

IFO

THE INDEPENDENT
FOOTBALL OMBUDSMAN



Chartered Trading
Standards Institute
ADR Competent Authority

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IFO COMPLAINT REF: 22/13

AN INDEFINITE BAN 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 he has received full cooperation from Brighton and Hove Albion in replying to enquiries.

The Complaint

3. A Brighton supporter complained about a Club sanction imposed on them following an incident involving a steward. The Supporter received a three-year Football Banning Order ("FBO") at Brighton Magistrates' Court which was terminated after two years, upon application by the Supporter. It is understood that the Supporter was involved in a verbal exchange with opposition supporters and was asked to leave by stewards, but they resisted attempts to remove them from the stadium and their flailing arms clattered into a steward's face. This was noted in *The Argus's* article, dated 16 May 2022, reporting on the FBO termination hearing, which is referred to later in the document.

4. The Supporter was unhappy that the Club reaffirmed an indefinite ban to the Supporter after the FBO was terminated, following two appeals.

5. The Supporter was also unhappy with the handling of the in-person appeal hearing and the length of time the process took. The Supporter wished for the IFO to consider whether the sanction imposed by the Club was reasonable and proportionate for the purpose it served. The Supporter was assisted by the Football Supporter's Association ("FSA").

The Chronology

6. Three days after the incident which took place on 18 January 2020, the Supporter emailed the Club's Supporter Services inbox to convey their feelings about the incident:

'... I am ashamed and appalled at my behaviour at the game of Saturday. I have been a lifelong Brighton fan. I'm disappointed with my actions and totally understand the punishment you have given me as a club by banning me from future games. Not only have I let myself down [but] I've let my family down...'

7. The Supporter explained their remorse and enquired about the steward affected:

'I am deeply sorry to the steward who was on the receiving end of an accidental incident which I totally did not mean to do. I understand that if my actions beforehand wasn't of me acting like a total idiot this would not have happened. I would like to make sure the steward is ok as I am deeply sorry and would like to send her a personal apology on my behalf. Again I am so sorry or what happened on the weekend and hope the stewards and you as a club will accept my apology...'

8. The Supporter received a three-year FBO at Brighton Magistrates' Court in February 2020, which amongst other conditions, banned the Supporter from attending matches at the Club.

9. On 13 May 2022 the Supporter successfully applied to the court to have the FBO terminated two years into the three-year term. The Supporter's representative explained that there was no paperwork to hand, although the hearing was reported in a local newspaper, as referenced in paragraph 3, above. The Club contacted the Supporter on 16 May 2022, following termination of the FBO. Within the letter, the Club explained:

'The Club continues to focus on creating a safe, relaxed, family atmosphere at all our matches, so to this end your actions during the match against Aston Villa, 2019/20 season, remain undisputed in that you behaved in a violent, aggressive, and unacceptable manner, and most worryingly you assaulted a member of the Club's staff. In your recent email you state that you are remorseful but there is absolutely no evidence of your making any personal apology to the female member of staff...'

The IFO has not had sight of the Supporter's 'recent email' the Club referred to in the extract above. It is unclear whether this prompted the Club to contact the Supporter after the FBO ended.

10. The letter dated 16 May 2022 provided the Club's decision and the basis in which it was being issued:

'Your actions were, and remain, contrary to Ground Regulations, criminal, aggressive and irresponsible. The Club will not tolerate this type of behaviour so in line with Club policies and the published official club sanctions you are hereby indefinitely excluded from attending any events and matches at the Amex, from purchasing tickets for Away matches and from entering any other club premises. This period of exclusion will be reviewed in 5 years' time, from the date of this letter.'

11. Information about the extent of the sanction and the premises the Supporter was banned from were clarified and the Supporter was given information about the right to appeal:

'You are permitted to appeal this decision provided that you submit your grounds of appeal in writing, along with evidence on which you wish to rely, within 10 working days of the date of this letter. The appeal will be considered by an appeals panel consisting of 3 senior member of Club staff not originally involved in the imposition of this sanction. The appeal will be heard by the Club within 25 working days of receiving the appeal request. The decision of the appeal will then be notified to you in writing within a further 10 working days.'

