

# IFO

**THE INDEPENDENT  
FOOTBALL OMBUDSMAN**



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**IFO COMPLAINT REF: IFO89**

## **An Indefinite Ban at Brighton & Hove Albion FC**

### **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 it has received full cooperation from Brighton & Hove Albion FC (the Club) and the Supporter in replying to enquiries.

## The Complaint

3. In 2004, following a football related fight away from the stadium, the Supporter was charged with and later convicted of a violence-related offence and received a two-and-a-half-year prison sentence and a seven-year Football Banning Order ("FBO"). The FBO was terminated early after six years. The Supporter was allowed back to attend matches at that juncture. In 2014, the Supporter was convicted again following a football-related affray (again, away from the stadium) and received a five-year FBO. The Supporter applied for an early termination of the FBO in 2017 and was successful. However, the Club refused to re-admit the Supporter and imposed an indefinite ban on the Supporter, with a review after five years.

4. In 2023, the Supporter applied via an appeals process to the Club, to request the lifting of the ban, but was not successful. The IFO has had sight of a copy of the Club's letter to the Supporter, dated 24 April 2023, along with Minutes of the appeal meeting on 12 April 2023 ("the Minutes"). In the letter, the Club highlights that the Supporter agreed that they had been given a fair hearing and this is reflected in the Minutes, which states 'He [the Supporter] confirmed that he has been happy with the opportunity he had been provided with today and had no further questions.'. However, on reflection the Supporter does not feel that the hearing was fair, as rather than focus on how they could return to the Amex Stadium, they feel that "it effectively put on [them] on trial all over again". The Supporter has asked for the following points to be considered by the IFO:

*"There is no escaping the fact I was involved in two football related incidents involving violence. In both cases I was rightfully convicted and had FBOs imposed on me.*

- I did not breach the conditions of either FBO.*
- Both FBOs were terminated early by the courts.*
- With emphasis on the second early termination given my history the court would not have granted the early termination application if they believed there was even the slightest risk of my reoffending. BHAFC should have considered this.*
- The minutes from the appeal hearing give a clear indication that rather than those present focusing on why I should be allowed to return to the Amex and*

*whether or not I posed a risk to other spectators and staff (ideally, all that they should be concerned with) the far greater focus was on my offending.*

- No weight was given to the fact that I have not reoffended since 2014, that I have matured considerably since then and have far more appreciation of what I have to lose both personally and professionally if I reoffend.*
- There is a strong argument to suggest that the line of questioning at the hearing was designed to set me up to fail and was not a meaningful process.*
- This view is supported by the security manager, [name redacted], stating on the record that "the club felt I was not the type of match-goer it wished to have on its premises".*
- No weight or due consideration was given to the references I provided.*
- No weight or due consideration was given to the fact I attend away games and have done without incident for several years.*
- No weight or due consideration to my stated desire to return to the Amex with my young son and elderly father and any risk I would pose in their company.*
- Despite this, the club state that I provided no new evidence that would provide them with the ability to lift or reduce the sanction.*
- The club have not given me any realistic opportunity of a pathway back nor any meaningful idea of what I have to do to persuade them to allow me to return or what evidence I can provide them with that will satisfy them I pose no risk or threat to the safety of fellow fans, opposition fans or match day staff.*
- The club have clearly concluded that my historic convictions (the last one nine years ago) would compromise the environment they wish to create and, further, they will not tolerate aggressive and irresponsible behaviour.*
- This assertion is completely and utterly baseless and if challenged the club would not be able to provide a shred of evidence to support it. It is a cheap, emotive argument when they should be professionally assessing any risk I pose rather than trying to debase my character.*

- *Whether or not the entire process of appeal is a meaningful one or merely a tick box exercise.*

- *I strongly suspect that the only reason the club know about my first conviction is because PC Darren Balkham would have informed them. Given the historic nature of that were the club right to rely on it and what was its relevance to this procedure?*

*Finally, in their letter to me the club said that I had said that I appreciated why they would not "wish to let me out". Without context this is an entirely disingenuous and misleading statement. What I actually said was that as a business man I can see the wider picture of what the club wish to achieve. This is an example of the sort of leading questions that were asked of me in a cynical attempt to set me up for failure".* It is noted that PC Darren Balkham, referred to in the Supporter's statement above, is the Club's football liaison officer.

