



---

THE INDEPENDENT  
FOOTBALL OMBUDSMAN

---

**IFO COMPLAINT REF: 11/06**

**Exclusion of a fan following incident at Brighton v Crystal Palace  
27 September 2011**

**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 Football League) 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 operates a system of non-binding arbitration. In exercising its jurisdiction, the IFO does not seek to question the merits of judgements made by properly constituted Regulatory Commissions and Appeal Boards, unless there were shortcomings in the administrative processes which led to those judgements. It is not the role of the IFO to retry cases, but it is its role to explore and review the procedures under which complaints have been decided 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 at the outset that he has received full cooperation from Brighton and Hove Albion FC and the Football League.

## **The complaint**

3. A 35 years' old Brighton fan, who has been a season ticket holder for 24 years, complained that he had unjustly been given a ban excluding him from Brighton matches until the end of the 2012/13 season. He also complained that the club had failed to reactivate his membership card so that his nominees could attend matches, thus causing him a financial loss.

## **Background**

4. The complainant is a member of the Brighton's premier seating section, named the 1901 club. He paid an up front membership fee of £1175 and pays a monthly fee of £92 all year round. The 1901 club is a hospitality area where match tickets are transferable and can be used by nominated away fans as well as home fans.

## **The events**

5. On 6 October Brighton's Head of Operations wrote to the complainant saying that following investigations into his behaviour at the Crystal Palace game, he was to receive a club exclusion until the end of the 2012/2013 season. The Head of Operations said that the complainant had been reported for assaulting two supporters, one an away fan guest of a 1901 member and the other a home fan who had stepped in to try to prevent him from making further assaults. After striking the away fan at least twice, the complainant had been seen poking his finger into the fan's face as the fan backed away toward the balcony wall. The intervening home fan had been concerned that there was a real risk of the man falling over the balcony, and that a small child with the man was clearly terrified. The complainant had also struck the home fan before the stewards had arrived. The Head of Operations said that the fact that there were away fans in a hospitality area did not in any way justify the complainant's action and he should consider himself fortunate that the police were not involved.

6. On 10 October the complainant replied disputing the allegations. He asked for a meeting with the club to discuss what had taken place. That same day the complainant telephoned the club's Safety Officer to ask for CCTV footage of the incident. He also asked for details held on him by the club and that such data should not be shared with other clubs. The Safety Officer replied saying that there was no footage of the incident. He made no mention of personal data. (The complainant has taken up this separately

with the Information Commissioner.) On 12 October the complainant emailed the club asking what would happen about his membership card, which appeared to have been deactivated, and his payments for the 1901 club. He wished to transfer his ticket to a guest for the Hull City match. On 13 October, following a telephone conversation with the Head of Operations, the complainant sent him five witness statements – three gave full accounts of what they had seen both during and after the match; the other two described events during the game but without having witnessed events after the final whistle. The three all denied that the complainant had used physical force other than to push away the hand of the large man who had confronted him.

7. On 14, 22 and 25 October and 10 November, the complainant made further efforts to get replies from the club. Meanwhile, on 27 October he had enlisted the help of the Football League. On 23 November the Football League told the complainant that the club had said that he could attend non-football events at the Amex Stadium, but not matches. They said that he should direct all correspondence to the Head of Operations. The complainant replied to the Football League saying that that was what he had been doing but he was not getting replies. Following a further call from the complainant, the Head of Operations telephoned him on 25 November. According to the complainant, the Head of Operations said that he had not made previous contact because the police had contacted him to conduct a formal investigation. He could not disclose any information. The Head of Operations agreed to reactivate the complainant's membership card. The complainant then telephoned Sussex police who could find no record of an investigation. According to the complainant, on 26 November Brighton's Football Liaison Officer (FLO) telephoned him to say that he was looking into the incident at the club's request. The FLO said that an off duty policeman (the home fan) involved in the incident had contacted the police internally, but there had been no complaint from the "assault victim".