12. The Supporter responded to the Club, by email on 21 May 2022 requesting an appeal, providing the grounds to support their application. They explained that they 'personally feel another 5 years not being able to support the club I've followed since a 4 year old child is a bit strong.' The Supporter added that they '... have

taken full responsibility for [their] actions on the day in question and have been punished for them...' Furthermore, the Supporter explained: 'I understand that my behaviour was not good but I never intentionally went out to hurt one of your stewards.' The Supporter stated that they would like 'to be given a second chance so I can start to come back to the club I love with my 7 year old son.'

13. The Club's Deputy Safety Officer and Security Manager emailed the Supporter on 27 June 2022, apologising for the response time, explaining that this was due to 'a period of staff having some well-deserved leave', following the end of the football season. The email noted: 'the Women EUROs commence in less than two weeks, and BHAFC are hosting three matches... this will cause further delays in hearing your appeal. Therefore, I will get back to you asap, with potential dates but I anticipate no earlier than mid to late July.'

14. The Supporter's FSA representative stated that they were contacted by the Supporter on 01 August 2022, having heard nothing further from the Club. The FSA representative stated that the Supporter chased the Club for an appeal date on one further occasion before the parties organised the hearing.

15. The Supporter's FSA representative provided details about a further email which set out grounds for an appeal and which was sent to the Club on 08 August 2022. A copy of the text was provided but it was unclear specifically to whom this was sent and exactly when. The document detailed the grounds for appeal to supplement the Supporter's email of 21 May 2022 (per paragraph 12).

16. An in-person appeal hearing was arranged and took place on 22 August 2022. The Supporter received a letter dated 02 September 2022 with the findings of the appeal panel:

'After careful consideration, the panel decided on the following outcome. During your appeal you stated that you are aware of and understand the club's Ground Regulations and our zero tolerance with regards to criminal, aggressive and irresponsible behaviour. Also, you informed the panel that you pleaded guilty in the courts to such behaviour. In an effort to maintain a consistent and fair approach to imposing sanctions on spectators; the decision by the board is to uphold the club's sanction and you remain indefinitely excluded from attending any events and matches at the Amex, from purchasing any tickets for Away matches and from entering any other premises. This period of exclusion will be reviewed no earlier than 20th January 2025.'

17. The letter continued: 'Therefore, in line with Club policies and the published official club sanctions your exclusion remains in place. This period of exclusion will be reviewed 5 years from the date of the incident.'

18. The letter also clarified the terms of the sanction: 'As a result, you are not permitted on site at either the Stadium, the Training Ground, or at any other Club property at any time during the length of your ban.'

19. A complaint was lodged with the IFO on 22 September 2022. The IFO sent the Supporter's complaint to the Club requesting a response. The Club responded to the

IFO, noting that although the time to lodge a second appeal had passed, they would consider a further appeal application if it were to be communicated before the end of October 2022. The IFO informed the Supporter, who made the appeal request to the Club.

20. The parties organised a second appeal hearing which took place in-person, with the Supporter assisted virtually during the meeting by the FSA representative, on 18 January 2023. The IFO was informed that during this appeal, the Supporter reiterated that he was still willing to offer an apology in person to the steward. The IFO has had sight of the minutes from this meeting that are referenced in more detail below. The Club sent a letter to the Supporter dated 26 January 2023 in which their assessment of the second appeal was provided. The letter referred to the Supporter's appeal and detailed the Club's response which broadly included the names, positions and roles at the Club of the panel attendees, an acknowledgment and review of the Supporter's appeal, the steward's account, the Club's stance on '*any inappropriate behaviour whilst attending matches and in particular towards its staff*', a review of the period of exclusion, the FSA representative's view on the matter and the panel's conclusion.

The panel was comprised of the Chief Operating Officer, the Head of Ticketing and Supporter Services, the Supporter Services Manager; it is noted that the Head of Safety and Security and their Deputy attended to provide evidence to the panel and not as panel members as referenced below.

