

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



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IFO COMPLAINT REF: 22/12

A 10 MATCH SUSPENSION AND LOYALTY POINT DEDUCTION AT BRIGHTON AND HOVE ALBION

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, The Premier League and The English 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 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 we have received cooperation from the Supporter and Brighton and Hove Albion ("the Club") in replying to enquiries.

The Complaint

3. A Brighton Supporter complained about a Club suspension imposed on them and a deduction of loyalty points after a ticket was purchased in the Supporter's name and using the Supporter's fan number by the Supporter's son, who was under 18 years old.

4. The Supporter was unhappy with the way the appeals were handled and the outcome.

The Chronology

5. An adult away ticket was purchased online by the Supporter's son for Wolves v Brighton, using the Supporter's fan number, on 23 September 2022. The Supporter's son was listed as the 'lead fan', having purchased the ticket.

6. The Supporter received an email from the Club on 27 September 2022, entitled '*Important Information about Away Match Tickets.*' The email thanked the Supporter '*for purchasing tickets for an upcoming away match.*'

7. The email stated that it provided an '*opportunity to remind you [the Supporter] of the rules regarding the distribution of away match tickets.*' The email explained the rules and a summary of the sanction for falling foul of the ticket terms and conditions. A link to the Supporters' Charter was provided.

8. The Supporter's son attended the Wolves away match on 05 November 2022.

9. The Supporter received a letter from the Club dated 10 November 2022. The letter explained that it had come to the Club's attention that a match ticket purchased and assigned to the Supporter for Wolves away was '*passed on and attempted use was made on the day of the game by another supporter. The supporter in question showed ID to stewards that did not match the assigned owner of the ticket.*' The letter summarised the terms and conditions:

'Away Supporter Match Tickets are assigned to purchasers for their sole personal use. The selling, disposal, re-assigning, lending, or any other transferal of Tickets to another person without the consent of the Club is strictly prohibited by our terms and conditions, which you agreed to at the time of purchase. It also infringes the Club's Loyalty Point system.' The letter also explained the sanction levied:

- *'You will be excluded from attending the next 10 home league matches;*

- *You will be unable to buy home or away tickets for the duration of this ban; and*

- *We will deduct 50 Loyalty points from your account.'*

The Supporter was given seven days [from the date of the letter] to appeal, providing the grounds in which they wished to do so.

10. The Supporter emailed the Club on 10 November 2022 to appeal. Within the email, the Supporter explained:

'Regrettably it appears my sons have decided that, in their desire to watch BHAFC play a match close to one of their birthdays, they should buy a ticket under my name. I had no intention of going and know the rules regarding all tickets. My son deciding to take his girlfriend and use a ticket in my name was something I was unaware of. If there was an email that I should have seen then I'm afraid I didn't - I get so many work emails.'

11. The Supporter noted that *'In order to appeal I realise it means that I have to ask for the ban to be moved to one of my sons. As a parent this puts me in a real quandary - I'm ultimately responsible for their actions. But I'm meant to nurture and protect them too.'*

12. Within the email, the Supporter asked the Club *'whether there is another way they can atone for their rule breaking.'*

13. The Club emailed the Supporter on 30 November 2022 with the outcome of the appeal, which was that a panel of four decided that they *'would consider passing the ban and loyalty point deduction on to your son if he were to write and explain his behaviour and accept this sanction.'* The Club provided their assessment of the incident, noting that the action of changing the name on the ticket which had *'presumably been taken to avoid detection has been seen as premeditated and therefore the full sanction will apply.'*

14. The Supporter's son emailed the Club on 10 November 2022 requesting transfer of the suspension to their account. The Supporter's son explained:

'My dad has received a 10-game ban, as my girlfriend used his ticket at the game. So, I would like to move this ban over to my account, as he was unaware of me purchasing the ticket.'

15. The Supporter's son stated that a steward asked for ID before entering and that they didn't stop them from going into the stadium and did not mention anything about being banned, adding that they were told by the steward that they *"are just finding out where people are getting tickets from."* The Supporter's son wrote that *'If I was told a ban would be sent to my Dad we would've never entered the ground.'* The Supporter's son remarked that they felt that it was unfair to *'to have a senior member of the stewarding team, pretty much set us up for failure like this.'*

16. The Supporter emailed the Club on 30 November 2022 to express their dissatisfaction with the appeal outcome and to provide their comment on a number of factors, including: the impersonal nature of the Club's email, the use of the word 'premeditated', the impact of the sanction on their family, the club's lack of leniency and the application of the same rules to '1901 members' (which will be explained later in the document.) The Supporter reported that they sent a supplementary email to the Club requesting direction to the terms and conditions and the Supporters' Charter and requested a response from the Club to the points raised.

