with the rules or regulations relevant to its decision; and/or
- (3) came to a decision to which no reasonable such body could have come and/or
- (4) imposed a penalty, award, order or sanction that was excessive.

5. Chronology of the relevant events

25 May. The Club had learned from another club of the make up of the Step 6 leagues. They told the FA that they had not been arranging their ground share in order to gain promotion, giving the reasons for moving from their ground.

29 May. The Club told the FA that they were in the process of lodging an appeal.

31 May. The FA replied that “All written correspondence in relation to your appeal is required by the Reply due by date on the letter from the FA League Management Committee”

6 June. The FA wrote to the Club “Following no response to the email below [that of 31 May] I can confirm the appeal is out of time and we will be unable to take the case any further. The decision of the LMC remains.”

6 June. The club told the FA that they had not sent their appeal as they had not had official confirmation of their allocation.

7 June. The FA emailed the club: “I can confirm that the notification of allocations has not yet been published by the Association and therefore you as a club have yet to be notified. You can only appeal a decision once you have received written notification which will be sent in due course by the Association. I am merely informing you of the appeal process therefore and for the avoidance of any doubt you are not currently required to complete anything.”

13 June. Having received from the FA the notification of allocation to Step 7, the club submitted four pages of what they called their “official appeal” against the decision to deny them promotion, stating the reasons for the appeal and the effect on the club. They said that their strongest point was that the denial of promotion appeared to have been that they had arranged a ground share in order to gain promotion; they explained in depth (as they had on 25 May) why that was not the case, and why it had been necessary to arrange the ground share. They also outlined the effect which the Committee’s decision would have on the club and the town and they cited other clubs who appeared to have been promoted despite ground sharing. They believed that

the denial of promotion was due to a simple misunderstanding about the ground sharing arrangement, which they hoped they had now cleared up.

16 June. The club paid £100 for their appeal.

18 June. The FA told the club that the appeal was out of time.

19 June. The FA told the club that on the basis that their intention to appeal was submitted on 29 May, and that the deadline for submissions was 31 May, the FA were unable to proceed with the appeal.

22 June. The FA emailed the club saying “The Club are only able to appeal the decision to allocate the club at step 7 of the National League System and correspondence on such matter was received on 13 June which will be accepted as an appeal against the allocation to step 7. It is noted on 13 June the Club notified the Association of the intention to appeal the decision However, the Notice of Appeal has not been completed in accordance with FA Appeal Regulations. Consequently the above determination accepting the appeals is done so on the proviso that the requisite appeal fee is received within three days of the Notice of Appeal pursuant to Appeal regulation 1.4 In the event the Notice of Appeal is not received by the FA on or before the aforementioned deadline of 27 June the case shall be formally considered out of time and the appeal will not proceed. Following receipt of your Notice of Appeal the FA LMC will be required to respond with their submissions within 7 days.”

1 July. The club pointed out that they had not had the expected response although seven days had passed.

1 July. The FA replied asking for a copy of the club’s email with the Notice of Appeal, which the FA had not received.

1 July. The Club sent a copy of their appeal letter of 13 June.

2 July. The FA replied referring to their email of 22 June identifying the requirements of FA Appeal Regulation 1.4. They said that as the grounds of appeal had not been submitted, the FA would be unable to take the matter any further due to the Notice of Appeal being incomplete.

2 July. The club pointed out that the appeal letter of 13 June ticked all the boxes.

4 July. The FA told the club that their letter of 13 June was their “intent to appeal”.

The Findings

6. First, it is important to note that it is not for the IFO to question the decision to deny club promotion. It is worth recording, however, an insight into the ground sharing situation as provided to the IFO by the FA’s Head of Judicial Services. Paragraph 5.7 of the National League System Regulations states “Clubs are not allowed to enter a ground share agreement in order to gain promotion ...” In addition, Rule 2.3.1 of the Standardised FA Rules states “A Club will not be permitted to ground share to gain promotion or avoid relegation”. The Head of Judicial Services explained that it does not matter how or why a ground share is in place if it is, in effect, used to gain promotion and that the League Management Committee made their decision within the framework of the Regulations. The correct way to challenge that decision was a properly constituted appeal. What the IFO has investigated are the events surrounding the club’s attempts to submit such an appeal and the way in which the FA handled the matter.

