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THE INDEPENDENT  
FOOTBALL OMBUDSMAN

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## **IFO COMPLAINT REF: 17/15**

### **ALLEGED MIS-SELLING OF MEMBERSHIPS AT HULL CITY**

#### **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.

## **The complaint**

2. A Hull City supporter complained that a number of benefits promised by the Club on purchasing memberships for the 2016/17 season had not materialised; he contended that memberships had been mis-sold accordingly.

## **The facts of the case**

3. On 15 May 2017 the complainant emailed the Club with his complaints about the failure to provide certain benefits, including prize draws, member only events and the award of loyalty points. On 11 July he complained that he had received neither an acknowledgement nor a reply. He said that he understood that the Advertising Standards Agency (ASA) had been in touch with the Club over a breach of the rules. That same day the Club replied quoting from their reply to the ASA in respect of each of the points raised by the complainant. That reply included items such as the Club having held numerous prize draws, usually through social media; and the Club having had a points scheme whereby members could earn points on Tiger Leisure and home ticket spend. In response to the allegation of no member only events, the Club said that the Dugout Bar in the stadium was free for members to enter. The Club said that the ASA's response to his complaint gave them no reason to believe that his membership had been mis-sold "in any way, other than improvements we can make of which has already been done (sic) in our new improved rewards scheme which will be launched shortly". With regard to his original complaint, the Club apologised and said that they had improved their complaints handling process.

4. The complainant responded immediately pointing out what he regarded as discrepancies between what the Club had told the ASA and the reality of the situation. He said that prize draws conducted through social media were clearly not member benefits as they were open to anyone. He pointed out that they had failed to mention that the advertised scheme said that points would be earned on attendance to matches and on concourse purchases, but had not been. He said that he did not regard the ability to enter a bar as a "member only event". He said that their reply was at best inadequate and at worst misleading. The Club replied apologising for any inconvenience caused. They said that they were sorry if he felt their reply was inadequate, but it was final.

5. On 21 August the complainant asked the IFO to intervene. On 22 August, after the IFO had asked the Club for comments on the complaint, the complainant told the IFO that he had received a "rather aggressive email" from the Club which said "We have received a complaint today from the IFO, which is the same complaint you raised with the ASA. Can you please confirm you are wanting to renew your membership or continue with your complaint."

6. On 24 August the Club's Marketing, Communications and Ticketing Manager emailed the IFO. He said that there had been long interactions with the complainant, including an investigation by the ASA who had found the Club "not in breach", with no further action needed, but suggesting some minor amendments which the Club were considering. The Manager pointed out that the complainant had contacted the Club for additional memberships, which was in contradiction to his apparent dissatisfaction with the membership scheme. The IFO replied, confirming that his remit is to consider complaints which have not been resolved within football's complaints process and that, the fact that the ASA had said "We consider the ad is misleading", suggested a prima facie case to investigate. The IFO asked for a meeting to explore the complaint and its possible resolution.

7. The Manager replied maintaining the stance that the Club had met the terms and conditions of the membership scheme. He indicated that the club wished to spend no more time on this complaint and he did not respond to the offer of a meeting with the IFO. He suggested that the fact that the complainant was purchasing more of what he regarded as a "misleading product" was an acceptance of the conditions of the scheme and undermined any complaint.

### **The investigation**

8. The IFO carefully reviewed the terms and conditions of the membership scheme, the correspondence between the complainant and the Club and between the Club and the ASA. The ASA advice notice to the Club said "We consider the ad is misleading because it fails to make clear how all these benefits can be retrieved. We suggest that you amend the ad so that it clearly

states how and when the benefits can be received and highlight any significant terms and conditions." The ASA said that the relevant rules were:-

Rule 3.1: "Marketing communications must not materially mislead or be likely to do so."

Rule 3.3: "Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium or the marketing information is constrained by time or space, the measures that the marketer takes to make that information available to the consumer by other means."

Rule 3.9: "Marketing communications must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify."

The ASA said that the advice notice resolved the complaint and that they would not be taking any further action on that occasion. By following the advice, the Club were likely to avoid further complaints on the issue.

