

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
Standards Institute
ADR Competent Authority

The Independent Football Ombudsman is approved by Government under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

IFO COMPLAINT REF: 20/10

ASSOCIATE DIRECTOR ISSUES AT NORWICH CITY

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 Norwich City.

The complaint

3. A Norwich City Associate Director (AD) complained that:-

- * the Club were denying the inheritor of an AD's shares the right to his seat for no ongoing charge;
- * the Club were denying him free away membership;
- * he had been treated unfairly by the Associate Director Group (ADG); and
- * the Club had failed to rectify the problem of bird droppings falling on him and his wife.

Background

4. In 2002 the Club launched a share offer. Page 4 of the prospectus listed the subscriber benefits. The purchase of 1000 shares entitled a subscriber to a free membership, various incentives to be delivered in 2003 and 2004 and "appointment as an Associate Director of the Club" which entitled that subscriber to "a season ticket for life", amongst all other benefits which were available to those with lesser shareholdings. The prospectus said "By offering these benefits the Board intends to encourage potential investors to subscribe and retain Ordinary Shares subscribed under the offer. Accordingly, the benefits are personal to the subscribers for Ordinary Shares and may not be transferred." In 2011 the Club, in consultation with the ADG, agreed a new set of terms to better reflect the way the Club wanted to take forward into future seasons the relationship between them and the ADs. The Club wrote to all ADs saying that the ADG had agreed, amongst other things, the following terms:-

"On the death of an Associate Director the title of 'Associate Director' shall be entitled to pass to one beneficiary of the deceased Associate, should that beneficiary hold 1,000 ordinary shares. Any qualifying beneficiary shall have a right of first refusal over the deceased Associate Director's seat for life at the full rate then charged for the seat in question."

Although the ADG had already agreed the revised terms, each individual AD was asked to sign consent to the changes.

5. Article 8 of the Club's Articles of Association, adopted on 4 November 1999, provides that "Each member holding one or more shares Shall be entitled to free full membership of Norwich City Football Club" At that time the Club ran a membership scheme only for home match tickets, thereby giving shareholders a home membership free of charge. At the beginning of season 2018/19 the Club introduced an away membership loyalty points based scheme under which the Club sell tickets to away members on the basis of past attendance. The full price of away membership is £35, but ADs are charged only £25 if joining by a specified date.

The facts of the case

6. In 2002 the complainant, and his friend (Mr A), each purchased 1,000 shares at a cost of £25,000. In November 2010 the complainant attended an ADG meeting to discuss new terms and conditions for ADs, but was unable to attend a second meeting in January 2011 and, by his own account, received no feedback on what took place. In response to the Club's letter outlining the agreed changes to the terms of AD membership (paragraph 4), all but one AD, and including both the complainant and Mr A, gave their written consent to the changes. According to item 4 of the minutes of an ADG meeting on 26 July 2011, the Chairman read aloud, word for word, the new package document issued by the Club and invited comments from those present. The only comment regarding benefits related to the annual dinner with the Board. The complainant was not at the meeting in person but is recorded as having had telephone input on the following subject (item 5) and, according to the Chairman of the ADG, the complainant was in telephone contact regarding item 4. According to item 5, it had been confirmed that each AD would be limited to two away match tickets (the same as Board Directors) and, providing the tickets were ordered and paid for four weeks in advance, all ADs "would be accommodated". The complainant is recorded as having "praised the new allocation for ADs" as he did not want to see a repeat of a match the previous season where he, and others, had been told that all tickets had been sold before they had a chance to apply.

