THE INDEPENDENT
FOOTBALL OMBUDSMAN

IFO COMPLAINT REF: 08/001 – THE FA'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 FA and has had sight of documents which are not in the public domain and must remain confidential to the FA Inquiry. In such circumstances, it is not possible to include as much information in this adjudication as has been made available to the IFO.

The complaints

3. A Luton supporter complained about a number of issues surrounding the penalty of 10 points imposed on Luton Town FC (Luton) by the FA. He contended that:

- The punishment imposed on Luton was not consistent with the treatment of certain other clubs.

- There was delay by the FA in investigating offences which had been divulged by Luton officials. That delay had the effect of the points deduction being imposed for the 2008/09 season, rather than 2007/08, and of permitting further offences to be committed during the period of the delay, which had exacerbated the gravity of the situation considered by the FA's Regulatory Commission.

- The new Luton Town club (Luton Town 2020 Ltd) was a separate legal entity with new directors and should not have had any liability for the actions of the previous directors.

- The FA should have been prepared to give their view on the Luton judgement.

- A more fitting punishment would been a retrospective points deduction (which would have made no actual difference to the club, which had been relegated in any event), or a punishment suspended to allow the "new club" to show that it was a fit and proper club.

The supporter also complained about the way in which the FA had dealt with his complaints.

The events

4. On 4 June 2008 an FA Regulatory Commission issued their judgement on an extensive list of charges relating to serious breaches of FA regulations by Luton. They imposed fines on Luton and four individuals, and a deduction of 10 points on Luton for

the 2008/09 season. They also issued warnings to six agents as to their future conduct. On 9 June the Complainant, a Luton supporter of some thirty years, wrote asking the FA to explain the rationale behind the judgement. He pointed out that none of the perpetrators was any longer involved with Luton, and that the offences had been brought to the attention of the FA by long-serving and loyal Luton employees. In his view the judgement meant that employees in similar situations at other clubs would be deterred from "whistle-blowing". The Complainant asked for an explanation of the vast discrepancies in punishments meted out to Luton compared to Premier League clubs found guilty of irregularities. He also asked for an explanation of the delay in reaching the decision, and the rationale in applying it prospectively.

5. On 12 June the FA replied saying that between July 2004 and February 2007 Luton had been run with a flagrant disregard for the regulations laid down to protect the game. They enclosed a copy of the Regulatory Commission's statement outlining the offences and the penalties imposed. The FA said that it was important to remember that the Commission, in reaching what they felt to be a reasonable and proportionate sanction, also wanted their decision to act as a deterrent to others. They pointed out that Luton had a right of appeal against the judgement. The Complainant wrote to the FA saying that their reply was inadequate.

6. On 16 June the FA wrote to the Complainant. They explained the rationale of the Regulatory Commission, and that full written reasons behind the judgement had been made available to the participants in the case. At that time the reasons had not been made publicly available. The FA said that it was not for them to interfere with decisions from an independent judicial process. The FA said that they understood the Complainant's comments surrounding the position of club staff informing the FA of misconduct. However, FA Rule E14 said:

> "A participant shall immediately report to the Association any incident, facts or matter which may constitute misconduct".

They hoped the decision would not deter others from coming forward. Those individuals who had come forward had not been prosecuted. As far as discrepancies in punishments were concerned, each case was dealt with on its merits and on the basis of evidence

presented before an Independent Commission. That might mean that not every decision is agreed with by the public, or even by the FA – for example, the FA had recently stated their disappointment with a Commission decision in the case of Messrs Ferguson and Queiroz of Manchester United – but they were confident that such decisions were taken without fear or favour. As far as the timescales were concerned, the FA said that the matter had been complex, involving numerous transactions and a significant number of defendants and witnesses. The management of the process had inevitably taken time and there was no suggestion it had been delayed or had taken an unreasonable amount of time.