5. The Supporter believes that they should be allowed the opportunity of a meaningful appeals process in which they should be risk assessed to ascertain whether or not they pose any future risk at matches hosted by the Club.

### **The Club's Response**

6. The Club's account broadly concurs with the background provided by the Supporter, stating that they have had two previous football banning orders following what the Club deems to be, "very serious disorder". The Club have confirmed that, following the reduction of the first FBO, they did permit the Supporter back to the stadium. Then, in 2014, the Club have stated that Supporter confronted a Millwall fan during a fracas and also a police officer and was given a three-year FBO. In 2018, the FBO was lifted and the Club gave the Supporter an indefinite ban with an appeal possible after 10 years. After an appeal, the Club stated that this was reduced from 10 to five years at the recommendation of the IFO, who felt 10 years was too long. The Club noted that the Supporter has now cited their desire to return to matches with their family.

7. The Club have also confirmed that the Supporter was given the opportunity to appeal the indefinite ban in front of an appeal panel. The panel felt that the Supporter had previously been given a second chance after what had been a very

serious incident, only to once again be issued with an FBO for football violence. The Club explained that the sanction policy is very clear in this respect, with criminal activity inviting an initial 10-year ban and a second offence being an indefinite ban. This was referred to in page 26 of the club charter document -

<https://www.brightonandhovealbion.com/club/club/club-charter>. The Club stated that they have followed this policy and applied the indefinite ban and believe that the Supporter has not put forward any mitigating evidence that would indicate that the Club should change its decision. The Club therefore feels that the Supporter has been given a good opportunity to prove that they should be able to attend matches at the Stadium again, and also a fair appeal hearing.

8. It is acknowledged that the Supporter gave character references at the hearing and explained themselves to be in a "bad place" in 2003. They also provided an explanation as to how the events of 2014 had transpired. However, it was noted by the Club that the Supporter had been drinking and, the Club believe, still does, albeit stating it is now not to excess. The panel felt that the Supporter could still pose a risk if allowed to return to matches. Further, the Supporter expressed their wish to attend with family albeit that one of their sons has been involved in disorder and also recently received an exclusion. The Club states that it has a responsibility to ensure that the many supporters who come onto its private property at the Stadium, are kept safe and secure. The Club feels that the reintroduction of the Supporter puts other supporters' at an unnecessarily risk. A previous second chance did not result in a change of behaviour and therefore the club does not feel they warrant a further opportunity at this stage.

9. The Club have also noted that the Supporter has said that they attend away games and has done for several years and they give no weight or consideration to these arguments, due to the fact that the Supporter is likely obtaining the tickets for away matches through other means and not, the Club states, via the Club channels.

10. In the Minutes, it is stated that the Supporter "confirmed that he has been happy with the opportunity he had been provided with today and had no further questions". The Club suggests that if the Supporter had concerns about the hearing then they should have been raised at the time and for the record. The Club noted that after the Supporter was informed of the Club's decision, the Supporter sent

emails, texts and made calls to the Club's offices. The Club explained that a recent email includes the following comments: 'How dare you lot get me into that office and talk down to me like that' and 'How dare you lot sit there and judge me!'.

### **The Investigation**

11. The IFO have considered all the information provided by both parties and have spoken to both parties separately, by virtual means.

12. The IFO asked the Club why the Supporter was allowed to return following the first incident, and not the second, in order to examine whether the Club had been consistent with the application of its sanctions policy. However, the Club told the IFO that this coincided with a move to a new stadium at which time they "wiped the slate clean" and provided a second chance to a number of fans. However, regarding the second offence, the Club explained, this carries more weight in terms of the application of their sanctions policy.

13. The IFO also discussed the Supporter's attendance at away fixtures with the Club, who confirmed that they have no control over who is and is not permitted into other grounds, however the Supporter's attendance was in contravention with the terms of their ban, notwithstanding that it was used in mitigation by the Supporter in the appeal hearing.

14. The Club were asked to confirm if this was still an indefinite ban, or whether it was now, in effect permanent from their perspective. The Club reaffirmed that the original ban was for 10 years, appealed after five years due to a previous IFO recommendation. They would therefore be able to review after a further five years and would be seeking evidence that there had been full compliance with the ban, i.e. in terms of attendance of away fixtures.