7. In March 2018 Mr A died. According to the complainant, Mr A's daughter spoke to the ADG Chairman about retaining Mr A's seat, but the Club made no attempt to contact the daughter until the complainant's intervention in December, when the Chief Operating Officer (COO) met with him. At that meeting the complainant proposed swapping his commercial seat for two ordinary seats, which, he said, meant a £400 per annum profit for the Club; he deemed that as a contribution to achieving the same solution for Mr A's daughter. On 26 May 2019 the COO wrote to the complainant saying that Mr A's shares had been transferred to his daughter. At a meeting of the Board, the COO had articulated the complainant's views on the right of an inheritor to retain an AD's seat, but the Board had unanimously concluded that ADs' benefits should not be changed. On 1 July 2019 the Chairman of the ADG wrote to the complainant and the COO to confirm what was in the minutes of the meeting on 26 July 2011. He said that Mr A had been present for item 5 and the complainant had taken part by telephone.

8. The complainant continued making protestations to the ADG about the clause agreed in April 2011, but was forced to resign in early August 2019. He said that his subsequent protestations to the Club have fallen on deaf ears on the grounds that the ADG is independent of the Club.

9. In the meantime, in April 2019 the complainant had told the Club that he, his wife and a friend had been showered with pigeon droppings while attending a match and the nearest washrooms had had no hot water. On 9 April the Club wrote to the complainant's wife saying that they were sorry about what had happened; pigeon droppings had been a problem for many years. They said that the Club were taking steps to rectify the problem and were in discussions with a company regarding the installation of netting, which would be done in the close season; the problem should be resolved by the following season. According to the complainant he accepted the offer of seats from the players' allocation for the last three matches of last season but, believing that the work would be complete as promised, he opted for the original seats for 2019/20.

10. As the work was not undertaken, on 8 February 2020 the complainant wrote to the Club asking for an assurance that the work would be completed in the summer and that, as an interim measure, the gantry above their seats should be kept under constant surveillance. The complainant asked the Club, in the event of failure, to offer alternative seats. According to the complainant he has not received a further offer of relocation. On 14 February, following a telephone call to the complainant, the COO said that he could not give any assurance, but the matter was on the priority list and the likelihood of completion was high. On 20 February the complainant wrote to the COO and Board members again asking for an assurance that there would be no repeat of the pigeon dropping incident. Meanwhile, on 10 February the complainant had raised all his concerns in a 90 minute meeting with the Club's solicitor.

11. As part of his letter of 8 February 2020, the complainant asked the Club to restore the away season ticket rights for ADs in accordance with the terms of item 5 of the ADG meeting of July 2011. On 26 February the COO replied to the complainant confirming his shareholder benefit of home membership, but saying that "that this does not roll over into an away membership, as that was not the entitlement when issued". He encouraged the complainant to purchase away memberships immediately while he was holding them at the reduced figure of £25, even though the deadline had been 14 February. On 20 March the complainant wrote to the COO pointing out that the 2002 Share Offer Document stated that free membership of the Club was a benefit of all shareholders which, logically, must extend to away membership. He was somewhat angry at the reference to home membership as that was of no benefit to him as a season ticket holder. Meanwhile, on 27 February the complainant had asked the IFO to investigate his complaints.

The complainant's case

12. The complainant contended that within the share offer there were no stipulations about what was to happen in the event of the death of a shareholder and that the statement in the prospectus to the effect that the benefits were offered to encourage investors to retain their shares made it reasonable to

assume that an inheritor would be able to claim the "seat for life". As far as the status of the ADG is concerned, the complainant said that it was somewhat disingenuous to suggest it is independent of the Club, given that the Club were willing to use the ADG as a negotiating vehicle on their behalf in 2011, and that the Club President had been active in efforts to oust the complainant from the ADG. In relation to the pigeon droppings, the complainant had not received the requested assurances and considered that a formal written apology and token compensation should have been forthcoming. He criticised the Club's "apparent casual approach to a fundamental Health and Safety issue". With regard to away membership he contended that ADs should have parity with Directors at away matches and should not be required to pay the charge. He pointed out that the Club's Articles of Association said that each member holding one or more shares was entitled to "free full membership" of the Club. The complainant said that there was no underlying reason for a change from that implied by the original share offer document. He asked that the Club agree a suitable solution for holders of 1,000 shares under the 2002 offer, backdated to at least 2018, that they ensure that shareholders can claim free away membership and that they give stronger assurance regarding health and safety issues. He said that, in addition, he would appreciate an ex gratia payment of £600 to reimburse him for legal costs incurred in relation to his inappropriate departure from the ADG.