21. The Club's decision was summarised:

'[Y]ou remain indefinitely excluded from attending any events and matches at the Amex, nor permitted on site at either the Stadium, the Training Ground, or at any other Club property at any time during the length of your ban. If you are seen in or around the Stadium, the Training Ground, or at any other Club property, you will be asked to leave, and further legal action may be sought. You are also excluded from purchasing any tickets for away matches. This period of exclusion will be reviewed no earlier than 20th January 2025.'

22. The Club explained that they would be maintaining the indefinite ban, which would be reviewed five years from the date of the incident, rather than five years from the date of the initial club sanction, as stated in the 16 May 2022 letter (per paragraph 10).

23. The Club shared their point-by-point second appeal hearing notes.

24. The Supporter subsequently contacted the IFO via the FSA representative, having exhausted the Club's appeal process.

The Club's Response

25. The Club explained that they did not find grounds upon which to alter the sanction following two appeals. The Club stated that the criminal case '*is totally separate to the Club sanctions*' and '*irrelevant as mentioned in the notes from the meeting.*'

26. The Club referred to the Supporters' Charter, noting that the Supporter 'had been to court and pleaded guilty to assaulting a member of staff. The minimum sanction as per our sanctions tariff for violent conduct towards a staff member is a 5 year exclusion.'

27. The Club noted that the Supporter requested the second appeal, which was granted by them, despite the period provided for a second appeal (per the Supporters' Charter) having expired. The Club explained: 'On reflection... and following a conversation [with the IFO]... we would not do this again in future.' When asked whether there was anything the Supporter could have done to satisfy the Club that the Supporter should be permitted to return 'early' from their indefinite sanction, the Club stated:

'There wasn't any new evidence and therefore nothing to satisfy the Club he should be permitted to return early. It is not for the Club to put together a case for [the Supporter's] return and the Club is 100% comfortable with the decision made in this case.'

28. The Club stated that 'everything submitted... in his appeal was considered.'

The Investigation

29. During the IFO's investigation it was in correspondence with the Club, the Supporter and the FSA representative. The IFO met with the Club for a routine meeting during which the case was discussed at a high level.

30. The IFO reviewed the Supporters' Charter, correspondence between the parties, the appeal information, the case file from the FSA, and the newspaper article in relation to the FBO. The IFO has also consulted the Government's online Home Office information about FBOs and the Criminal Prosecution Service online information.

The IFO's Findings

The Initial Sanction

31. The Supporter received an FBO for three years. As per the Government website regarding FBOs, the Supporter was prevented from attending regulated football matches in the UK for the duration of the banning order.

32. The Club became aware that the FBO was spent on 13 May 2022. It is unclear whether the Club were first made aware of the FBO being spent when the Supporter emailed them. The Supporter was informed in writing on 16 May 2022, of the Club's decision to uphold an indefinite Club suspension. The letter read that the period of exclusion would be reviewed five years from the date of the letter, although the Supporter could appeal. The minimum review period has changed from that in the letter sent to the Supporter on 16 May 2022 (per paragraph 10).

Under the Supporters' Charter, the Club clarified to the IFO that the Supporter's incident was categorised under "category 5 - violent conduct towards a member of staff". This contains a minimum sanction of 10 years with a 5 year review for a first offence which it is understood that this is.

33. In regard to live criminal investigations, the Supporters' Charter states:

'Individuals arrested at any home or away match may not be permitted to any future matches or have access to any Club premises until the outcome of the police investigation is known; this includes pending a court appearance and the outcome of any related criminal or civil proceedings.'

Elsewhere in the Charter, the Club include a further category of offence ("OTHER") which includes incidences where a supporter receives a police sanction, a breach of the Ground Regulations or any other offence. Within this category, the Club provide themselves with the discretion to review on an individual basis.

34. The Club reiterated the basis (per paragraph 26) for issuing the ban. The IFO notes the subjective and emotive wording in this letter which stated that *'[The Supporter's actions]... remain undisputed in that you [the Supporter] behaved in a violent, aggressive and unacceptable manner, and most worryingly you assaulted a member of the Club's staff.'* The Argus article reported: *'at the hearing in 2020, [the Supporter] admitted his behaviour was reckless...'*

35. The IFO believes that having noted the panel's composition of staff members not un-connected to the incident, (per paragraph 20), both parties may have benefitted from independent voices on the panel, in which the hearing may have taken a more objective approach. The IFO acknowledges that the Club were faced with a difficult decision as one of their own staff members had been assaulted and, therefore, it might be a common instinct to stand with that person as opposed to the perpetrator. The eyes and objectivity of independent persons who would not carry the same loyalty would provide a balance to hearings of this type.

