

In the Matter of a Regulatory Commission of the Football Association

Before:

His Honour Phillip Sycamore CBE (Chairperson)
Alison Royston (Independent Football Panel Member)
Daniel Mole (Independent Football Panel Member)

Between:

THE FOOTBALL ASSOCIATION

The FA

and

(1) BRIGHTON AND HOVE ALBION FC

(2) PAUL WINSTANLEY

The Participants

Decision and Reasons of the Regulatory Commission

Introduction

1. These are the written reasons and decision made by the Independent Regulatory Commission (“The Commission”) which sat on 13 September 2022 to consider charges brought against Brighton and Hove Albion FC (‘**BHA**’) and Mr Paul Winstanley (‘**PW**’) (together the ‘**Participants**’), by the Football Association (“**FA**”). The hearing took place remotely by Teams video link.
2. Mr John Edmunds, the FA Judicial Services Co-ordinator, acted as Secretary to the Commission.
3. The case for the FA was presented by Mr David Dainty of counsel. BHA and PW were both represented by Mr Nick De Marco KC of counsel. We are grateful to them both for their assistance and presentation.

4. We considered the extensive documentation, including the evidence filed on behalf of the Participants, contained in the four files provided by the FA, which included helpful submissions on sanction prepared by Mr Dainty on behalf of the FA and Mr De Marco KC on behalf of the Participants.
5. The case against both Participants, in the main, arises from a number of player transactions between 2012 and 2021 in which there were breaches of the FA Working with Intermediaries Regulations. In essence, BHA and the relevant Player Intermediaries informed the FA that the Intermediary was acting for the Club whereas in reality the Intermediary was acting for both the Club and the relevant player and the transaction should have been recorded as such. A number of Intermediaries have faced charges and have been dealt with by the Regulatory Commission.

BHA

6. Initially, on 2 August 2021 BHA were charged with 18 breaches to which it formally responded on 8 October 2021 by pleading guilty to all of those matters.
7. As a result of further voluntary disclosure of material by BHA, the FA decided to charge BHA with 2 further similar breaches in relation to player transactions in August 2012 and July 2014.
8. Whilst that material was being reviewed, the FA received information from the Premier League in relation to the signing of a youth player in respect of whom one of the intermediaries acting for the player was not registered with the FA and the name of a different Intermediary was recorded on the relevant form (IM1).
9. Accordingly, on 23 March 2022, BHA was charged with those 3 further breaches. BHA responded on 26 April 2022 indicating that it would be pleading guilty to all 3 charges.
10. The individual facts in relation to each charge are set out in the FA's case summary and submissions on sanction. The charges are set out in Schedule 1 to this decision.

PW

- 11.** PW is, and was, at all relevant times, employed as Head of Recruitment at BHA.
- 12.** On 2 August 2021 PW was charged with misconduct arising from a misrepresentation made to the FA in relation to the signing of a player ('NM') in July 2015
- 13.** PW replied on 8 October 2021 admitting the charge and providing a statement in which he set out the background and his role in the transaction. BHA have admitted a charge in respect of the same transaction.
- 14.** Essentially, the charge arises from circumstances in which PW suggested that a Registered Intermediary (RB) could be recorded as acting for the Club only as he did not have a representation contract with the Player. In particular, the FA rely on a What's App message from PW to RB in which he indicated that as RB did not have a representation contract with the Player: *"You can represent us in order to get your fee."*
- 15.** We observe that no other employee or former employee has been charged by the FA.
- 16.** The charge against PW is set out at Schedule 2 to this decision

Background

- 17.** With the exception of the charge which relates to the October 2021 matter, the charges against both BHA and PW arise from Regulation C2 of the Football Agents Regulations/Regulation A3 of the FA Regulations on Working with Intermediaries (as applicable at the relevant times). The Participants were charged with having *"concealed and/or misrepresented the reality and/or substance of the registration"* of the Player in question. The charge in relation to October 2021 is different and is in the following terms:

"... used and/or paid MR for Intermediary Activity when MR was not registered as an Intermediary and/or was not entitled to act under a valid Representation Contract contrary to Regulation A2 of the FA's Working with Intermediaries Regulations."