17. The Club provided a response to the Supporter by email dated 02 December 2022, explaining and clarifying their position that *'the panel considered everything you [the Supporter] stated in your emails in their decision, as they did with a number of others'* The Club provided a link to the Supporters' Charter.

18. The Club confirmed that the sanction could be transferred to the Supporter's son, if both were agreeable. The Club also responded to a technical point about whether the same rules were in place for '1901 members' of which it is understood the Supporter's family did not hold membership. The Club confirmed that they *'have spotters and away stewards at every match'* and that *'if a banned supporter were to be identified as entering, then the person who provided the ticket to that person would have a sanction against them.'*

19. The email also referred to the process for a second appeal. The Club explained:

'I would however strongly suggest you provide something in writing from your son if you were to do this. Please note this would be your next course of action rather than writing directly to [named member of staff] who was on the original appeal panel.'

20. The Supporter wrote to the Club to request a second appeal with their written summary of why they felt the sanctions should be reduced, on the basis that:

'1. They are wholly disproportionate to what has happened,

2. They are apparently based upon "premeditated" conduct on the part of my son, without any or [sic] any recognition of his young age, the isolated nature of the incident and the fact that he acted without my knowledge or consent,

3. They fail to pay any sufficient regard to relevant mitigating factors on my behalf, including my history and track record as a BHAFC season ticket holder and supporter.'

21. A second appeal hearing was arranged and took place in-person with the Supporter and a panel of Club representatives.

22. A summary letter was sent by the Club to the Supporter following the hearing. The Club provided an explanation behind their decision to uphold their original decision to uphold the original sanction, having recognised the Supporter's appeal submission and the points the Supporter raised in their appeal [as per paragraph 20].

23. The Club recognised the Supporter's son's request to transfer the sanction to them but noted that the Supporter declined the transfer previously.

24. The letter noted the Supporter's view of the context in which the word 'premeditated' was used. The Club noted that the use of the word was not intended to create a perception of the stigma which the Supporter found inappropriate. The Club stated that *'in hindsight other words could have been used to support the points we were making.'*

25. The Club's Chief Operating Officer ("COO") wrote the letter which summarised the panel's appeal decision to not vary their original decision. Explaining the basis of their conclusion, the letter read:

'The appeal panel did not feel that there was any new evidence presented that has not already been provided to this point in the appeals process that would provide them with the ability to reduce the sanction in any way.'

26. The Supporter contacted a senior staff member of the Club to convey their concerns about the Club's decision. The Supporter questioned the appropriateness of being put through the Club's sanction and appeal process and whether the sanction imposed was proportionate.

27. The Supporter explained that their complaint was *'not about the appeal panel meeting per se, rather how the meeting was conducted'* and how they were *'made to feel humiliated and chastised – having my decisions and actions as a parent questioned.'*

28. The Supporter questioned the role and approach of a member of the panel that was part of the Club's safeguarding team. The Supporter felt that the member of staff *'decided to press me [the Supporter] as to why I chose to attend the meeting, rather than my son.'*

29. Although the COO explained that they were unable to comment on the appeal as they were not familiar with it, the events leading up to it or the sanction received, they did provide some information about a member of the panel from the Club's safeguarding team, whom the Supporter queried, on the basis that their presence in the guise of a safeguarding matter was inappropriate. It was explained that the member of the panel in question was *'fully conversant with our [the Club's] appeals procedures, our ticketing terms and conditions, and indeed the law concerning the unauthorised transfer of ticket to football matches.'*

30. The Supporter sent the COO a further email noting that they had lodged a complaint with the IFO, although they wanted the Club *'to have the opportunity to address the issues raised, first.'*

31. The Supporter explained that they felt the presence of a safeguarding officer *'infers that his role was to determine criminality in this matter which somewhat conflicts with his stated welfare position.'* This was after the Supporter stated that they were told that the safeguarding officer's presence was due to the case involving a child, despite the Supporter themselves being sanctioned.

32. The COO reiterated their position in respect of their lack of knowledge of the Supporter's case and invited the Supporter to share the correspondence with the IFO.