36. The letter of 16 May 2022 incorrectly stated that *'there is absolutely no evidence of your making any personal apology to the female member of staff.'* The evidence provided by the Supporter appears to show that they emailed the Club three days after the incident, offering remorse and sadness for their actions. The Supporter wrote:

'I would like to just make sure that the steward is ok as I am deeply sorry and would like to send her a personal apology on my behalf... again I am so sorry for what happened on the weekend and hope the steward and you as a club will accept my apology...'

37. When asked about receiving the Supporter's offer of an apology, the Club stated that they did not consider it appropriate to inform the steward. The IFO feel that the steward should have at least been notified of the apology offer and then the appropriateness of this, or otherwise, and channel by which this could have been conveyed could have been discussed with them. Whilst, therefore, the IFO recognises that this is an internal matter, the IFO believes that the Supporter's offer of an apology should have been acknowledged by the Club at the outset. The Club

mistakenly thought the Supporter had not offered to apologise (per paragraph 9), using this as an aggravating factor when considering a sanction at the outset, as per the Club's letter dated 16 May 2022.

The First Appeal

38. The letter sent to the Supporter (per paragraph 11) provided a period to submit grounds to appeal, along with evidence *'within 10 working days of the date of this letter.'* This differed from the period of time to lodge a claim as prescribed in the Supporters' Charter (*'within 14 working days of receiving the notification of sanction'*). The IFO has observed that the Supporter appealed within both deadlines. It is therefore seen that the inconsistencies had negligible impact, given the Supporter's timely response.

39. The Supporters' Charter provided: *'Appeals must be completed within 25 working days of the Club receiving the appeal request.'* The Supporter received an email dated 27 June 2022, from the Deputy Safety Officer and Security Manager apologising for the delay and offering an explanation and time period to expect to receive potential hearing dates and the appeal took place 64 working days after the appeal request.

40. The Supporter felt that the appeal hearing was used by the Club as another opportunity to question them about the incident, rather than considering the aspects of mitigation. It is fair to say that, based on the correspondence relating to the appeal, little consideration appears to have been given to the factors in mitigation which the Supporter presented at the hearings, which were that the Supporter had served their FBO, their long-term support of the Club, as well as the desire to bring their son to matches. Given that some of those on the panel were involved in the aftermath of the incident, the IFO would consider whether the appeal panel could have been comprised of a greater proportion of people not involved in the incident itself or indeed who were wholly separate to the Club.

41. The IFO has reviewed the first appeal hearing minutes produced by the Club. The minutes referred to the Security Manager that *'recalled back to the incident where he was first dispatched to the segregation line following reports of disruption.'*

42. Within the Minutes, the Security Manager described the incident and *'confirmed that whilst this was not intentional, it was a repercussion of [the Supporter's] sudden arm movements.'* This is consistent with the Supporter admitting to recklessness in the initial court hearing, as noted in paragraph 35 and at odds with the Club's position in their original letter to the Supporter (per paragraph 9). There is a distinction to be drawn between a deliberate act to cause harm and a conscious disregard for risks which may result from an action.

43. The Supporter stated that they did not receive the minutes from the first appeal. It is unclear whether this was shared, although the Club wrote to the Supporter dated 02 September 2022 to provide a summary of the appeal decision.

The Second Appeal

44. Three weeks after the date of the first appeal, the IFO received a complaint from the Supporter which as part of the IFO process was sent to the Club for response.