Investigation

13. The IFO carefully considered the evidence and submissions from both the complainant and the Club. In their comments to the IFO, the Club said that it was clear from the share offer prospectus that an AD would be entitled to "a season ticket for life", and that the rules that all parties agreed to do not permit the seat to be transferred to an inheritor free of charge. The benefit had always been a personal right for the subscriber for life, rather than a right attaching to the shares. The Club had tried to act favourably to the ADG by granting an inheritor the right to join the ADG and the right to purchase the deceased's seat at the full rate at the relevant time. In 2011 both Mr A and the complainant had signed agreement to the variation to the terms of AD membership.

14. With regard to away membership, the Club said that the Articles of Association entitle every shareholder to membership of the Club, but when the Articles were approved the Club ran a membership scheme only for home tickets. The away membership is a new scheme and the Club found no grounds for the complainant's assertion for parity with the Club's Board Directors, which was not a benefit offered by the 2002 prospectus or the terms revised in 2011. The IFO queried why it was necessary for ADs to purchase away membership when they appeared to have been given entitlement to away tickets in accordance with item 5 of the minutes of the July 2011 ADG meeting (paragraph 6). The Club acknowledged that there had been an informal agreement between the Club and the ADG back in 2011 to grant that access to away tickets, but nothing was ever agreed in writing. It was always

more of an informal understanding rather than a right granted by the Club to ADs. That was something the Club did as a goodwill gesture, rather than a benefit to which ADG members signed up for when agreeing to purchase shares, which they have now discontinued.

15. The Club said that the concession was for anyone holding a corporate season ticket. The complainant had elected to give up his corporate seat in return for two general admission tickets; as such, he is regarded as a general admission supporter and is no longer served by the corporate hospitality team. Any general admission supporter wanting away membership must purchase it, and the Club are not prepared to extend a corporate season ticket benefit to a general admission ticket holder. However, the Club's Head of Ticketing reported that, given the complainant's previous investment, as a goodwill gesture the Club had given him priority status this season to book the best available away tickets in advance of the other 8,000 members. He has always booked online on the first day and has had no problems of any note in doing so.

16. Regarding bird droppings, the Club had already apologised and would be carrying out the necessary works in the summer to rectify the problem. With regard to the ADG, the Club said the Group has had periodic meetings with the Club, but it is independent of the Club, and the Club has no formal oversight of, or participation in, the Group.

Findings

17. The IFO must make clear at the outset that he is satisfied that the ADG is independent of the Club and, therefore, the actions and decisions of the Group, and its constituent members, do not fall within the IFO's remit. That includes the complainant's legal costs in relation to his departure from the ADG. Neither has the IFO considered concerns the complainant has expressed about the administration of a bond scheme which the Club introduced in 2018, under which the complainant was unable to purchase bonds because of over-subscription. This is a commercial financial matter. If the complainant believes there was maladministration in the bond issue, his remedy lies with a financial regulatory body, such as the Financial Ombudsman, and not with the IFO. Hence, evidence and events related to these issues have not been included in this report.

18. With regard to the right of an inheritor to claim a deceased person's seat free of charge, that is not an issue which affects the complainant personally at this point in time. Although his protestations have been on behalf of a third party, Mr A's daughter, the IFO has nevertheless considered the matter. The IFO is satisfied that "a season ticket for life" was intended to be personal to the life of the subscriber. The prospectus clearly said that the benefits were personal to the subscriber and not transferable (see paragraph 4). Even if that was not the case, the revised terms agreed by the ADs and implemented in 2011 made that

abundantly clear. The IFO is also satisfied that the process undertaken to effect the change to the terms was conducted properly and each AD had ample opportunity to input to the process; and, of course, both Mr A and the complainant consented to the changes.