The Club's Response

33. The Club explained the context of their stance concerning away tickets. The Club said that they have repeated issues with their away travelling supporters transferring their tickets.

34. The Club stated that they communicated the ticket policy and respective sanctions in the matchday programme, via email and online via their website and social media. The IFO has had sight of the email reminder of the ticket policy sent to the Supporter and the link to the Club website post.

35. In terms of this specific case, the Club felt that they had applied the sanction consistently with that listed in the Supporters' Charter and the Supporter had gone through the appeals process.

36. They explained that their sanction policy states that the assigned ticket owner is responsible for who uses their ticket. The Club noted that it was offered to the Supporter that the sanction could be transferred to their son, who purchased the ticket.

The Investigation

37. The IFO spoke with the Supporter regarding the complaint.

38. The IFO spoke to the Club to discuss the matters raised by the Supporter.

39. The IFO reviewed the Supporters' Charter, the ticket policy, the communications between the parties and the appeal information and these will be considered in more detail below to the extent they are applicable to this matter. The role of the IFO in this matter is in respect of the claim from the Supporter only. The purpose of the IFO's assessment is to consider how the Club's processes were applied as pertains to the Supporter, as opposed to allocating blame or to hold individuals to account.

The IFO's Findings

The Incident

40. The parties were in agreement that the Supporter's son purchased a Wolves away match ticket using the Supporter's account. The Supporter said that they were not travelling to the fixture and that their son had purchased a ticket without them knowing. A photograph of the ticket had been supplied by the Club which showed the Supporter's full name originally printed in black ink on the front of the ticket. It appeared as though the first name had been written over by hand in black ink and replaced by the forename of the Supporter's son's girlfriend. The Supporter noted the breach of the Club's ticketing policy, which was outlined in the email they received, dated 27 September 2022.

41. The Club published an update about the away ticket terms and condition on their website, on 26 September 2022. The article read: 'Tickets that supporters purchase for away matches are for the sole use of the assigned owner.' *The statement also read: 'Any supporter found to be passing on away tickets will be subject to a ten-home match ban, during that time the excluded supporter will not be able to purchase away tickets and a 50-point loyalty point deduction will be made.'*

42. The Supporter's son went to the match and states that they had their identification checked. They were allowed into the stadium for the match and the Supporter subsequently received contact from the Club afterwards, notifying them of the decision to ban and deduct loyalty points on the basis that it was their account from which the tickets were assigned.

43. The Supporters' Charter document provides that *'tickets being transferred, resold or advertised for sale outside of our documented authorised processes' is a 'category 3' offence which has a first offence sanction of a '10 home league match ban, plus potential loyalty point deduction.'* The Club has confirmed that this was considered a 'category 3a' offence under the Supporters' Charter.

44. It was noted that the booking confirmation email was sent to the Supporter's son as 'lead fan'.

The Sanction

45. The Supporter's son queried why they were allowed into the ground following the identification check and why the stewards did not notify them of an infringement before entering the stadium. Nonetheless, the transfer of the ticket had already occurred before entering the stadium. This factor has been considered, although it does not materially affect the decision.

46. The Supporter stated that they had not been aware of the purchase of the ticket. The sanction letter stated:

'[away match tickets] are assigned to purchasers for their sole personal use. The selling, disposal, re-assigning, lending or any other transferal of Tickets to another person without the consent of the Club is strictly prohibited by our terms and conditions, which you agreed to at the time of purchase.'

47. The booking email showed that the Supporter's son was the purchaser of the ticket and the named 'lead booker'. Despite the ticket having the Supporter's name written on it, it is understood that the ticket was posted to the Supporter's son and

booking confirmation sent to them, also. The IFO is satisfied that the Supporter's son transferred the ticket to another person without the prior written consent of the Club, and in doing so was in breach of the Club's Men's Away Ticket Terms and Conditions, whether the Supporter's son was reasonably aware or not.

48. It is understood that the Supporter did not attend the match and based upon the circumstances under which the booking was confirmed and the ticket dispatched, the IFO is satisfied on balance, that they were unaware of a ticket being purchased. Although the Club later offered to transfer the sanction to the Supporter's son that transferred the ticket, it is clear from the letter that the sanction was issued to the Supporter in the first instance.

49. It is accepted that the Supporter did not change the name of the ticket, although their account was used by their son to purchase the tickets. It may be considered that the breach of ticket terms could not reasonably be levied upon the Supporter as it was accepted that they were not aware of the ticket purchase in the first instance.