8. On 2 December the complainant emailed the Head of Operations asking that if the police took no action, his membership card could be reactivated and he could be reimbursed for membership fees lost during the period of his exclusion. He wanted to have the ticket available for the following day's match against Nottingham Forest. The Head of Operations replied saying that, if the police took no action, the complainant would be invited to a meeting to discuss a way forward. The complainant replied asking

for his card to be reactivated. On 3 December the Head of Operations emailed the complainant saying that the police were taking no action against him. The club would invite him to a meeting.

### **The Meeting with the Club**

9. On 14 December the complainant met with Brighton's Managing Director and Safety Officer. According to a record produced by the complainant's partner, who had been present at the meeting, the complainant gave a full account of what had happened. He said each time Palace had scored, an away fan had celebrated, and a steward had attended the fan twice. After the match the complainant had left the stand by a route he takes. As he passed the away fan he had told him he should show respect in a home stand. The complainant had not sworn or approached the man as there had been a woman and child with him. The man had sworn at him. A large man (who turned out to be an off duty policeman), and another who appeared to be a Palace fan, had approached him with raised voices and aggression. The large man had raised his hand towards the complainant's chest and the complainant had pushed it away. A young steward had intervened saying that he had seen the complainant run at the Palace fan aggressively. The complainant had told him not to lie. The steward had taken him to the stand steward at the top of the concourse. There the young steward changed what he had previously said and claimed that the complainant had assaulted the Palace fan. The complainant denied that and other fans passing by had confirmed his story, offering card details to the steward so they could give witness accounts. The stand manager had not taken up the offers. The large man had then started shouting at the complainant that he was going to get him banned. The complainant had then gone to the lounge to meet friends. The complainant asked about his 1901 membership, his loyalty card which had money on it and what would happen about future payments if the ban was upheld.

10. The club officials had said that the Palace fan had celebrated only once. They said that the report of the incident had not been made to the control room at once, which was why there no CCTV footage. The Palace fan had said that he would not press criminal charges provided that the club took action against the complainant. The officials said that the club could terminate 1901 membership at any time if someone was in breach of the rules; they could admit or ban whoever they chose. The officials said that because an off duty policeman had got involved, they had to believe him. The officials said that the

witness statements provided by the complainant did not state that he had not assaulted the fan; the club had not contacted any of the witnesses.

### **Following the meeting**

11. On 16 December the Head of Operations wrote to the complainant. The club had revisited all the evidence and considered his explanation. They had concluded that his actions had been so serious that they had no option but to continue his exclusion until the end of the current season. He would be allowed to attend again in season 2012/13. In making that decision, it was clear to the club that he had left his seat in order to confront the Palace fan, something he had admitted in the meeting. He could have avoided the whole incident by leaving the stand by his normal route. There was complete agreement between the Palace fan and the off duty policeman as to the severity of the incident; taking place where it had, at the front of the stand, there could have been much more serious consequences. The complainant's contention that the Palace fan had goaded home fans was not supported by other witnesses. Most contended that it had been the young boy who had over-celebrated the first goal. Of the witness statements the complainant had provided, some admitted that they had not been present at the appropriate time and others failed to contradict the version the club had received from elsewhere. The club found it striking that none of his witnesses had gone to his defence at the time. They were disappointed that he seemed to regard his behaviour as acceptable and was unwilling to show remorse. They had decided he could keep his 1901 membership and could loan his ticket, which would be available to others from the following day's match.

### **The complainant's comments on the letter of 16 December**

12. The complainant said that after the final whistle he had remained in his seat for about a minute as he normally did, then had walked along the empty row, as he had done previously. He had spoken to the Palace fan as he had gone to pass him; he had been fully aware of the presence of the child, which was why he had decided to speak to the Palace fan about his conduct in the home end. At no stage had he told the club officials that he had deliberately gone to speak to the Palace fan. The four witness statements he had provided all stated that it had been the adult Palace fan who had celebrated and a steward had attended him on two occasions. His witnesses were prepared to provide affidavits to corroborate their statements. There had been no need

for any of them to go to his defence. He said that he could not show remorse for something he had not done. He said that as of the previous Saturday his membership card was still deactivated. He made comparisons to his punishment with three match bans imposed on other home fans arrested for public order offences. He maintained that if he had been guilty of assault the off duty policemen (who had not identified himself as such) would have arrested him.