45. Following receipt of the Supporter's complaint, the Club offered a second appeal. The Club explained that this was despite a further appeal not being initially requested by the Supporter within the timeframes prescribed by the Supporters' Charter: *'the excluded person must write to the Club within 10 working days of having been given the result of the 1st appeal...'*

46. In respect of the appeal, the Supporters' Charter states: *'the review panel will include 1 member of the BHAFc executive committee, and one other senior member of staff.'* However, the hearing notes show that there were five attendees from the Club in the second hearing; three were panel members and two were in attendance as clarified below, separate to this there was also a minute taker. It is unclear whether this made a material difference in respect of the outcome or the way the hearing was conducted, although it is worth highlighting that this appears to be a departure from the Supporters' Charter provisions.

47. The Club's notes from the second appeal stated:

'Following the Court's decision to reduce [the Supporter's] football banning order, the Club then reviewed the situation and current circumstances. AM sent [the Supporter] a letter dated Monday 16th May 2022 stating that the ban would remain indefinite and would be reviewed in 5 years' time which [the Supporter] appealed.'

48. The Supporters' Charter provides a *'minimum period before review of 5-years'*. There were inconsistencies with the exact date of the minimum review period. Initially the minimum period before review was five years from the date of the letter sent to the Supporter confirming the sanction (16 May 2022). However, this was later changed to five years from the date of the incident. The IFO consider that this could be clarified by the Club updating the Supporters' Charter to show the date from which the minimum review period is measured.

49. Although the Club explained that the outcome of the court case was not relevant to their decision, it appears that the trigger for the review of the sanction was the termination of the FBO. The Club sanction is therefore intrinsically related to the court action on this basis.

50. The Club granted the Supporter a second appeal despite there being no new evidence. The Club were asked why the second appeal was granted. They noted that the second appeal was granted as the Supporter requested it, although on reflection, and following discussion with the IFO, they would not do this in the future. The IFO is concerned that the Club went ahead with the appeal with the mindset that the Supporter could not have succeeded, owing to the lack of new evidence which would have been apparent before the hearing was convened.

51. The Club were asked by the IFO what evidence would have satisfied them that the Supporter should be allowed to return. The Club responded as per paragraph 27.

Further Information

52. The Club were asked whether they considered the evidence of the police and the comments made by the judge from the court hearing, in reaffirming their sanction. The Club explained: *'It was noted that very little football was played during the time of [the Supporter's] FBO due to Covid. But again, the criminal case is separate and not relevant to the decision made here, so the police and judge's comments were not seen to be relevant.'*

53. Objectively, the IFO notes that although the Club is entitled to apply their own sanctions and review the incident in light of their Supporters' Charter and are not bound in this instance by the determination of the criminal court when it lifted the FBO, there were objectively some useful conclusions drawn by the court which could have been considered. In particular, the comments from the District Judge, Amanda Kelly, who was quoted as saying *'if a police officer says you have learned your lesson... then [the Supporter] had "earned the right to attend" matches again.'* The IFO does consider this relevant given that it understands the police officer referenced, PC Darren Balkham is the Sussex Police's dedicated football police officer.

54. Considering that the court was assessing the same incident and whether it was deemed appropriate that the FBO was terminated, it brings in to question the reasonableness of the Club's position that the decision of the court was discounted as not being relevant. When the Club was asked about the relevance of the termination of the FBO in relation to the Club's sanction, the Club wrote:

'Irrelevant as mentioned in the notes from the meeting. A criminal case is totally separate to the Club sanctions.'

55. Even though the Club is entitled as a private business to control the threshold of its ground and ultimately can decide who it admits, the IFO recommends that it exercises this control in a way that is demonstrably fair. This duty of fairness should appropriately extend to giving proper consideration to all evidence available. The IFO has been informed that the opinion of the Club's dedicated police officer – that there was no legal reason to object to the termination - was considered by the Judge as a significant factor in the decision to terminate of the Supporter's FBO. It remains unclear why the findings of the court and specifically that of the Club's dedicated football police officer were discarded as irrelevant and not at least considered as grounds for mitigation.

56. Further, whilst there is no obligation upon the Club to rehabilitate one of its supporters, in this case it occurs to the IFO that no amount of evidence or mitigation could have satisfied the Club that there should be a way back for them. In short, the IFO is satisfied that there was never a reasonable prospect of the Club conceding ground and upholding an appeal in the Supporter's favour.

