



THE INDEPENDENT
FOOTBALL OMBUDSMAN

IFO COMPLAINT REF: 16/17

A COMPLAINT ABOUT THE SUSPENSION OF SEASON TICKETS AT ARSENAL

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 Arsenal FC and the Premier League.

The complaint

3. A season ticket holder complained that Arsenal had unjustly confiscated four Club season tickets, seven silver memberships, two cannon Clubs and several associated match tickets previously purchased belonging to him and his family, the value of which amounted to approximately £3,400.

The facts of the case

4. On 8 April 2012 the Club carried out a seat check and found evidence that a ticket belonging to the complainant's son had been sold at a price over face value. The Club cancelled the son's silver membership. On 1 September 2013 the Club confiscated various tickets confirming that the complainant had set up an unofficial supporters' Club and was selling season tickets through it. On 5 September the Club wrote to the complainant saying that it had been brought to their attention that he was offering membership as well as a "pay as you go" fee per ticket service to his members; he was also offering members the opportunity to "adopt" spare season tickets that had been renewed for the 2013/14 season. The Club said that they did not recognise his supporters' Club and they had not given him permission to act in that capacity; the Club already had an active official supporters' Club in the region he covers. They said that his activities constituted ticket touting and they advised him to stop with immediate effect. The Club had cancelled the confiscated memberships .

5. On 25 October the complainant emailed the Club saying that he had not been acting as a ticket tout, nor selling tickets on the secondary market. He asked for the Club's decision to be reconsidered. On 30 January 2014 the Club wrote telling the complainant that they believed he had been continuing to provide tickets through the unofficial supporters' Club using other active membership accounts. As a result the Club were cancelling those memberships and would continue to monitor the use of tickets using memberships connected to him.

6. At the complainant's request he met with Club officials on 27 February 2014. According to the Club's record of the meeting, in reply to the question "Do you charge any fees?" he replied "No". When asked again, he replied "No, none at all." He denied selling tickets at above face value and asked the Club to

reconsider his position. On 6 March the Club wrote to the complainant saying that they still believed that he had used memberships to provide tickets to paying members of an unofficial supporters' Club. They confirmed that they would not be reinstating his memberships and no refund would be made. If there were further breaches the Club would have to consider banning him. On 14 March the complainant asked whether the Club had an appeals process. On 24 March the Club confirmed that there was no appeals process. On 6 May, in response to further correspondence, the Club told the complainant that their decision was final.

7. After a gap of nearly two years the complainant reopened the case and on 17 August 2016 he emailed the Club saying that it was obvious from his financial status that he had no need to profit from membership fees or from ticketing transactions that breach the terms and conditions. He said that far from profiting from ticket activities, he had expended, willingly, a huge cost in personal time and out of pocket expenses in introducing hundreds of Arsenal fans to the live match experience. He said that the Club had not provided a shred of evidence to substantiate their claims. He asked for documentary proof that he had breached the season ticket terms and conditions. On 25 August the Club replied referring him to what they had said in previous letters. On 8 September the complainant asked the IFO to investigate his complaint.

The investigation

8. The IFO carefully considered the complainant's correspondence to and from the Club. The IFO and his Deputy visited the Club on 13 October and met with the Investigation Officer, the Supporter Liaison Officer and a Legal Counsel. They explained the background to the complainant having established his unofficial supporters' Club. He had wanted to obtain official status for it but Arsenal rejected the idea as it breached the guidelines for supporters' Clubs.

9. The officials pointed out breaches of the ticketing terms and conditions as follows:-

3.3 (A) If more than one Home Match Ticket is issued to you, one Home Match Ticket must be retained by you for personal use and the remainder may be transferred to a Guest(s) for his/her/their personal use only, PROVIDED THAT such transfer takes place

in consideration of no payment or benefit in excess of the face value of the Home Match Ticket.

3.4 (A) In the event that you and/or your Guest(s) are unable to use any Home Match Ticket then you may transfer that Home Match Ticket(s) to a natural person who is known to you personally and who would be entitled (under the Terms and Conditions of Entry and otherwise) to purchase such Home Match Ticket and attend the Match PROVIDED THAT such transfer takes place in consideration of no payment or benefit in excess of the face value of the Home Match Ticket.

The Club stressed that the complainant was required to attend where multiple accounts were used.

10. The IFO examined evidence received by the Club showing that the complainant was supplying tickets on a "pay as you go" fee basis to cover Arsenal membership and booking fees which he had paid and offering the adoption of season tickets which he had spare. There were also instances of non-members being required to pay double the contribution towards the booking fee. The Club are particularly concerned that the complainant does not, as he is required to, give the Club details of "guests" who are using his tickets; and that tickets which the complainant sells to people known to him can then be passed on to others. Such practices pose potential security risks over segregation of fans inside the stadium. The officials also pointed out that in the case of breaches of the regulations the Club are entitled to refuse entry, and to cancel and withdraw tickets without giving any refund. The Club accepted that the complainant is not a tout in its most serious form, but maintained that he has been involved in unauthorised sales. The complainant has not been banned by the Club and still has memberships. The Club said that they would entertain an appeal only if the complainant had fresh evidence.

11. On 15 November 2016 the IFO and his Deputy met with the complainant. He explained the history of his extended family and friends group which had been absorbed into the official West Midlands supporters' Club and his decision after several years to return to his original informal network. He maintained that all he had ever done was to facilitate the use of unwanted tickets to be transferred to friends or family and by so doing he had inducted many people into the Arsenal family of supporters. He categorically denied that he had ever been

involved in ticket touting and reiterated the point made many times to the Club, that he ran a very successful business and had no need to supplement his income, nor had he ever profited from the sale of tickets. He was particularly bitter about the "shameful" treatment of his children who had been deprived of their memberships unfairly and thereby deprived of attending matches which they had always done from a very early age.