13. Meanwhile, on 8 December the complainant had written to the IFO. His aim was not only have his exclusion lifted and funds reimbursed, but also to obtain a written explanation and apology from the club to redress the damage to his reputation.

14. On 30 December the complainant visited the club shop, but his card was still deactivated. The complainant's nominee was unable to use the card to access the stadium and had to call the club in order to collect a paper ticket to be able to watch the match against Wrexham. On 7 January 2012 the complainant emailed the club about activation of his card.

15. On 10 January the complainant emailed the club asking when his membership would be reactivated. He said that since the Head of Operations had agreed to do so in November he had been unable to log on or use the card as it was blocked. On 11 January the club issued a new card (number 27649). On 16 January the complainant emailed the club saying that his guest had been unable to gain entry or to use the funds on his card on 14 January. She had had to seek assistance to gain entry by a day pass. On 17 January the club replied saying they were sorry to hear he had had further problems regarding access to his card. They said the card was shown as active on the computer system and gave directions on how to check that his card was operational. On 25 January the club issued a new card (number 27757) which the complainant's nominee successfully used on 28 January.

### **The Investigation**

16. The IFO and his Deputy considered all the relevant correspondence between the complainant, the club and the Football league. The Deputy IFO visited the club on two separate occasions. He met with the Head of Operations, the Safety Officer, the supervisor and the Ticket Manager. He obtained the following documents:-

### **Steward Supervisor's Debrief Statement to Stand Manager dated 27 September**

The supervisor's "debrief sheet" showed simply that away fans in specified seats had received abuse in an incident. A "fan incited and responded very aggressively to steward instruction". [The first incident did not involve the complainant. The complainant was the fan in the second incident.]

### **The Steward Supervisor's Statement dated 14 December**

When Palace equalised (their first goal) an aisle steward reported an incident in the 1901 stand. The supervisor witnessed a number of Brighton fans angry at a Palace fan. The supervisor told the fan to remain seated for the rest of the game or he would be ejected. The supervisor then spoke to two vocal Brighton fans who were protesting, neither of whom was the complainant. The supervisor recruited further stewards to the area and established that the away fan was accompanied by two children, a boy and a girl, the boy's celebrations having sparked the protest. As full-time approached the supervisor sent a steward to the front of the aisle to ensure that the family remained in their seats at the final whistle to ensure their safety. At full-time the supervisor saw the complainant approach the away fan and perform what looked like a "cut throat" gesture. The supervisor and another steward went forward over seats, because the crowd was exiting, to intervene. The Palace fan and the boy had been distressed. The complainant was dismissive and uncooperative but the supervisor could not remember precisely what he had said. The away fan had told the supervisor that he had turned around in response to abuse of his child and said "Don't talk to my boy like that". The supervisor said that, on reflection, after the first Palace goal he could have removed the away fan for his safety, but after speaking to the two home fans who had confronted him, calm seemed to have been restored.

### **The Palace Fan's Statement**

The fan said that everything had been fine until Palace scored, when his son and daughter, and an elderly man sitting next to them, clapped. A spectator sitting behind had abused them verbally and threatened to throw the fan off the stand. Another home fan had joined in the abuse with appalling language. When Palace scored again the group had not celebrated. When Palace scored a third the abuse got worse. Two Brighton fans

came to their rescue and tried to explain that the Palace fans had done nothing wrong and that the men should calm down. The fan said that he honestly felt that the only thing that had prevented the assault from becoming physical was the row of seats in between the parties. His son and daughter did not want to attend matches in future and he had had an anxiety attack the day after the match.