57. It is unclear whether the Club undertook an assessment of the risk posed by the Supporter when reviewing the case. However, there was little reference in any of the documentation supplied which pertained to the risk the Supporter may possess to the steward or the crowd in the future.

Summary

58. The Club did not consider the FBO hearing findings of District Judge, Amanda Kelly, when assessing the Supporter's case and subsequent appeals. The Club stated that they felt the hearing was not relevant to the Club sanction issued. However, the IFO disagrees with the Club's position that the court hearing carried no relevance. The IFO notes the assessment of the criminal case from the District Judge and the input that it has been informed of from PC Balkham. The IFO consider that the findings from a tribunal of fact should not have been discounted and instead given due consideration. Furthermore, it appears as though the trigger for the initial review of the sanction was the FBO termination hearing.

59. The IFO found that the composition of the appeals panels may have contributed to the Club's introspective assessment. The panels were comprised of staff that were not all predominantly un-connected to the incident, which could have contributed to a more subjective appraisal of the Supporter's appeals than is to be expected and certainly gives rise to the perception of this having been so.

60. The appeals process was found to have a number of inconsistencies against the Supporter's Charter, and clarity issues. Namely: the timeframe in which the first appeal took place, the time given for the Supporter to supply evidence to support their appeal, the minimum period for review, the consideration of the Supporter's offer of apology and the cross-section of panel attendees.

61. It is the IFO's view that the Club have thus far missed an opportunity to facilitate some form of restorative justice, which might have been helpful to the steward and the Supporter, for example by conveying the Supporter's remorse. The IFO appreciates that the steward may have elected to reject the Supporter's apology, but would have at least been given that choice.

Recommendations

62. The IFO recommends that Club considers, as a matter of course, taking steps to structure independence on appeals and sanction panels.

63. Although the IFO recognises that the Club aren't bound by the decision of the Court, but given that another tribunal of fact has weighed the risk and lifted the FBO, the IFO finds it difficult to resist weighting the outcome of this adjudication in favour of the Supporter and recommends the Club reconsiders the sanction. The District Judge, Amanda Kelly, was quoted as saying 'if a police officer says you have learned your lesson... then [the Supporter] had "earned the right to attend" matches again.' The IFO does consider this relevant given that it understands the police officer referenced, PC Darren Balkham is the Sussex Police's dedicated football police officer.

May 2023

64. The draft adjudication was circulated to the parties and comments were received from both parties following this:

65. In addition to clarifying that the Supporter reiterated their willingness to offer an apology to the steward (as has been clarified in paragraph 20 above), the Supporter's representative also commented on the Club's position set out in paragraph 52 above, that due to the FBO falling within the lockdown, meaning there were periods in which no football was played and/or games were played behind closed doors, it had more limited application in terms of missing matches than it might otherwise. However, the Supporter pointed out that the conditions of the FBO remained meaning the Supporter still had to surrender their passport and were they to be found in breach, was still liable to arrest and charge for any breach.

66. The Club has also commented on the draft, stating that they consider that the report contains a number of material inaccuracies. Insofar as these relate to material fact and offer clarification, these are set out below. Any additional issues will be dealt with directly through correspondence with the Club. The Club have adopted the paragraph numbering above, for ease of reference.

Paragraph 8 – The Club wish it to be noted that “the supporter pled guilty to assault on a member of our staff”. The Club has stated that does not appear to be properly reflected in the report. The IFO has noted this and sought clarification from the Supporter that this was the case. The IFO has also noted throughout that the Supporter received a 3-year FBO which is reflected throughout the report and is accepted fact.

Paragraph 32 - The Club has expressed its concern that it is suggested that the sanction was 'other', and further that based on the Club Charter, the conduct complained of fell squarely within "category 5 - violent conduct towards a member of staff". This contains a minimum sanction of 10 years with a 5 year review. This is duly noted. Notwithstanding this, the IFO have noted that the Club sanction still exceeded the recommended provision for a first offence, which it is understood this was. Correspondence following the removal of the FBO relates to an indefinite ban which is more consistent with a further offence as stated within the Club Charter.