19. With regard to the away ticket scheme, the complainant asked for the away ticket rights of ADs to be restored in accordance with item 5 of the minutes of the July 2011 ADG meeting. The IFO can understand why the complainant feels strongly that the statement in the Articles of Association that a shareholding member shall be entitled to free full membership of the Club might entitle him to away membership free of charge. In addition, there was clearly a period where, seemingly as an informal goodwill arrangement, members of the ADG were treated the same as Board Directors in relation to away tickets; but that was not a specified benefit of AD membership, either in the prospectus or any other formalised way. It is a fact that throughout that period, the only membership was for home matches and the introduction of a scheme for away matches represented a change of circumstances. By his own choice, the complainant had elected to exchange his corporate seat for two general admission seats, thereby apparently ceding any access to away tickets through the corporate hospitality team. It follows that the IFO accepts that the complainant must purchase away membership to be part of the scheme.

20. The bird droppings incident in April 2019 was clearly unpleasant for the complainant, his wife and their friend. The Club replied promptly and said that they were sorry for what had happened. They said that the problem would be rectified in the close season, which was a reasonable response, and which prompted the complainant to opt for the same seats for 2019/20. However, the promised work did not take place and the complainant's subsequent attempts to obtain an assurance that the required work would be done were unsuccessful; and he apparently did not receive any offer of alternative seating. The IFO finds that that undertaking should have been honoured and the IFO welcomes the Club's belated assurance that the situation will be rectified in the summer of 2020. In recognition of the unpleasant experience and the Club's failure to honour their undertaking, **the IFO recommends that the Club make the complainant a goodwill gesture of £100.**

21. As is standard practice, the IFO issued a draft report to the respective parties for comment. The complainant said that he did not wish to make complaints about the Club's bond issue as such, but wished to raise the issue of prejudicial treatment of some holders of 1,000 shares, in accordance with section 994 of the Companies Act. That is not a matter within the remit of the IFO. If the complainant believes that the bond issue was conducted in a prejudicial manner his recourse is to petition the court.

22. The complainant pointed out that the share prospectus said that the holder of 1,000 shares obtains "appointment as an Associate Director of the Club", which does not entitle other individuals "independent" of the Club to deny him that entitlement. He said that, if the Club are not willing to campaign for his reinstatement to the ADG, they must provide a protocol as to what service he is entitled to as an independent AD. The complainant resigned his membership of the ADG; it is his personal responsibility if he wishes to seek reinstatement, and not for the Club to become involved in the affairs of an independent group. As to protocol, the Club told the IFO that ongoing benefits delivered to ADG members are their seats for life and membership of the group; as an independent AD, the complainant has only admission to the ground to use his two seats.

23. The complainant maintains that the Club have not implemented their pledge that "... by offering benefits, the Board intends to encourage investors to ... retain shares" in that only "free home membership" has been retained on an ongoing basis. According to the Club, the standard shareholder benefits relating to various discounts etc outlined in the prospectus are still available to all shareholders, including the complainant (see paragraph 4).

24. In their comments on the draft report, the Club said that it had been their intention to rectify the bird droppings situation before the beginning of this season but, with having to pay promotion bonuses, the Club had been unable to afford the work, which was expensive. The Club said that they still intend to complete the work before next season, but with the Covid-19 situation, cannot give any undertaking. Given that this is a longstanding problem, **the IFO strongly recommends that the work is completed before next season and that, if a permanent solution cannot be implemented, a temporary solution should be found.**

Conclusion

2. The IFO has found not justified the complainant's claim that an inheritor of shares in the Club should retain the right to the deceased's seat free of charge. The IFO accepts the Club's contention that by exchanging his commercial seat for two general admission seats, the complainant ceded access to away tickets through the corporate hospitality team. The IFO found that the bird droppings incident had been an unpleasant experience for the complainant and his wife and the Club had not honoured an undertaking to rectify the problem. The IFO recommended that the Club make the complainant a goodwill gesture of £100.

Professor Derek Fraser, Ombudsman

4 May 2020

Alan Watson CBE, Deputy Ombudsman