### **Statement by the Owner of the Palace Fan's Seats dated 14 October**

The owner said that he had spoken to the Palace fan who had told him that when Palace had scored their first goal the fan's two children and an elderly man had given "restrained applause". The "banned fan", who was two rows behind, had let off a stream of abuse, threatened to throw the Palace fan off the mezzanine, and continually tried to stretch over to reach the Palace fan. The abuse and threats had continued and it had taken the intervention of two Brighton fans to calm things down. For the rest of the game the party had sat in silence and at the end of the game had been escorted out of the ground. The owner said that the Palace fan had described the incident as extremely disturbing and had been shocked by the ferocity of the language and the intensity of the hatred directed towards the family. Without the intervention of the Brighton fans the Palace fan believed that an assault would have taken place.

### **The Off Duty Policeman's Statement dated 14 October**

The policeman, a Brighton fan, said that when Palace scored their third goal, a man in the middle of the front row had jumped up in celebration, but quickly sat down again. After the final whistle he noticed a large man stepping over seats to make his way to the front – the man was angry and shouting but the policeman could not hear the words. The home fan leaned over the back of the front row and attempted to punch the away fan, shouting abuse at him. He then poked the Palace fan in the face, applying constant pressure, which caused the fan to lean back against the front wall. The policeman put himself between the parties, and deflected a punch by the home fan. The policeman shouted "Leave him alone, it's just a football match" to which the home fan responded "I've been a season ticket holder 26 years, the scum shouldn't be in here". Stewards intervened and took the home fan away. As the policeman left the stand the home fan verbally abused him and accused him of siding with a Palace fan.

### **Evidence taken from the Off Duty Policeman**

17. The Deputy IFO spoke to the policeman. At the request of the Stand Manager the policeman had supplied his contact details after the match and had given the written statement after the club's Safety Officer had contacted him. When the police investigated the matter following the post-match briefing, he had also given a statement at the request of Brighton CID, but had heard nothing further about it. He gave his account of the incident as outlined in his statement. He said that the atmosphere in the stand had been tense, as it had been the previous game when Leeds fans in the 1901 stand had celebrated their goals. He was aware that there had been a celebration by someone in the group at the first Palace goal, and possibly the second, and the man who had stood at the third Palace goal had been the man confronted by the complainant. He maintained that the complainant had climbed over seats to get into the second row, which was how he had first noticed him. There had been pushing, which on reflection might not have been an attempted punch, but he had been particularly concerned because the pressure the man was putting onto the Palace fan's cheek was forcing him back onto the wall, and the young boy was shouting "Daddy" in fear. The policeman maintained that the man had taken a swing at him but he had pushed away his hand. The policeman said that if the stewards had not taken over he would have arrested the man. The policeman said that that aisle had not been blocked when he went down.

### **Witness Statements supplied by the complainant**

18. The Deputy IFO spoke by telephone to the complainant's witnesses. None of them had seen any violence. They said that the complainant had told the Palace fan he should show respect and there had been a verbal exchange. The most heated part had been when the off duty policeman had intervened – he had pointed into the complainant's face and the complainant had knocked his hand away. The witnesses did not think that the complainant's action in speaking to the Palace fan had been premeditated – he had walked along the row toward the next aisle because the nearest aisle had been blocked. The general view was that Palace fans had celebrated each time Palace had scored. The complainant's boss said that his business partner had been in favour of dismissing the complainant, but he, in common with the other witnesses, had not believed the complainant capable of the violence alleged.

### **Evidence from the FLO**

19. Both the IFO and his Deputy spoke with Brighton's FLO. The FLO was not present at the incident but learned of it in the post match debriefing. He emailed the Palace fan who provided the statement in paragraph 16 of this report, but did not confirm that he wished the police to pursue the case. Having set a deadline, which the Palace fan did not meet, to determine whether he wished the police to act, the FLO made further contact with the fan who said that he preferred the club to take action. Neither the complainant nor the Palace fan had been interviewed by the police. On 3 December the FLO informed the club and the complainant that there was to be no police action. The FLO did not recall having asked the club not to have contact with the complainant while police action was being considered, but he said that it would be normal club policy not to while they believed the police were taking action.