15. The IFO has also spoken to the Supporter, confirming the background information and the way in which they considered the appeal was unfair. The Supporter reiterated that they accepted they had made mistakes in the past, but felt that the most recent appeal was a box ticking exercise, that they remained excluded on the advice of the police constable and there is no evidence that they would pose a problem now. The Supporter reiterated that they do go to away games and there have been no problems so now they are seeking a way back to attend home

games with their family. They have provided statements from other season ticket holders, one of whom is a magistrate, who does not think they pose a threat. The Supporter did confirm that they felt the Minutes fairly reflected the hearing.

16. The IFO has had regard to the Minutes, the correspondence referred to above and the Sanctions Policy which confirms that criminal activity carries at 10-year minimum ban and a second offence, a more serious sanction of an indefinite ban with a minimum period before review of five years.

### **The IFO's Findings**

17. The IFO has considered the way in which the appeal was conducted and, in particular, the IFO has had regard to the Minutes, which the Supporter has confirmed were a fair reflection of the meeting. The IFO has noted that, in addition to the Supporter, there were five others present from the Club, which included three on the panel, the Security Manager and a minute taker. The Sanctions Policy indicates that for a second appeal, the review panel will consist of a member of the executive and one other senior member of staff. It is noted, therefore, that there were more people on the panel itself than envisaged by the published information. The IFO recommends that the Club looks at its processes accordingly to ensure they are a fair reflection of what supporters can expect from said processes. It is noted that the Security Manager attended to present a timeline of events and overview of documents provided to the panel. The opinion of the Security Manager was recorded, and it is noted that the Security Manager did not feel that the Supporter was "the type of match-goer it wished to have on its premises", however when attending away games, confirmed "there have been no further reports on [the Supporter's] behaviour at away games". It was reaffirmed that the ban related to the two historic incidents that resulted in a court hearing, conviction and Football Banning Orders.

18. The Minutes then record that the Supporter was provided the opportunity to confirm why they thought the ban should be overturned and stated that they "took the penalty" for previous behaviour and had been taking their children to some away games. The Supporter provided some context around the previous incidents before assuring the panel that they are not a risk and intends to accompany family who are season ticket holders. It is noted that the panel were provided with the

opportunity to ask questions of the Supporter around their reactions to certain hypothetical events regarding his family at matches. The Supporter's comments regarding this line of questioning is noted. However, it is also noted that the Supporter's son has been involved in an incident which resulted in a ban and another in which their son was assaulted by another supporter. The Security Manager stated that "from the Club's perspective, we cannot be completely certain how [the Supporter] would react if he witnessed his son involved in any further altercations" and it was acknowledged that the Club would need to manage the risk around this possibility.

19. The Club asked the Supporter for some more information surrounding the disorder that took place in 2003 (which resulted in a conviction).

20. The Supporter was also asked about how they obtain tickets for away matches and as to their drinking habits at games. The Supporter reiterated their apology for past behaviour and concluded "that as the Club knows, [the Supporter] has not caused any issues at away games and just wishes to take their children to the home games". The Supporter noted that they know other Brighton supporters and they step in to take a ticket if another person drops out.

21. The Minutes also record that the Supporter confirmed they have "been happy with the opportunity he had been provided with today and had no further questions". It is noted that this latter point has been subject to later reflections on the part of the Supporter. The IFO notes that the Minutes are comprehensive and that both a representative of the Club and the Supporter were able to present their views. Further, the Supporter was invited to comment upon them within seven days of receipt of the final outcome letter on 24 April 2023 and have recorded no reservations as to accuracy, notwithstanding the issues raised in the application to the IFO.

22. The Club have recorded in their letter of 24 April 2023, that "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". The Minutes make reference to key documents that the panel had reviewed along with supporting evidence. The letter of 24 April 2023, also confirms the factors taken into account by the panel in coming



to its decision, including the character references supplied by three named individuals. That they are referenced transparently within correspondence indicates that they were given consideration. It is also fair to say that these may constitute "new evidence", however the Club is entitled to weight these against other factors which they ultimately have done, providing reasons for the rationale behind their decision. The Club have confirmed when, having done so that the Supporter has not put forward any mitigating evidence that would indicate that the Club should change its decision.

