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9th April 2021

The Scottish Football Association Ltd
Hampden Park,
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Dear Sirs,

Season ticket contracts and the Covid-19 pandemic.

The Society of Chief Officers of Trading Standards in Scotland is a Scottish Charitable Incorporated Organisation (SC047951), and is the professional body representing the heads of service for trading standards services in Scottish local authorities.

My purpose in writing to you is to make you aware of the findings of project work we have carried out examining the trading practices of a selected number of Premiership clubs in relation to season ticket contracts during the COVID-19 pandemic. I am pleased to inform you that, as you will see from our findings, some examples of good practice fully in accordance with consumer protection law were identified, however there were also some matters of concern where improvement is required. In asking you to consider all of this, SCOTSS would also like to offer to work with you and assist as much as necessary in helping to ensure that, going forward, the Scottish professional football sector as a whole and all clubs understand how consumer protection law applies to the arrangements they have with football supporters, as consumers of their services.

The pandemic crisis has, amongst other things, highlighted the importance of all providers of goods and services ensuring that their contracts meet the requirements of consumer law and that they recognise consumers' rights in the current situation. This letter, and the advice which accompanies it, does not introduce new laws or rules for businesses; rather it explains how the current law applies in the present circumstances. In particular, the advice addresses specific matters identified during a project involving nine Scottish local authority trading

standards services (SLATS) which examined how nine Premiership clubs responded to the curtailment of season 2019/20 in relation to season ticket refunds, and also how season tickets for season 2020/21 were marketed in the anticipation that attendance at grounds was likely to be limited for at least part of the season.

I would make clear that our research into these matters was not driven by consumer complaints or other specific intelligence received about unfair trading practices. In fact, no Scottish local authority is known to have received any such complaint over this period. However, some anecdotal evidence as to how certain clubs may have been responding to the effect of the pandemic raised some questions. In addition, we were conscious that the contractual relationship between a football supporter, and particularly those who purchase season tickets, and their club is unlike most contracts between a business and a consumer. Football supporters can feel part of the club itself and have great loyalty to it. Unlike in a contract for a holiday, or to buy a house or a car, they are not necessarily motivated by getting the best value for their money as such, and indeed may be willing to contribute when their club undergoes hardship or forego refunds to which they may be entitled. This might make them less aware of, or less inclined to pursue, their rights where they may be entitled to resulting from a contractual breach by the club they have supported emotionally and financially, perhaps for years. Football businesses, like every other, are required to comply with the law of contract and to be fair and transparent in their dealings with their customers. Similarly, supporters, as consumers, should be aware of their rights and be able to exercise them.

The Appendix to this letter details the findings of our project and provides specific advice arising from these in bold.

Where football clubs, as service providers, are not compliant with consumer law they may risk action by local authority trading standards services, the Competition and Markets Authority (CMA) or any other enforcer under consumer protection law. In addition, independent of any such action, football clubs should be aware that consumers can take action themselves, through the courts if necessary, to challenge breaches of contract and terms which they think are unfair.

SCOTSS wishes to work with the Scottish football authorities to ensure that football club contracts and arrangements with their consumers comply with the law. We recognise that these continue to be very difficult and unprecedented times which bring enormous financial pressures and uncertainty. SCOTSS is not proposing to interfere with arrangements made freely between clubs and supporters to waive rights to refunds or other compensation. However, it is important that all parties are aware of how the law applies in the current

situation and the rights of consumers. We would therefore request that you bring our findings and advice to the attention of all member clubs to inform their trading practices with supporters in the future. Most trading standards services offer a business advice service and individual clubs are welcome to contact their local authority should they require specific advice, tailored to their needs.

I hope our comments are helpful. If you have any queries, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "G. R. Paton". The signature is written in a cursive style with a large initial 'G'.

Graeme Paton
Chair SCOTSS

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS), is a Scottish Charitable Incorporated Organisation (SC047951). Our members are professional trading standards managers representing every Scottish local authority trading standards service.

Appendix

1 Background

The Competition and Markets Authority has published the guidance "Statement on coronavirus (COVID-19), consumer contracts, cancellation and refunds"

<https://www.gov.uk/government/publications/cma-to-investigate-concerns-about-cancellation-policies-during-the-coronavirus-covid-19-pandemic/the-coronavirus-covid-19-pandemic-consumer-contracts-cancellation-and-refunds>

Amongst other things, this states:

- "The law does not specifically set out the consequences of the coronavirus for contracts. Usual legal principles will therefore apply. In addition, consumer protection law ensures that consumers' legal rights (for example those which might apply under the usual legal principles) are protected and that businesses treat consumers fairly in all their dealings with them.
- In some circumstances, due to lockdown laws, a contract cannot go ahead as agreed or at all, it is therefore 'frustrated'. A contract will be frustrated as a matter of law if, due to no fault of the parties, something happens after the contract was entered into which means it can no longer be performed at all or performance would be radically different to what was agreed.
- As a result, the contract comes to an end and, where consumers have paid money in advance for services or goods that they have yet to receive, they will generally be entitled to obtain a refund.
- For most consumer contracts, the CMA would expect a consumer to be offered a full refund where.... a consumer is prevented from receiving any goods or services, because, for example, lockdown laws in the UK or abroad have made it illegal to receive or use the goods or services.
- In most cases, consumers will contact a business to ask for their money back, but there is no requirement for consumers formally to communicate with a business before becoming entitled to a refund.
- Sometimes, a consumer will already have received some of the services they have paid for in advance. In those cases, the CMA considers that the consumer would normally be entitled to at least a refund for the services that are not provided. However, where they have already received something of value, consumers should generally be expected to pay for it and they will not usually be entitled to get all their money back."