7. There is no doubt that some of the FA correspondence caused confusion for the club. Although on 29 May the club told the FA that they were in the process of lodging an appeal, the correct position, as the FA later pointed out, was that they could not appeal until they received their notification of allocation. Despite that, on 6 June the FA told the club that their appeal was out of time. Then, after the club had submitted what they believed to be their formal appeal on 13 June, the FA told them on 18 June that it was out of time, on the basis that their intention to appeal had been submitted on 29 May, even though the club had received the notification of allocation only on 11 or 12 June.

8. The club have maintained that their “formal appeal” submitted on 13 June contained all the elements required by a Notice of Appeal. They clearly stated the decision against which they wished to appeal, and what they regarded as the grounds for appeal; they gave the facts upon which the appeal was based

and they outlined the impact on the club caused by the denial of promotion. In light of that the IFO raised with the FA a number of concerns in relation to what was regarded as lacking in the club's "appeal". In response the Head of Judicial Services said that the Club's letter did not conform with the formal requirements for an appeal application as it did not outline the grounds of appeal as required by the regulations. He explained that it is a distinct requirement as it permits the respondent (in this case the League Management Committee) to respond to the relevant ground.

9. On 22 June the FA sought to clarify matters for the club, but again this seems to have caused some confusion by what the club regarded as conflicting information. Early in the message the FA said that the club's letter of 13 June was accepted as an appeal against their allocation to Step 7. Taken in isolation, the IFO can see why the club might have been misled by that statement. However, the FA went on to say that the club's letter of 13 June was the intention to appeal and a Notice of Appeal had not been completed in accordance with the FA Appeal Regulations; the FA warned that unless a Notice of Appeal was received on or before 27 June, the appeal would be out of time. The FA were, in effect, allowing the Club additional time in which to submit the formal Notice of Appeal and that letter should have alerted the Club that they needed to take further action before their appeal could proceed. The very least the club should have done at that stage was to clarify their position with the FA. However, in the mistaken belief that their appeal had been accepted, the club merely waited for the response they were expecting from the League Management Committee, then pointed out to the FA that the seven days' period for the response had elapsed. Although the IFO is critical of the way in which the FA have handled this matter, in light of the FA's letter of 22 June, the onus was clearly on the club to do what the FA had asked, and within the timescale quoted.

10. In the light of what has happened in this case, **the IFO recommended that the FA review the wording of the Regulations governing the Commencement of Appeal to make clear any differentiation between the Intention to Appeal and the Notice of Appeal.** Although the FA considered that the Appeal Regulations already make that distinction, they said that they would refer the

IFO recommendation to their legal department to determine if amendment is necessary.

11. Finally, the club complained that they had not had official notice of the reasons why they had been denied promotion, although they admitted having learned from other sources. The only notification they got was their allocation to Step 7. If that was the case, and the IFO has seen nothing to suggest otherwise, then that part of their complaint is justified.

Conclusion

12. It is not for the IFO to question the decision to deny the club promotion, nor to speculate on what might have been the outcome of a successful appeal. While it is clear that some of the FA's correspondence lacked clarity and caused confusion for the club, the club nevertheless contributed to the failure to appeal successfully by not acting on the clear message from the FA that they still needed to lodge a Notice of Appeal for the matter to proceed. The IFO welcomes the fact that the FA legal department will be asked to review the Regulations in light of the IFO's recommendation.

Professor Derek Fraser, Ombudsman

15 January 2019

Alan Watson CBE, Deputy Ombudsman