## **Findings**

9. Despite the Club having told the IFO that the ASA had found them "not in breach", the ASA made patently clear in their advice report that they found the Club's advertisement misleading. Unfortunately, the ASA did not specify which parts were misleading and, in the absence of constructive dialogue with the Club, the IFO has been unable to assess the credibility of the Club's response to the ASA, nor determine whether all the failures specified by the complainant are justified. What the IFO can conclude, from what the ASA said, is that there is obviously some justification in the complaint; and an example of that might be the fact that prize draws were not exclusively a member benefit. However, without further investigation, the IFO is unable to assess the extent of that justification, and whether that had any tangible effect on the complainant, other than to cause him to conduct a long running campaign, which he obviously considered to be justified.

10. The IFO is the final stage, indeed the independent stage, in football's complaints process. The IFO role, as defined by the Football Authorities, is **to investigate** complaints not resolved in the earlier stages of the process. It is unacceptable, and unprecedented, that a Club should choose not to cooperate so that IFO can fulfil his given role. Such a situation renders it impossible to reach a reasoned judgement on a complaint and undermines the whole credibility of the process. **The IFO criticises the Club most severely for the stance adopted and is taking up the matter with the Football Authorities.**

11. The IFO also takes issue with the Club's view that the complainant's purchase of additional memberships is in contradiction with his apparent dissatisfaction with the scheme, that it confirms acceptance of the conditions of the scheme and undermines his complaint. Quite apart from the fact that the provisions of the scheme for the current season are different from those for season 2016/17, the Club's view is completely at odds with the situation where someone with a strong attachment to a Club can continue their support despite dissatisfaction with the way in which the Club is run.

12. Finally, the IFO is also critical of the customer service provided by the Club. Some eight weeks after his initial complaint, the complainant had not even received an acknowledgement, let alone a substantive response, which caused him to report the matter to the ASA. Then when the IFO asked the Club for comments on the complaint, they sent the complainant what the IFO viewed as an attempt to deter him from progressing his complaint by suggesting that he could renew his membership **or** continue with his complaint. **The IFO recommends that the Club review their customer service arrangements to make them more user friendly.**

### **Conclusion**

13. This has been a very unsatisfactory investigation in that the refusal of the Club to co-operate with the IFO has meant that it has not been possible properly to evaluate the complaint. What is clear from the ASA advice is that the Club's advertisement was misleading, but it has not been possible to assess the degree of culpability nor any tangible effect on the complainant. The IFO hopes that the Club ensure that their provision of customer service improves and that future

advertising is accurate and that any consequential promises are honoured. The IFO trusts that this report, and subsequent discussions with the Football Authorities, will ensure that all clubs adhere properly to the provisions of football's complaints procedure, of which the IFO is the final stage.

**Professor Derek Fraser, Ombudsman**

**6 September 2017**

**Alan Watson CBE, Deputy Ombudsman**

*Subsequent to the completion of the report Hull City FC supplied the following statement which is included as an Appendix to this IFO Adjudication*

**The Club acknowledges a complaint was received by Advertising Standards Agency and responded to appropriately, the Club also acknowledges that there was correspondence between the complainant and the Club and that unfortunately the actual complaint was not responded to on 15<sup>th</sup> May. Since 15<sup>th</sup> May, the Club has made several improvements to its processes to improve customer service levels, this includes a new sales centre which has improved service levels, ensuring that all queries are responded to and are followed if necessary as per the new complaints handling process. Our aim is to treat everyone fairly within our complaints handling process and want to ensure that all views are heard and taken into consideration.**

**The Club responded to the Advertising Standards Agency and was satisfied that although amendments had already been made to membership in July 2017, that the benefits as set out for Membership scheme starting July 2016 had been fully adhered to, however has taken on board feedback that the brochure could have been explained better to avoid misleading Members. In July 2017, the Club made additional improvements to the Membership scheme and has added additional benefits as part of Tiger Rewards scheme.**

**The Club maintains its original response to the Advertising Standards Agency and are satisfied that the complaint is resolved, based on the fact that no further action was necessary as confirmed by ASA and that amendments have been made to the membership scheme to avoid any further confusion. This supporter has also enquired about purchasing further Memberships which we see as a sign of his content with the scheme.**