### **Evidence taken from the Head of Operations and the Safety Officer**

20. The Brighton officials told the Deputy IFO that they had been satisfied from the accounts given at the end of the match that the complainant should be excluded, without the need to hear his side of the story. They had reduced the penalty after the meeting with the complainant as they were satisfied that the level of aggression had not been as severe as first thought. The punishment was in line with others given in similar circumstances. (The Deputy IFO examined records.) The officials said although the Palace fan had made a statement to the FLO, both the fan and the off duty policeman had favoured the club, rather than the police, taking action against the complainant. There was no CCTV evidence of the incident as the club had decided to allow away fans to leave alongside home fans straight after the match and cameras had concentrated on the away stand. The officials were certain that the police FLO had told them not to communicate with the complainant while police action was being considered. The officials said that the complainant's membership card (number 20980) had been used until the Palace game. The membership was reactivated on 26 November under number 27361. Card number 27649 was issued on 11 January. Card 27757 was issued on 25 January. The club's computer system automatically records all attempts to access the stadium and the Deputy IFO saw that, after the Palace match, no attempt was recorded until the Newcastle match on 28 January.

21. The Deputy IFO visited the 1901 stand. The Palace fans were seated at one end of the front row. The complainant's seat is three seats from the aisle at the other end of the second row. To reach the Palace fans the complainant would have had to walk to the far end the row and exit that aisle, rather than the one adjacent to his own seat.

22. In a second meeting which the Deputy IFO held with the Head of Operations and the Safety Officer, in order to discuss the various discrepancies and inconsistencies in the respective statements, the officials accepted that the complainant had not physically assaulted the Palace fan, but they still regarded the incident as serious enough to justify the ban. In maintaining that position they paid much more regard to the policeman's statement than any produced by the complainants associates. They accepted that there had been some misunderstanding of the facts immediately after the match.

#### **Evidence from the Steward Supervisor**

23. The supervisor gave an account to the Deputy IFO similar to that in his statement (paragraph 16). In addition, he said that after Palace's first goal, the fan had turned round in response to abuse from the two Brighton fans. After the match the supervisor had spotted the complainant behind the Palace fan exchanging words; there had been raised hands, and the complainant had made a cut throat gesture but the supervisor had not seen any attempted assault. When the supervisor had spoken to the complainant about the incident he had been dismissive of it, but not aggressive. The supervisor's concern had been that the complainant had caused distress to the man and his son. The aisles had been congested and the supervisor had not identified anyone else in the vicinity.

#### **Evidence from the Ticket Office Manager**

24. The membership card is not only for entry to matches but can be used for buying merchandise and drinks etc from the club. There is an online account and funds can be put on the card online. Attempts to use a card should show on computer records. If the complainant was continually finding that his card was deactivated while at the club shop, the assistant should have reported the matter to the Ticket Manager.

#### **Evidence from Brighton Fan Not Known to the Complainant**

25. As a result of the complainant's ban having been given an airing on North Stand Chat, an internet fan's forum, a 1901 club member who works and lives in the Czech Republic responded to the complainant's sister. The Deputy Ombudsman discussed the matter with the man, who does not know the complainant, but who witnessed the events from his seat, five or six rows behind the Palace fan. He said that the Palace fan had over-celebrated by cheering with his arms in the air when Palace scored, which had caused a very heated situation with fans behind. At the end of the game he saw the complainant go behind the Palace fan and point at him and exchange words, as others had done. He said that there was no physical contact between the two. The big man who had intervened shouted "Leave him alone"; the club member did not see any punch. A little later the club member encountered the complainant at the top of the aisle talking to an official in a suit; the club member had given the official his membership card so his number could be taken and offered to act as a witness, but the club had not contacted him subsequently.