The clubs whose trading practices were examined were: Aberdeen, Celtic, Dundee United, Hibernian, Kilmarnock, Livingston, Motherwell, Rangers and Ross County.

Research was carried out by examining club websites. In some cases, local officers or colleagues had personal season ticket contracts and were able to provide further details. The football clubs concerned have not been contacted in relation to any of these findings.

2 Refunds for season 2019/20

When the season was brought to a premature close, Premiership clubs were unable to play on average four remaining home games which season book holders had purchased entry to as part of their contract.

Our research found that seven of the nine clubs concerned took steps to actively offer to their season ticket holders a pro rata refund and we would commend them for this. However, in two cases (Ross County and Dundee United) they did not appear to do so.

Dundee United's website included the following Q and A:

Q Will I receive a refund for matches that were cancelled due to the pandemic during the 19/20 season?

A The price for 20/21 season tickets reflects the cancelled matches from last season.

We would reiterate the above statement from the CMA that where a contract is frustrated and consumers have paid money in advance for services or goods that they have yet to receive, they will generally be entitled to obtain a refund.

3 Season ticket renewals for season 2020/21

All clubs whose marketing was looked at offered as part of their season ticket packages to provide "virtual services" for season ticket holders giving them live online coverage of those games which over the course of the season they could not attend as they would have to be played with no, or a limited number of, spectators.

Livingston were not providing these services to those who bought an Under-16 season ticket package, and likewise Dundee United for the Under-16 and Under-12 season ticket packages. It would appear that nothing was being offered to those fans in return for their purchase for as long as they were not admitted into grounds, which is now likely to be the entire season.

Aberdeen said they were committed to providing "full-value" and that the virtual package was a "first-step". They specifically mentioned those households where there are multiple season ticket holders and hence less value from the virtual packages, as follows:

Q I have multiple season ticket holders in my household, how are we all going to get value from our tickets?

A This applies to many of our season ticket holders and we are determined to find a way to ensure that every season ticket holder feels they have been provided with value for money. This is one of several issues we are still grappling with and, when we have answers, we will be in touch with those affected.

Celtic also talked of "additional value" and said:

Q Will there be any changes to the price of my season ticket as a result of the virtual services?

A The price previously communicated by the Club remains the same. Whilst we appreciate that supporters will be disappointed not to be able to support the team at Celtic Park for every match during such an important season, the Virtual Services ensures that Season Ticket Holders will not miss out completely on the action in these unprecedented times. It is our aim to have Season Ticket Holders back at Celtic Park as soon as we can and we are doing everything we can to achieve this. The Club is also committed to looking at ways of delivering additional value to our supporters over the course of Season 2020/21 and will provide further updates in this regard when we have more details.

In the case of both Aberdeen and Celtic, and any other club making such promises, while non-specific, there is an obligation to honour these otherwise they may be deemed misleading.

Motherwell, Kilmarnock and Dundee United said that 2020/21 season ticket holders, in addition to their virtual package, would get a full credit on all games which they were unable to physically attend towards their 2021/22 season ticket.

In December 2020 Dundee United sent a newsletter to season ticket holders referring to the credits being built up. They referred to the "decimation" of season 2021/22 season ticket revenue should holders exercise their rights to these credits and requested that they complete a survey as to whether they intend to exercise these rights to credits.

These three clubs are to be commended for the approach they have taken and Dundee United are within their rights to consult season ticket holders on their intentions and, if they wish, encourage them to waive their rights by reference to the implications for future revenues. However, in all three cases, any supporter who chooses to take their credits forward should have this honoured.

4 Other general findings

- Clubs often described the virtual services as "free" or being provided "at no extra cost".

This appears to fail to acknowledge the fact that customers were paying the full cost of their season ticket to watch the game at home instead of attending in person and may be deemed to be misleading.

- Five of the seven offering refunds put a deadline or closing date for applications.

This puts an arbitrary time limit on claims and gives a false impression that if customers applied after this date they were no longer entitled to a refund.

- Some of the seven who offered refunds openly acknowledged the fact that this was something to which fans were entitled while others put more emphasis on the club's potential financial plight and how it would help if fans didn't take a refund.

In its Guidance "Nursery and early years sector: COVID-19 restrictions and consumer law advice" the CMA identified the practice of "Providers putting unfair pressure on consumers to agree to make payments by threatening that the child's place will be lost or the provider will go out of business." They stated that "....despite the financial pressures caused by the crisis, providers should not demand that consumers should pay high fees by warning that if they do not pay the fees the business will cease trading and/or livelihoods will be lost. To do so may breach consumer law."