7. On 19 June the Complainant wrote to the FA thanking them for the fuller reply, but he remained dissatisfied. He contended that the penalties had punished a new company which had bought the goodwill of the offender. He said that the duty of a participant to "immediately report" must have a corresponding duty on the part of the FA to take appropriate action immediately. As he understood it, the FA had taken no action for some months after the report from the club; a number of the offences had been committed in the period post-report, and could have been avoided by prompt intervention. He said that the statement that "those individuals who came forward were not prosecuted" implied an offence more serious that "punished" or "penalised". The implication was that those individuals had been complicit in the offences – had a deal been struck to avoid prosecution? As far as discrepancies in punishment were concerned, it was not only an issue of punishment, but an issue of whether action was taken at all. He appreciated that many people had referred to the West Ham/Tevez case, but there were other analogous cases. He asked what action had been taken over:

- The seventeen suspect transfers referred to in the Stevens report.

- The finding of a VAT Tribunal that Newcastle United FC had "lied" and agents had misled the FA over how deals had been done.

- The finding of a VAT Tribunal that Birmingham City FC had been "untruthful" with the FA, and that their paperwork could not be taken "at face value".

He also asked why in the Boston United FC tax evasion case the club had been allowed to retain their league status be being deducted only four points, with punishment delayed. He said that the striking feature in all four cases was a finding by a wholly independent body, on which the FA had either taken no action, or had – in comparison to Luton – given no more than a mild rebuke. He speculated that the FA had taken no action in three of the cases cited because the clubs had been in the Premier League at the time. Given that the FA had commented on the judgement in the Messrs Ferguson/Quieroz case, he asked for their view of the Luton judgement – whether the FA agreed or disagreed with the individual parts of the judgement. Finally, the Complainant asked for the rationale in applying the judgement prospectively, as a retrospective deduction of points would have had precisely the same deterrent effect.

8. On 20 June the FA replied saying that due to the amount of correspondence they had received in relation to Luton, they were unable to enter into continued dialogue with any correspondent. They appreciated his frustrations, but could not elaborate further as Luton could still appeal the decision. Subject to any appeal, the FA intended to provide any further information on Luton's sanction on the FA's website.

9. On 3 July the Complainant wrote to the FA saying that their reply was unsatisfactory. He said that there was no reason why they could not comment on a decision arising from an independent judicial process. He said that his questions of the FA were from fear that his team would be forced out of existence – if the FA, as custodians of the game, did not take a more long sighted view, other clubs would soon follow. On 4 July the FA e-mailed the Complainant saying that they were unable to comment further as the Luton case was subject to an appeal. Once the appeal had been heard the FA would communicate on the case through Luton's supporter groups.

10. On 15 July the Complainant wrote to the FA following the appeal decision which upheld the Commission's judgement. He described the appeal decision as "short sighted, inconsistent and entirely contrary to the interests of the game as a whole". He outlined the content of much of his earlier correspondence which he considered had not been answered adequately and accused the FA of seeking to hide behind the smokescreen of an "independent commission". On 23 July the Complainant wrote to the FA complaining that they had not replied, and asking for the address of the IFO.

11. On 28 July the FA wrote to the Complainant outlining the events in the Messrs Ferguson/Querioz case. They said that the Complainant could contact the Premier League if he wanted more information about the Stevens Inquiry, and that they understood that the appeals process was ongoing in the two VAT cases. The FA were keeping matters under review. They provided the details of the IFO.

12. On 30 July the Complainant wrote to the FA saying that they had again failed to answer his questions. He copied his letter to the IFO, who wrote to the supporter saying that his correspondence would be considered carefully and comments sought from the FA. On 2 September the Complainant wrote to the IFO with an additional submission. He provided research on the events relating to the Stevens findings and the Newcastle and Birmingham VAT cases, and pointed out that the FA had made no comment on the Boston case. In addition, the FA had not commented at all on his concerns over the culpability of a current or past member of Luton's staff i.e. had a deal been struck to exonerate someone in return for blowing the whistle?