50. It was accepted that the Supporter's son logged on to their own online ticketing account to purchase the tickets assigned to their father's name.

51. The IFO accepts that the Supporter received the sanction, despite being unaware of the use of their fan account. The IFO questions whether the sanction the Supporter received fits the offence as defined by the Club and under the Supporters' Charter document. The IFO understands that the Supporter was sanctioned under category 3a in the Supporters' Charter:

'Tickets being transferred, resold or advertised for sale outside of our documented authorised processes.'

52. The sanction was applied to the Supporter, despite it being accepted that their son purchased the ticket in the Supporter's name and manually transferred it by changing the name on the ticket by hand without their knowledge.

53. If it is accepted that the Supporter was not responsible for the name on the ticket being changed, it could be suggested that the application of the sanction under these terms could potentially be considered unfair and/or disproportionate.

54. The Supporter's role in the incident (of having their online ticket account used by their son), does not squarely sit with the offences listed in the Supporters' Charter as set out above. It is unclear, therefore, whether a sanction would be appropriate in any form, for the Supporter.

55. In considering the appropriateness of the Club's actions in respect of the sanction, it is worthwhile ascertaining whether the sanction reflects a proportionate

means of achieving a legitimate aim. Ultimately, the IFO endorses the approach of all Clubs who rely on robust sanctions, policies and procedures, but where a more appropriate response is objectively justified, Clubs should exercise their discretion. The involvement of the Supporter and their son differ dramatically in this case. The Supporter's actions (or lack of) would fall short of transferring tickets to another person.

56. It is clear that the Club was determined to apply a sanction to one of the parties. It therefore placed the dilemma of who should receive the sanction on the shoulders of the Supporter, which the IFO considers inappropriate, notwithstanding the son's willingness to shoulder the blame. This raises the question of what purpose the Club intended that the sanction should serve.

57. The IFO believes that it should be the Club's responsibility to carefully determine in the first instance whether a sanction is appropriate and if so, to which party it should apply. It should never be for the parties to decide between themselves who faces the consequences.

58. The Supporters' Charter reads:

'A sanction letter will be sent to the home address/email of the excluded person and stored on BHAFc database. In the case of young supporter, 17yrs and under, a letter will be sent to their parent/guardian or carer.'

The section does not note that a parent/guardian/carer will be responsible for actions of the minor and this section does not sit squarely with the facts of this case in that the Supporter both received the initial contact and were held responsible for the breach of the ticketing policy of their son and then asked by the Club whether they wished for this to be transferred to their son. The IFO does not consider that the Club are able to rely on this section of the Supporters' Charter in the circumstances of this case as this is not what occurred.

The Appeals

59. I turn to the complaint, the correspondence and the appeals. There were inconsistencies in the Supporters' Charter and some of the communications from the Club to the Supporter, which are considered in more detail below.

60. The Supporter appealed against the sanction. They felt that the sanction was not 'fair or appropriate' and that they wouldn't be passing the ban to their son. The Supporter was unhappy at the 'two-tier structure' in which members of the '1901 Club' were subject to a different ticketing policy which was inconsistent with the principles of the away ticketing policy and the terms of entry.

61. Firstly, it was noted from the initial letter sent to the Supporter in which they were informed of the sanction, that they had to write to the Club within the next 7 days if

they wished to appeal. The Supporters' Charter allowed for a period of 'up to 14 working days' of receiving the sanction to request an appeal.

62. There was no reference to the Supporter's second appeal rights within the email containing the outcome of the first appeal. The Supporter was referred to the second appeal in a later email. The Supporters' Charter provides information about a secondary right to appeal: *'The excluded person(s) must write to the Club within 10 working days of having been given the result of the 1st appeal. The request must set out in writing the reason for their appeal. A 2nd appeal may not be granted if there is no new evidence available to consider...'* It was also noted from an email from the Club prior to the second appeal hearing that *'during your exclusion you are banned from attending the stadium or training ground.'* This was not a part of the original sanction.

63. In the email from the Club to the Supporter dated 05 December 2022, a Club representative stated: *'I would suggest the request of a 2nd appeal where we can then hear your further concerns.'* There appeared to be no new evidence supplied by the Supporter to trigger this. Once a date for the second appeal was organised, the Club sent the Supporter an email in respect of the hearing details.