### **Evidence from the complainant**

26. The IFO and his Deputy had separate meetings with the complainant and his partner. Both the IFO and his Deputy considered the complainant a respectable member of society with a passion for the club he supports. The complainant gave his account of the incident as outlined in paragraph 9. He maintained that the steward had attended the Palace fan on two separate occasions. He said that in speaking to the Palace fan, all he had meant to do was to tell him about the need to show respect. He had said "Are you the Palace fan?" but the man had sworn at him and the young lady with him had "mouthed off". He thought that the man might have mistaken him for one of the Brighton fans who had abused him after the first goal. He categorically denied that there had been any assault or that he had been abusive. His natural reaction had been to push away the policeman's hand which had been raised towards him. He claimed that the policeman's actions had been much worse than his own and believed that the policeman should have revealed his status. The complainant contended that he should have been consulted prior to the imposition of a ban – it had been quite wrong for the club to have fired off a letter to him without getting the facts straight. The complainant was distraught not only for not being able to watch the team he has supported so loyally for so long but also because of what he sees as a totally unjustified slur on his good character, which had damaged his professional reputation at his place of work.

27. The complainant told the Deputy Ombudsman that, following the Palace match, neither he nor a nominee had scanned his card (number 20980) at the turnstile entrance. He was not prepared to give the card to a nominee without first confirming that it was active. That was why there was no record of his membership on stadium access records prior to the Newcastle match. On numerous occasions he had attempted to use the card on the machine scanner located in the club shop, at ticket sale counters and in the bars, such attempts having been witnessed by friends and work colleagues. Each time he had been told that the card was blocked or deactivated. In addition, following the Palace match he had been unable to log on to his account online. He said that he had never been told that his membership had been reactivated on 26 November and had not received a new card (27361) around that time; and the club had not answered his subsequent queries about the card Card 27649 had not worked and had had to be replaced. The complainant said that the longer the saga continued, the more he thought that an unresolved dispute he had with the club about a restricted view from his seat was playing a part in his exclusion.

## **Findings**

28. The IFO deals first with the way in which the ban was imposed. Brighton officials have conceded that their post match discussions suggested that the incident was more serious than it actually was, possibly due to a misunderstanding of the facts, which resulted in the club's letter of 6 October saying, wrongly, that the complainant had struck the Palace fan at least twice. The supervisor's post match debrief statement does not mention assault, only the complainant's reaction to the steward's intervention. More pertinently, **the Palace fan makes no mention of having been struck at all**, but rather he thought he might have been assaulted had the two men not intervened. This version is corroborated in the seat holder's statement which records that the Palace fan "believed that an assault would have taken place" without this intervention. The off duty policeman did not provide his statement until 14 October, the Palace fan appears to have given his account after that and the supervisor did not make a written statement until 14 December, some eleven weeks after the incident. The IFO considers that to impose a ban of almost two seasons based simply on oral exchanges, without hearing evidence from the complainant or others who had witnessed the incident, was precipitous and was not in accord with natural justice. **The IFO recommends** that in cases which are regarded

as likely to be serious enough to warrant lengthy bans, statements from the respective parties should be obtained without delay so that properly informed decisions can be taken, taking into account both sides of any argument. Where judged necessary membership could be suspended pending final determination.

29. As for the incident itself, as in similar IFO adjudications, it has been impossible to resolve completely the marked contradictions and inconsistencies in the accounts given by the respective parties and other witnesses. The fact that after the match had finished the complainant spoke to the Palace fan and that an altercation ensued is not in doubt. Whether that was premeditated and how he came to be behind the Palace fan is open to conjecture. Although the complainant denies premeditation, in order to get to the lounge he made his way to the end of the row behind the Palace fan, which took him to the next aisle. He maintains that that is a route he often takes when the aisle nearest to his seat is congested, which is what he contends happened on the day. The policeman has confirmed that that aisle was not blocked when he made his way down. The policeman's account is that the complainant climbed down over seats to get behind the Palace fan. He would have needed to do that only if he had started to go up the nearest aisle then changed his mind, which he vehemently denies. The complainant contends that in speaking to the fan, he simply wanted him to understand that as an away fan in a home stand, particularly when having a young boy with him, he should show respect. In his statement, the Palace fan complains only of abuse, his belief being that the intervention of the two men had prevented the assault from becoming physical. The wording of his statement also seems to suggest that he thought the man confronting him was one of those who had been abusing him earlier; credence is given to that supposition by the statement made by the owner of the seats (paragraph 16). If it was the case that the Palace fan thought that the earlier antagonist had returned for more, that may well have caused the exchange to have been more heated than it might otherwise have been. **The IFO finds it particularly significant that the Palace fan talks only of verbal assault**, that the supervisor did not see any physical assault and that the witnesses produced by the complainant were adamant that there had been no physical assault. The only person to suggest that punches were thrown or attempted was the policeman, who, with a colleague, decided intervention was necessary because the pressure the complainant was applying to the fan's cheek was pushing the fan toward the balcony, and his son was terrified. No doubt arms were raised, which may have given the