Evidence from the FA

13. As part of their investigation, on 8 September 2008 the IFO and his Deputy visited the FA and met with the Director of Governance, and the Head of Financial Regulation. The IFO asked for sight of various documents which he received at the beginning of October. The Head of Financial Regulation told the IFO that on 18 January 2006 he had met the then manager of Luton in relation to the matter of a "bung" culture in football, unrelated to the irregularities at Luton. At the end of the meeting the manager had voiced general concerns about transfer dealings at Luton, but he had been unable to offer anything concrete on which the FA could act. The FA had asked him to let them know if he was able to provide further information, and they kept in touch with him thereafter in an effort to build up a picture of what was happening at Luton. On 6 June 2006 an official of Luton telephoned the FA voicing concerns over transfers conducted by Luton. On 8 June a manager within the FA's Financial Regulation Department met the official on an "off the record" basis. The official thought that Luton were paying agents outside the proper process, with money going through a company which was not part of the football club. The official wanted to establish if the information was likely to

demonstrate that Luton were breaking FA rules. Because of employment concerns, the official was not prepared either to make a formal statement, or to let the FA have any documents, and did not want the FA to take any action which could lead to the official being implicated as a whistleblower. As a result the FA had to consider carefully how best to deal with the matter as it would be difficult to take forward without compromising the anonymity of the informant. Following internal discussions, the FA manager telephoned Luton's official to say that the FA viewed the intelligence as credible and indicative of potential rule breaches; however, they would need evidence or a formal statement in order to progress matters. (NB: There were no irregular deals/transfers after June 2006. There were two staged instalments paid through the external company– the last in early 2007 – in respect of earlier irregular transfers.)

14. Over the following months there were a number of meetings within the FA on how best they might proceed with matters relating to Luton. The overriding concern was that the FA had no jurisdiction over the company through which payments were alleged to being made, and they had no actual evidence on which to work. They had to weigh up the risks of pushing forward for evidence, balanced against the possibility that such action could result in evidence being destroyed, or not being found, and the potential adverse effect on any Luton employee considered to be a whistleblower. While waiting to see if evidence became available, they kept a close watch on events at Luton, monitoring transfer activity, the use of agents, and media interest.

15. On 13 February 2007 Luton's then manager attended a FA disciplinary hearing unrelated to the payment of agents by Luton. He called on the Head of Financial Regulation saying that he had concrete information about the way in which Luton had been paying agents through a separate company, and he was prepared to go on the record. The FA said that they would prepare a written statement for him to sign, but before that process had been completed, around the end of February, Luton's then Chairman telephoned the FA asking to speak with someone on the compliance side. In early March the Head of Financial Regulation telephoned the Chairman and arranged to meet him. On 22 March 2007 two officials from the FA's Financial Regulation Department conducted a tape-recorded interview with Luton's Chairman. Between then and 20 September 2007 the FA conducted a further 20 tape-recorded interviews with the club's directors, some officials, players and agents. There were also numerous meetings within

the FA to discuss matters. On 15 November the FA issued 17 charges of breaches of FA Regulations by Luton during the period from 22 July 2004 to 14 February 2007; two charges were withdrawn subsequently. In December the FA conducted a further interview, the content of which has been made known to the IFO, but remains confidential to the FA Inquiry. During December and January the FA received responses and submissions from the parties charged.

16. On 2 February 2008 the FA appointed a Regulatory Commission. [FA Regulatory Commissions are appointed, by the Chair of the FA's Judicial Panel, on a well publicised formula, with generally a legally qualified Chair together with 2 or 3 representatives from the judicial panel, - which consists of the FA Council, specialist members and football members.] The Commission conducted a series of hearings. The first was a directions hearing on 29 February. On 20 March they made further directions based on written submissions. On 1 April the Commission heard the facts in relation to Luton. The final hearing, in relation to one of the agents involved, was on 23 May. During the hearings the defendants raised the matter of delay in the FA's Inquiry, but the Commission made no comment on the subject. On 4 June the Commission issued their judgement. The Commission said that they had considered potentially relevant previous FA disciplinary decisions, but had not found any wholly analagous to the Luton case. In their findings the Commission gave credit for the fact that Luton had admitted their wrongdoing at the first reasonably practicable opportunity, for their cooperation with the FA, and for their previously exemplary record. In deciding the appropriate sanction, the Commission also took into account the then position of the club in administration, and their impecuniosity. The Commission viewed the charges as serious, meriting an overall sanction which included an element of deterrence. Had Luton not accepted the charges the Commission would have imposed an overall sanction of:

a) A fine of £75,000
b) A deduction of 15 points (operative in the 2008/09 season).

