

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
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IFO COMPLAINT REF: 20/15

EXECUTIVE MEMBERSHIP AT MANCHESTER UNITED

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 Manchester United FC.

The complaint

3. A man complained that Manchester United had not treated him fairly by refusing to refund his executive club membership proportionately in relation to the matches missed because of the pandemic. He claimed that the goodwill offer made by the Club was insufficient.

The facts of the case

4. The complainant is an executive club member at Manchester United, who has been attending Old Trafford for some 50 years. He pays an annual fee of £5000 + VAT, for which he receives tickets for all matches played at Old Trafford. On 19 May 2020 he received a communication from the Executive Club which explained that, because of the impending arrangements to play matches without spectators, all members would receive a 10% discount, which could be taken as a cash refund or applied to the 2020-21 season. He responded that he did not believe that the refund was appropriate and submitted an arithmetical calculation which suggested that the refund should be at 20%, not 10%. In subsequent correspondence he pointed out that he had been promised a signed shirt following some difficulties with an away Europa League match. *[Later in the process the complainant was informed that the delay was due the pandemic and he was assured that he would eventually receive the shirt. This aspect of the case does not form part of the current complaint]*. He requested that his complaint be escalated and it was considered in turn by the Head of Hospitality, the Customer Services Manager and finally by the Operations Director, in line the Club procedure. On 9 July the Director explained that in seasons where the number of games was more than expected there was no additional charge and hence it followed that there would be no rebate due when the number fell below expectations. Although the Club was under no obligation to make any refund, "we wanted to make a gesture of goodwill to our Executive Club Members in recognition of their dedicated support". He concluded that the 10% went beyond what was contractually required and the Club's position was unchanged. The complainant was advised of his right to refer his complaint to the IFO and he did so on the same date.

Investigation

5. The IFO carefully reviewed the complainant's submission and the responses from the Club. In response to the IFO's request the Club provided a copy of the Executive Club Terms and Conditions. The complainant stressed that his calculation was based upon an estimate of the number of matches he would not be able to attend, while the Club's offer of a rebate was wholly a goodwill gesture unrelated to the specific number of matches played behind closed doors.

Findings

6. The complaint has to be considered in the context of the pandemic which could not have been planned for and which posed severe challenges throughout football. From a consumer-trader perspective the question is whether the complainant was sold a product or service that he was unable to use. Manchester United's regular season ticket holders are entitled to attend the 19 Premier League home matches. Any Cup or European games have to be paid for separately. Hence Manchester United is able to calculate easily what refund is due for the matches the ticket holder is unable to attend. Similarly, a person who purchased a single ticket for a specific match cannot now attend and is entitled to a refund. However, the Executive Club provided an entitlement to an *unspecified* number of matches and so different criteria apply.

7. The Club are adamant that the complainant has no contractual entitlement to a refund and cites the Terms and Conditions as justification for their position. The relevant clause is as follows:

Where any match is cancelled, abandoned or postponed the Club shall have no liability whatsoever to Ticket Holders or any Authorised Representatives in respect of any such match except that, following any cancellation, abandonment or postponement of a home match, a Ticket Holder or any Authorised Representative shall be entitled to attend the rearranged match (if any).

It is the case that in a successful season when Manchester United had a long run in the cup competitions and made progress in Europe, Executive Club members would be able to attend a significantly higher number of matches than normally expected. The Club reminds the complainant that in such circumstances he has not been charged a supplementary fee and by the same token a lower number of matches does not entitle him to a refund. The goodwill gesture offered was not contractually required, but was provided in recognition of the Executive Club members' continuing support. It was not based on an arithmetical calculation of the matches missed.

8. The complainant bases his case on just such an arithmetical argument and is viewing the matter in a quite different light. He cites the longevity of his support and wrote "I have been attending matches at Old Trafford now for 50 years and feel totally stabbed in the back". He also cites the practice of other clubs with similar hospitality schemes. If the contractual obligation was zero and the complainant demanded 20%, then the 10% goodwill gesture may be viewed as a not unreasonable compromise figure. The IFO finds that there can be no "correct" figure for a refund because of the nature of the scheme with its unspecified entitlement to matches and that the complainant had already attended a significant number of matches before the lockdown. This is a matter for the Club's discretion and it chose to exercise that discretion by making a 10% goodwill gesture. The complainant has a reasonable case based on his calculation of the likely number of matches missed (and he argues that the Club

is saving the cost of the food provision), but it is inappropriate for the special scheme which the Executive Club involves. It would have been a relevant approach if, for example, the complainant had been a regular season ticket holder and the Club had based its calculation of the refund amount on a doubtful basis. However, the Club's offer of a 10% rebate was not based on the specific numbers of matches missed and was a token of support for its most prestigious ticket holders. The Club is correct that there was no contractual obligation to offer a refund and it is in the nature of a goodwill gesture that it is within the gift and discretion of the provider. Of course, the complainant has the freedom to reject the goodwill offer and refuse to renew his Executive Club membership. The IFO is unable to uphold his complaint and finds that Manchester United acted reasonably.

Conclusion

9. The pandemic and clubs' financial response to it have generated a number of complaints about refunds, such as this one. Where the benefit, such as a season ticket, is for a defined number of matches then the refund calculation is relatively straightforward. However, where the benefit is undefined, such as for a membership, a simple arithmetical approach is inappropriate. The complainant's calculation of the matches missed has mathematical justification, but it is not relevant for a scheme where his fee entitles him to attend any number of matches, depending on the Club's success. He suggests that a 15% rebate would be a reasonable compromise and he is free to pursue that with Manchester United. The IFO concludes that in offering a goodwill gesture to its Executive Club members beyond its contractual obligations, the Club has treated them in a fair manner.

Professor Derek Fraser, Ombudsman

22 July 2020

Alan Watson CBE, Deputy Ombudsman