23. The Supporter did offer some factors in mitigation recorded in the Minutes, to which the IFO will now turn. Firstly, the Supporter stated that they wished to attend home fixtures with their family. The Club's questioning around the Supporter's reactions to certain hypothetical occurrences is noted and, the IFO feels was relevant in terms of trying to ascertain risk. Whilst, as noted above, an independent view on the panel may have been helpful, the IFO has also viewed this objectively and feels that this was a way of trying to ascertain any future risk particularly in light of the fact that one of the family members had also recently been involved in an incident that had resulted in a stadium ban, something not disputed by the Supporter, who the Minutes record, stated "After the incident, [the Supporter] said that he was very angry at his son but confirmed his son had not repeated this behaviour since being allowed to return to the stadium after a short exclusion".

24. The Supporter also raised their attendance at away games, with no incident (as confirmed by the Club), as additional mitigation. However, when considering this, the IFO must take account of the fact that the ban was for home, away and cup games and that this is clearly stated in the Charter: "\*\*\*Bans cover home and away league matches and any cup matches that fall during this period". Therefore, the Supporter is in contravention of the ban in attending away fixtures. The IFO does not, therefore, feel that this ought properly to be considered as mitigation. The IFO therefore feels that the Club had grounds to reject the appeal on the basis of a fair assessment of current circumstances.

25. In coming to this decision, the IFO has considered that the FBOs in both instances were terminated early, however in the first instance the Supporter was allowed back into the ground without undertaking any process or risk assessment and then

committed a further offence which the Supporter's Charter envisages will warrant more stringent consideration and potentially a harsher penalty. This has been weighted against the early termination of the FBO in 2017 and the information provided in mitigation that the IFO believes was capable of a different interpretation to that intended by the Supporter.

26. Nevertheless, this being an indefinite ban, the IFO considers that it is reasonable that the Club clarifies the next steps for future appeals of the ban, which would be due 10 years after the date of the original ban. The Supporter has specifically referenced the fact that there is no direction as to a "pathway back" however, the IFO feels that it is for the Supporter to consider what they might provide in terms of mitigation and how they might re-build the trust of the Club. From the Club's perspective, this could involve a *Good Behaviour Agreement*, or similar undertaking by the Supporter. **The IFO therefore recommends that the Club convenes a further appeal in line with their published process if the Supporter so requests at a date no earlier than 10 years after the date of the original ban.** The IFO considers it reasonable that this includes compliance with the terms of the current ban with regards to attendance at away games and that the Supporter is able to evidence adherence to this.

27. If the Club accepts the IFO's recommendation to convene a further appeal, the Club may wish to give consideration as to who is best placed to hear that appeal. **The IFO recommends that the Club revisits its current published information about the process to be undertaken to ensure it is a fair reflection of what supporters may expect in terms of the composition of appeals panels.** The IFO have recommended elsewhere that Club's consider independent voices on a panel which may be something which the Club wishes to consider.

## **Summary**

28. Having had regard to this matter, the IFO finds no grounds to make any recommendation to overturn or reconsider the sanction at this juncture. In coming to its decision, the IFO has weighted the mitigation provided by the Supporter which, when considered objectively, the IFO considers compelling for the Club to have considered when drawing its conclusions. Whilst recommendations have been

made about the composition of the panel, the IFO is satisfied that the basis upon which the appeal was conducted was transparently communicated to the Supporter along with explanations as to how the factors the Supporter provided in mitigation were considered within the appeal. The IFO are satisfied that there were sufficient grounds for the Club to conclude in the manner it did. The IFO makes recommendations to the Club around the appeals process more broadly, as referenced in paragraph 26 and 27 above.

### **Comments from the Parties on Draft Adjudication**

29. Upon circulation of the draft adjudication both parties were invited to make comments as to any error of fact. The Club provided comment, explaining that further to paragraph 27, above, they had since amended the 2023/24 Supporters' Charter to be clearer with regards to the composition of the appeals panel, along with other adjustments that strengthen the appeals process.

The Supporter has also made comments, which are duly noted, however, since these did not relate to any factual elements of the draft adjudication, they have not been responded to specifically within the final adjudication.

### **Conclusion**

30. Whilst the Supporter's additional comments have been given due consideration, the IFO finds no grounds to uphold the case in the Supporter's favour in respect of the application of the sanction for the reasons set out above.

31. However, notwithstanding the IFO's conclusions regarding the sanction itself, the IFO makes the recommendations outlined in paragraph 26 and 27, above.