Paragraphs 35 and 40 and 46 – Regarding the composition of the panel, the Club have clarified that members of the safety team attended the meeting in order to provide evidence as to the acts complained of. They were not part of the panel. The Club have provided meeting notes, in addition to the second appeal outcome letter which confirms that Panel attendees were the COO, Head of Supporter Services and Supporter Services Manager and also in attendance from the Club was a Minute taker, Head of Safety & Security, Deputy Security Manager, along with the Supporter and the FSA Caseworker, the latter attending remotely via Teams. The IFO

has reviewed the transcript of the meeting, from which it has specifically noted the following:

- *All members were then informed that due to it being a second hearing, there should be a focus on any new evidence [the Supporter] wishes to present that is in line with the Supporters' Charter.*
- *Once the preliminaries had taken place and their evidence discussed, the Head of Safety & Security and Deputy Security Manager left the room.*
- *[the Supporter] confirmed that he has been given a fair hearing and did not have any additional questions or comments to make in addition to what he had already provided.'*

The IFO thanks the Club for the transparency in sharing meeting notes and acknowledges that the panel was comprised of three members, the additional staff being either in secretariat roles or present to provide evidence, being asked to leave the room where not required. However, the IFO must also consider that Panel attendees were all BHAFc employees and, therefore our comments about any independent elements remains a consideration that the IFO recommends the Club takes on board.

Paragraph 36 & 60 –regarding the apology the Club have asked it to be recorded that in the appeal panel it was very clearly noted that a letter of apology, originally lost in the system, had been received by the Deputy Security Manager, and that was acknowledged. Further, it was not under question in the second appeal, the Club knew the Supporter had apologised. This is confirmed within the appeal notes where *'[The Chair] confirmed to [the Supporter] that his apology to the steward is noted by the second appeal panel members and would be captured in the meeting's notes'*. This is duly noted, however, it remains that this was not communicated to the steward to allow them to make a choice about what to do with the offer of apology, whilst therefore the Club's knowledge is accepted, this does not change the IFO's views regarding the apology.

Paragraph 55 – the Club have pointed out that the dedicated police officer for the club did not advocate the termination of the FBO and it was their understanding that with very limited football having been played, there was no legal reason to object as the Supporter had not come to his attention. It is the Club's position therefore that this is not the same as supporting the termination of an FBO or thinking he should be permitted to return to the Club. The IFO's comments in this respect come from the reporting of the judge in the FBO termination hearing and the article itself. This police officer's input appears to be key to the judge's decision which is why weight was ascribed to this accordingly:

'However, he appeared in court on May 13 and successfully applied to Brighton magistrates court to terminate the order early after submitting a supporting letter from a police officer.'

'In an email submitted to the court, the police said they supported [the Supporter's] application and said that they would not have concerns, if the court did choose to remove the current ban.'

'One of the police officers who has been working with [the Supporter] during the course of his ban said: "In the time [the Supporter] has had his ban, he has not come to notice at any football matches.

"He has complied with all his conditions on his ban and throughout the process, if he had any questions, especially around this process he is currently applying for, he kept in contact.

"It is my opinion that [the Supporter] has learned from this."

The Judge was then quoted – "if a police officer says you have learned your lesson" then [the Supporter]r had "earned the right" to attend matches again."

Whilst, therefore it is acknowledged that there may have been more limited fan attendance at the football being played during the Covid-lockdowns, the decision is based on the opinion that the Supporter "has learned from this" and it is noted that this was the rationale applied by the Judge.

Paragraph 56 – the Club records that it has a clearly stated sanction policy which details violent conduct towards staff and the sanction. As stated in the notes from the appeal meeting, if the police find you ticket touting you will likely get a fine, the club sanction will be more serious. The two are therefore not aligned. From the Club's perspective, this was category 5 violent conduct towards a member of staff – minimum sanction 10 years with a 5 year review. This is duly noted, however it is the IFO's opinion that the FBO hearing did have some relevance and could have been given greater consideration when hearing the appeals, not least by way of mitigation.