12. The IFO enquired about the long hiatus in the case and this had been the result of personal and family illness, together with pressing business responsibilities. When his own health had recovered and his business was running successfully, he felt strong enough to revive his complaint because he felt a burning sense of injustice about his treatment by the Club which he had supported for over 20 years. When reminded that he had told the officers who met him in 2014 that he did not charge fees, he explained that all he had done was to pass on the booking fee which Arsenal themselves charged and in the case of a membership, a small pro-rata contribution towards the annual cost of the membership. He distinguished between the "price" of the ticket and its real "cost", which included the Club's booking fee and the cost of the membership. All he had ever done was to recoup the actual cost involved in the original purchase of the ticket and there had never been any profit element in the informal transaction which he had facilitated. He was embittered that the Club had taken no account of the reasons for his absence on 1 September 2013 (which had provoked the whole saga) which had been due to him being taken seriously ill on the way to the match and being transferred to hospital by ambulance. He characterised Arsenal as being "judge, jury and executioner" in what had been grossly unfair treatment of himself and his family.

The Findings

13. The IFO gives primacy in the investigation to the way Arsenal treated the complainant, rather than his claim for reimbursement of £3400, which may need to be resolved by a different tribunal. On the basis of a strict interpretation of the terms and conditions there had been breaches of the regulations (albeit in terms of the money involved relatively minor technical breaches) and Arsenal were therefore entitled to consider disciplinary penalties. It is relevant to cite the familiar legal maxim that the punishment should fit the crime and in the IFO's view the sanction applied has been unfairly harsh on the complainant,

whose motives appear partly altruistic. In the discussions with the IFO the Club stressed that part of the complainant's misdemeanours was to operate an unofficial supporters' Club outside the formally approved system. The IFO is not wholly convinced that this was a serious offence or necessarily relevant to the severity of the sanctions imposed. It would appear that what was in place was an informal network of supporters linked by kinship and friendship, though the Club cited evidence to suggest that sales were made well beyond his network and that unwelcome approaches were made to members of his former supporters Club. The complainant did seek approval from the Club which was declined on the grounds of geographical proximity to another official Club, though the complainant points out that Bedford, Milton Keynes and Daventry Clubs co-exist within the stated 50 mile zone. The Club explained that consent is required from neighbouring supporters Clubs and this was not forthcoming from West Midlands in the complainant's case. It was also contended that the authorisation process is important in enforcing rules about processing members' personal data and protecting the Club's intellectual property.

14. In considering the appropriate sanction to apply for the breaches in the regulations, the Club appear to have given no weight to the long history of the complainant's support for the Club or his previous active endeavours on their behalf. Perhaps the protests received from other supporters may have coloured the Club's view of that history. Although the Club did not impose a stadium ban, the result of the Club's actions has been in effect to ban the complainant from home games for three years. He retains his travel membership and attends some away games, but has not been able to attend home games since his membership cards were cancelled. A three year ban is now a common sanction imposed on those proven to have been engaged in ticket touting. The IFO finds that the complainant is not a ticket tout (as such term is often understood) and that what has turned out to be a three year ban is more than enough penalty for the offences he is deemed to have committed. It was unwise of him not to have been more forthcoming when he met Club officials about how he had operated his network and his categorical denial that he charged fees left them with the understandable impression that he had lied to them. Had he heeded the warnings given and openly discussed his contention that he was simply recouping the actual cost of the ticket, where the Club cites the supplement

above the face value of the ticket, which is a breach of the ticketing terms and conditions, the situation could well have been resolved at the time. Even the Club accept that the sums involved were modest (only a few pounds) and accept that he was not motivated by financial gain. In the light of the time already served, the **IFO recommends that the effective ban be lifted, the complainant and his family be reinstated into Club membership and they are permitted to purchase season tickets when available.** [*The Club have indicated that the complainant and his family will have their former memberships restored from the start of the next season, subject to there being no multiple memberships in a single name. The IFO commends the Club for this positive and welcome response*]. In order to ensure that the complainant complies with all regulations, it would be reasonable for the Club to require the complainant to sign an agreement to that effect and to confirm that he will not repeat the breaches referred to in this case.

15. The IFO makes no ruling of the issue of reimbursement as this is a commercial contractual matter. The IFO hopes that when the relationship between the complainant and the Club has been re-established, this can be resolved by dialogue between them, although it is clear from the terms and conditions that breaches of them carry no *entitlement* to a refund..

Conclusion

16. The complainant has suffered what was in effect a three year ban for his offences, which, though in financial terms minor, were counter to his membership terms and conditions and moreover he was warned about his re-selling practices. The dispute might have been resolved sooner if the complainant had been more forthcoming with the Club in clarifying that he never "sold" tickets outside his extended circle and only sought to recoup their full cost. The IFO does not believe the complainant was involved in ticket touting (as such term is often understood) and in the light of this the penalty imposed was severe. The IFO welcomes Arsenal's commendable and positive response to this investigation and is pleased to see the prospect of an amicable resolution of the dispute between the Club and one of its long-standing and loyal supporters.

Professor Derek Fraser, Ombudsman

29 December 2016

Mr Alan Watson CBE, Deputy Ombudsman