64. A summary of the hearing was sent from the Club to the Supporter. The IFO noted that the Supporter's son contacted the Club to firstly request that the ban be passed to him. The Supporter's son later offered mitigation.

65. The COO sent a letter to the Supporter following the second appeal hearing. The letter noted that the panel recognised that the Supporter felt that the sanction was disproportionate, given the circumstances and the occasion for which the Supporter's son were in attendance.

66. The Club also recognised the Supporter's dissatisfaction with the term 'pre-meditated' in respect of the ticket use, which the Supporter considered inappropriate due to the stigma it carried. The Supporters' Charter did not contain any reference to intention in respect of the wrongdoing the Supporter was accused of. For clarity, the aspect that the Supporter was deemed to be in breach of was the category 3a Supporter Charter provision of *'tickets being transferred, resold or advertised for sale outside of our documented authorised processes.'*

67. In the letter, the COO explained that the panel *'did not feel that there was any new evidence presented that has not already been provided to this point in the appeals process, that would provide them with the ability to reduce the sanction in any way.'* The COO did not comment on their view of the severity of the breach of ticketing terms or comment on the mitigation, apart from to note that they had been considered.

68. In relation to the second appeal, the Supporters' Charter reads:

'...A 2nd appeal may not be granted if there is no new evidence available to consider...'

69. The IFO questions on what basis a second appeal was granted where no new evidence was provided, given that the first appeal panel reached a conclusion, just days earlier. It appears as though the Supporter was referred to the 2nd appeal in the email referred to in paragraph 19.

70. The IFO noted from the Club's response to the draft adjudication that they considered it appropriate to use discretion when considering whether to grant the second appeal.

The Panel

71. It was noted that the appeal panel consisted of three senior members of staff, with another chairing the meeting. That person was noted as being 'not part of the panel.' However, the second appeal letter stated that the same person listed as the chair was *'present on behalf of the Club to articulate the process followed to date, the rationale for the initial decision and appeal and to answer questions from the panel and yourself.'*

72. The Supporter was unhappy that the Head of Safeguarding was present. It was noted that they felt 'humiliated and chastised', having had their 'decisions and actions as a parent questioned.' Although it was difficult to ascertain the exact content of the conversations discussed as the IFO was not present and no minutes were taken, the Supporter stated that they felt 'patronised and morally judged.'

73. There was no information about the basis for the Head of Safeguarding to be included on the panel. Although this is a secondary part of the complaint, the Club may wish to consider the appropriateness of this in the future, given the perception of a safeguarding issue by virtue of their presence on the panel. For the avoidance of doubt, although the IFO recognises that through the Supporter's optic it was objectional, it also recognises that there can only be so much resource and expertise available at any one time.

74. Regarding the presence of the Head of Safeguarding on the panel, the Club wrote: *'The participation of the Safeguarding Officer will always be to ensure that such matters are handled sensitively and appropriately by the Club.'* The Club disagreed with the Supporter's reflection of the purpose for the staff member's presence on the panel.

Recommendations

75. The IFO recommends that the Supporter's sanction is lifted for the remaining number of games for which it is active, the loyalty points are restored and the Club issues an apology to the Supporter for applying a sanction which wasn't applicable in the circumstances and for the handling of the matter.

76. The IFO recommends that the Club updates its policies to reflect the possibility of the presence (and purpose) of safeguarding staff on panels during the appeals process.

Draft Circulation

77. The parties were sent a draft copy of the adjudication, in which they were given 14 days in which to comment on any errors in fact. Any factual inaccuracies were updated in the final version of the adjudication and any clarifications required were inserted.

78. Although not a part of the process, the IFO addressed the subjective aspects of the Club's response to the complaint which incorporated a call between the IFO and the Club, as well as an email clarification in respect of the points raised.

Conclusion

79. The IFO was not satisfied that the Supporter's actions were consistent with that specified under the Club's sanction policy. It is fair and reasonable for the Supporter to receive an apology from the Club in this regard, for the loyalty points to be reinstated and for any remaining sanction to be lifted. The IFO neither considered that it was appropriate for the Supporter to receive a sanction, nor that they were given a choice between them and their son as to who faces the suspension and loyalty points deduction.

80. The IFO acknowledges the challenges the Club faces with the transfer of away match tickets but would implore the Club to consider the clarity and application of the policy in such instances over the desire to hold someone accountable for breaches of policy, given the impact that this had to the Supporter in this case.

April 2023