impression of an attempted punch, or pushing towards the balcony, when seen from behind as the policeman descended the steps. The policeman is adamant, however, about what he saw. The complainant also concedes, and is supported by his witnesses, that when the policeman intervened he knocked his arm away, which would have been a natural reaction if he thought he was going to be struck. The IFO was surprised that if the policeman regarded the incident as a physical assault, he did not arrest the complainant, or hand him to a duty police officer, but accepts that the policeman was content to leave the matter with the stewards.

30. The IFO now turns to action taken by the club following imposition of the ban. The complainant immediately disputed the allegations and, quite reasonably, asked for a meeting to discuss them and followed up by providing five witness statements. The complainant made several further efforts to get a reply from the club. It is not entirely clear whether the club were advised not to have contact with the complainant while it was possible the police might be taking action, but if they believed that to be the case, they should at the very least have told the complainant that, rather than simply ignoring his communications. In the event, there was no formal complaint from the Palace fan, the complainant was never interviewed by the police and there was no police investigation, despite the policeman having been asked by Brighton CID to make a statement.

31. After the club became aware that there would be no police action, they held a meeting with the complainant (paragraph 9). Following the meeting, the club wrote to the complainant saying, among other things, that his contention that the Palace fan had goaded home fans was not supported by witnesses and that, of the witness statements he had provided, some had not seen the altercation and others did not contradict the version the club had received from elsewhere. Neither of those statements was correct. Four of the witnesses referred to inappropriate behaviour by the Palace fan and three categorically denied that the complainant had used physical force, other than to push away the arm of the off duty policeman. In addition, the policeman's statement mentions a man in the group of Palace fans having jumped up when Palace scored their third goal (confirmed by the policeman as having been the fan confronted by the complainant). Club officials told the Deputy IFO that after the meeting they had reduced the length of

the ban because they accepted that the incident had not been as bad as first thought, but they still regarded it as serious, a matter which the IFO considers later.

32. The IFO next considers the matter of the deactivation of the complainant's membership card. The card was deactivated after the Palace match when the exclusion took effect. According to the club's computer records the complainant's membership was reactivated under number 27361 on 26 November, but there is no documentary evidence to show that the club told him that or that they actually issued a new card; and it is clear from subsequent events that he neither received a card nor was told by the club of the reactivation. Indeed, the club missed opportunities to tell him, or to rectify the situation if they had not actually issued a new card. On 2 December the complainant asked for his card to be reactivated, but the matter was not mentioned in the club's reply. In the letter of 16 December, following the meeting, the club said that his card would be available for the following day's match, but failed to mention why. In reply the complainant said that on the day of the match his card was still deactivated, but the club did not respond. Despite pressure from the complainant, who had made frequent attempts at the club shop to see if his original card had been reactivated, it was not until 11 January that the club issued a new card. Unfortunately, it did not work and a further card was issued on 25 January, thus allowing the complainant's nominees to attend matches. The fact that the complainant was unable to access his membership meant not only that his nominees were unable to gain entry to the ground by card, despite the fact that he had continued to pay the monthly fee, but also that he was unable to access the money held on the card, or use it for purchases. **The IFO recommends** that the club compensate the complainant for the loss of use of his membership between 26 November and 14 January.