In light of the club's acceptance, the sanction was reduced by a third to £50,000 and 10 points.

17. FA procedures provide that Appeal Boards are appointed not by the FA itself, but by an independent body under UK Sport. Such an Appeal Board was appointed to hear

Luton's appeal. The club's grounds for appeal were that the Commission's judgement was one to which no reasonable Commission could have come; and that the sanction was excessive. Luton considered that the written reasons given by the Commission were inadequate, and showed that crucial relevant factors had either not been considered or had been given inadequate weight. They said in particular that the Commission had not given adequate weight to the whistle blowing element of the case, nor to the fact that Luton had made a full and open public acceptance of the charges; and that those by then in charge of the club were entirely reasonable people, unconnected with the breaches committed by the previous regime. The Appeal Board were satisfied that the Commission had had all the relevant considerations firmly in their minds, and had addressed their minds to all material aspects of mitigation. The Appeal Board said "This is a heavy penalty but we do not find in all the circumstances, including the element of deterrence which was expressly recorded by the Regulatory Commission, it can be regarded as excessive or unreasonable."

Findings

18. The supporter complained that the matter of punishment was not consistent with other cases, but it is clear from their judgement that the Commission had considered potentially relevant previous disciplinary cases (see paragraph 16). The IFO considers it right that, unless there is a direct parallel, each case should be judged on its own merits; in any event it is not for the IFO to comment on other cases or, as indicated in paragraph 1 of this adjudication, to question the merits of the judgements of Commissions and Appeal Boards unless there were shortcomings in the processes leading to such judgements.

19. The supporter complained of delay in the FA investigating the irregularities at Luton. The IFO considered very carefully whether the FA should have intervened earlier than February 2007 but, for the reasons given in paragraph 14, is satisfied that until they had substantive evidence of wrongdoing, or had someone prepared to go formally on the record about the alleged situation, their decision to limiting action to monitoring the situation was a reasonable one. The IFO is also satisfied that, although the FA Inquiry and the Commission processes were lengthy, the time expended was justified for such a complex case, with so many different defendants. The IFO found no unjustified delay. It

follows that the IFO sees no reason to question the points deduction having been imposed for the 2008/09 season which, in any case, was the judgement of the Commission. In addition, the IFO did not find that the offences committed by Luton had been compounded by any inaction by the FA.

20. The supporter complained that it was wrong for the "new" club to have been penalised for the "old" club's irregularities. As explained earlier, it is not for the IFO to question Commission's judgement.

21. The supporter complained that the FA had not been prepared to voice an opinion on the Luton judgement. The IFO is satisfied that there is no obligation on the FA to comment on that, or any other judgement. It is a matter purely for their discretion.

22. The supporter complained that a more fitting punishment would have been a retrospective punishment, or a suspended punishment. Both the Commission and the Appeal Board made clear that deterrence was part of the reason for the sanction imposed. A retrospective or suspended punishment would clearly not have had that effect, given that Luton had already been relegated in 2007/08 season, and it is not, of course, for the IFO to question a properly considered judgement.

23. The supporter complained about the way in which the FA had handled his complaints. Although the FA did not answer all of the points which he made, they were generally prompt, informative and courteous in their replies and, considering the fact that they were inundated with letters about the Luton situation, they made determined efforts to satisfy the supporter.

Conclusion

24. While the IFO sympathises with the situation in which the Complainant and other Luton fans find themselves, with the Commission's sanction compounded by the 20 points penalty imposed by the Football League, the IFO finds that the matter has gone properly through the FA Inquiry, Commission and Appeal Board processes. The Commission considered, having taken into account mitigating circumstances, that an element of deterrence was warranted; and that was upheld by the Appeal Board. That is not something with which, in the absence of shortcomings in the processes, the IFO can take issue. Although the IFO understands why the Complainant felt the need to pursue his complaints, the IFO does not, in all the circumstances of the case, find them justified.
25. **The supporter's complaints are not upheld.**

Professor Derek Fraser. Ombudsman **21 October 2008**
Mr Alan Watson, Deputy Ombudsman