Paragraph 59 – The Club have noted the composition of the second appeals panel and dispute the IFO findings in this regard. The initial sanction letter from the Head of Safety and Security (an attendee at the second appeal) and cc'd was the Head of Supporter Services (although under a different position). Also early emails were sent to the Supporter Services email address (of which one of the panellists was the Supporter Services Manager). The IFO therefore remains of the opinion that when viewed through an objective lens, looking at the personnel involved, there were several areas of overlap which the IFO contends may have led to a more subjective appraisal of events.

Paragraph 61 – The Club have confirmed why they decided not to extend the offer of an apology to the steward, explaining that the member of staff wrote an impact statement for court which explained how they had been affected by the incident and this was discussed with the Supporter. Having read that, the panel did not feel

bringing this back up for the steward was appropriate and in the notes the Supporter acknowledges himself how “no one comes to work to get hurt”.

The Club have cited the CPS Legal Guidance on restorative justice in that: *“The timing of this invitation can be crucial as victims often need a little time to recover from the initial trauma of the offence, before being able to agree to address the issues involved. However, if left too long, many victims will have “moved on” emotionally and will not wish to revisit the events of their victimisation again”.*

However, the IFO notes that the same guidance also states that *“Where RJ is an option the police should contact the victim (unless there are exceptional reasons not to do so) to ask for their views on reparation as a condition of the caution”.* Given that the apology was offered by the Supporter very soon after the event and has also been reiterated since, the IFO remains of the opinion that this should have been the steward’s choice, noting further that the guidance referred to by the Club is supportive of this stance.

Paragraph 63 – The Club has reiterated its responses to paragraphs 55 and 56 above to which the IFO has responded.

In summary the Club states that “we feel we have followed the required processes and worked completely within the lines of our sanction policy. We do not see any reason why we would permit [the Supporter] to return to matches having served less than our stated minimum sanction for violent conduct towards a member of staff.

Further, there appears to be an underlying tension in the report. It is repeatedly accepted that the Club is not bound by the court decision, yet there are many points during which the report seems to suggest that the Club should (in effect) be bound by its findings. Clubs are required to have charters in place to set out clearly what sanctions will be implemented when certain offences are committed. The complainant has pled guilty to an offence which is specifically set out in the Charter. The approach referred to in the Charter (and the transparency that this is intended to achieve) is somewhat undermined if the IFO’s decisions suggest that a club may be acting unfairly while acting squarely within its Charter”.

As per the recommendation at paragraph 63, although the IFO recognises that the Club aren’t bound by the decision of the Court, given that another tribunal of fact has weighed the risk and lifted the FBO, the IFO finds it difficult to resist weighting the outcome of this adjudication in favour of the Supporter and recommends the Club reconsiders the sanction. The Club allowed the appeal following the lifting of the FBO itself which set a very clear expectation that they are not bound by their earlier decisions. The presence of the second appeal itself is persuasive in recognising that the Club had given themselves the flexibility at the time to review and therefore potentially lift the sanction. The Club could also consider amending their Charter to reflect that there are circumstances where flexibility regarding an individual’s circumstances could lead to a fairer outcome.

67. The IFO has reviewed the comments made by both parties and have sought counsel from members of its Advisory Panel, Alan Watson CBE and Mark James, Professor of Sports Law at Manchester Metropolitan University and Head of Research at Manchester Law School.

Conclusion

68. The Club has presented its comments in response to the original draft very robustly and the IFO has carefully considered these. The IFO acknowledges that the Club may act as its own gatekeeper and that the IFO's recommendations are not binding upon it. The IFO also acknowledges the sensitivity of the matter, involving, as it did, a colleague and appreciates the explanations as to the consideration given to that colleague regarding the apology and the stance that the Club has taken upon appeal.

69. The IFO has also considered the conclusions drawn by the Court, an independent tribunal of fact, where, having considered the matter objectively, it found the opinion of the police officer persuasive in its re-consideration and subsequent termination of the FBO. This now being spent, the IFO remains of the opinion that the composition of the panel could lead to a potentially more subjective consideration, or the appearance that this could be the case. As noted above, the appeal process not only needs to be fair, but demonstrably so. The IFO remains of the opinion that, whilst a separate process, the opinion of the court could have been given consideration.

70. The IFO therefore makes its recommendations pursuant to paragraphs 62 and 63 above.