33. Clearly the club are entitled to impose a ban if a behavioural offence has been committed, and the IFO in no way condones inappropriate behaviour. The ban on the complainant was reduced when the club decided that the incident had not been as serious as first thought. The current position is that the complainant is excluded from matches up to the end of the current season. Is that reasonable? In a recent adjudication, the IFO found that a man who had committed a non-violent assault on a steward, which had resulted in his arrest and a police caution for common assault, had been given a four match ban by his club, and would be readmitted to the ground if he

signed an "Acceptable Behaviour Agreement". The IFO found that to be a reasonable situation and in line with common practice in other clubs. In another investigation the IFO found the complainant, his partner and son had become involved in a heated argument with other fans over persistent standing, which had developed into a physical confrontation. The complainant's party and three others had been ejected from the ground and their season tickets confiscated. The following month the club had offered to return the tickets provided that the fans signed "Good Behaviour Agreements". The IFO endorsed the club's stance. To what extent is the complainant's case comparable? That is difficult to say because, unfortunately, despite extensive enquiries, the IFO is unable to determine with any certainty precisely what took place, primarily because the accounts given by the complainant and his witnesses on the one hand, and the policeman and to some extent the supervisor on the other, are poles apart. Although the complainant was clearly unwise to have confronted the Palace fan (and the IFO hopes he learns from that), he has not, unlike the first IFO case cited above, been charged with any offence, and may well not, unlike the second case, have been involved in physical confrontation. Nevertheless, he did put himself in a position which resulted in an altercation with the Palace fan and the club were entitled to take action against him because of that. However, given that the complainant has been a loyal supporter for so long without getting into trouble, that he has gone to such great lengths to refute the allegations against him, that there are such significant doubts over precisely what took place and that he will no doubt have learned from the experience, the IFO finds that the period of exclusion already served should suffice. Currently the complainant has been excluded for 5 months, equivalent to a 15 match ban. This is manifestly excessive compared to other cases the IFO has investigated. **The IFO recommends**, therefore, that the complainant's full membership be restored forthwith, complemented by his completion of an acceptable behaviour agreement if the club deems it necessary. (The IFO trusts that the club agreement contains no admission of previous guilt, in common with the general practice of clubs across the country.)

## **Conclusion**

34. This is by far the most complex case which the IFO has investigated. In similar cases of ejections or bans, the IFO (and its predecessor the IFC) has been confronted with a dearth of evidence, beyond the conflicting accounts of the disputing parties. In this case there is a wealth of independent testimony, but it is equally confusing. The

Head of Operations states that "it is inconceivable that an off-duty police officer and stewards would intervene in an incident that according to the complainant did not occur". That indeed is at the heart of the factual disputes which the IFO has been unable to fully resolve. There was undoubtedly an angry confrontation, but the IFO finds it particularly significant that the alleged victim of the assault makes no mention of it and reported that he feared that an assault **might have taken place** (during the match and not after it) but for the intervention of Brighton fans. The IFO concludes that on the balance of probabilities no physical assault occurred, but that the complainant himself instigated the incident by approaching the Palace fan, an action he now bitterly regrets.

35. It is wholly characteristic of this confusing case that even the facts relating to the membership card are in dispute. The complainant alleges that he frequently checked whether his card could be used, whereas the club asserts that the computer system (in which it has full confidence and which is used by other clubs) has no record of that. Because of this, the club has refused to compensate the complainant for the loss of the use of his membership. At heart, this aspect of the complaint is a commercial dispute over whether a service already paid for was available to the complainant. The IFO believes the complainant is entitled to compensation. It will now be for the complainant to seek to negotiate with the club on this in the light of the IFO recommendation or to look to another tribunal to resolve the dispute.

36. Prior to the completion and publication of this report, the IFO shared with the club the recommendations arising from this very full and thorough investigation. The IFO is pleased to find that the club accepts the central recommendation that the complainant's exclusion should be lifted forthwith, subject to the very reasonable condition that he signs an acceptable behaviour agreement. The IFO also welcomes the decision of the club to amend its policy to allow for a temporary exclusion where full details are not immediately available.

The IFO trusts that the complainant will now return to peacefully watching Brighton and Hove Albion FC.

**Professor Derek Fraser, Ombudsman**  
**Mr Alan Watson CBE, Deputy Ombudsman**

**8 March 2012**