- 18.** It was accepted by all parties that a direct consequence of the breaches was a significant loss to HMRC. If the transaction had been correctly recorded the Intermediary fee would be split between the Club and the Player. As such the Player would be liable to pay income tax and NIC for their half of that fee. If, as was the case, the Intermediary was recorded as working solely for the Club, then the Player would not be liable for the additional tax and NIC. In addition, the Club would be entitled to reclaim VAT on 100% of the Intermediary fee.
- 19.** There was no dispute that upon being made aware by the FA of the irregularities in July 2019, BHA embarked upon an extensive and expensive review of all transactions involving Intermediaries between the January 2015 and January 2018 transfer windows. BHA identified 24 transactions which might possibly have been irregular. That information was reviewed by the FA and resulted, initially, in BHA being charged in relation to 18 transactions. As already observed, there followed 3 further charges against BHA and 1 against PW.

Mitigation

- 20.** There is no doubt that BHA paid a significant sum to HMRC in October 2020 (£1,356,088.21) in respect not only of the 18 transactions which formed the basis of the charges but also in relation to 6 other transactions in respect of which BHA was not charged. The sum also included the tax on behalf of the Players which BHA had no legal obligation to pay.
- 21.** The FA accepted that, notwithstanding the later set of circumstances in October 2021, which led to the charge in relation to MR, BHA have taken a number of steps to ensure that breaches of this nature cannot occur again in the future.
- 22.** There is no doubt, in our view, that during the relevant period there was a culture within BHA which led to a disregard of certain regulatory obligations. We have referred already to information required to be provided on the relevant registration form (IM1). It is a simple form and is easy to understand. As Mr Dainty reminded us, the parties are asked in simple terms i) whether the player has used an Intermediary and ii) whether the Club

has used an Intermediary. There are clear references to “dual representation” and a prominent warning as to the consequences of the provision of incorrect information: *“The provision of untrue or misleading information may result in disciplinary action.”*

- 23.** A number of submissions made on behalf of BHA and PW were based on the extent to which reliance was placed on the actions and advice of the former Club Secretary (“X”). X is no longer employed by the Club and is in poor health. He was not involved in these proceedings either as a participant or as a witness. It was suggested that both Participants relied on the advice of X and that they were justified in doing so given his seniority and experience and their belief that he had sought guidance from the FA as appropriate.
- 24.** Although it is effectively asserted that most of the fault lay with X, as we have already indicated it is clear that a culture of ignoring regulations did exist at the relevant time. As we have not heard evidence from X and as he, for good reason in relation to his health, has not participated in the process, we are not in a position to make any findings as to the extent, if any, of his culpability.
- 25.** In any event BHA, as employer, is liable for the actions of X in his former capacity.
- 26.** We were referred to a number of decisions of previous Commissions and Appeal Boards but were reminded that there are no guidelines for sanction, which is a matter entirely for the Commission. Mr Dainty reminded us of the powers of the Commission in dealing with sanction.
- 27.** We do need to consider where on the scale of culpability the actions of BHA and PW fall. Our attention was drawn to decision of a Commission in *The FA v Hartlepool United FC and Ors* (4 July 2018). The FA relied on it for the following proposition: *“ the system of registered Intermediaries offers considerable benefits to those who are registered. It is a serious abuse for a registered Intermediary to undermine that system.”* Mr De Marco asked us to look further into the reasons and relied on the following: *“...Nevertheless, these are serious breaches by an FA registered intermediary. He was knowingly involved in a deliberate subterfuge which would conceal from the FA the true nature of his*

participation as an intermediary and the fee to be paid for that work. These were blatant breaches of the regulations..."

28. *Hartlepool* was clearly at the higher end of the scale. On behalf of the Participants, it was submitted that the facts of this case fell well short of "subterfuge." The FA submitted that the conduct did amount to concealment within the wording of the charges (concealment or misrepresentation). On behalf of the Participants it was suggested that the culpability lay at the lower end of the scale of misrepresentation.

29. We concluded the culpability was not in the category identified in *Hartlepool*. Notwithstanding that we have declined to make findings in relation to X, the level of culpability for BHA is at the higher end of the scale of misrepresentation, given the culture which had developed and the length of time over which the breaches occurred. PW was charged with one breach and we consider that his level of culpability is at the lower end of that scale.

30. Regardless of the differences between the parties on that issue, they were broadly in agreement as to the mitigating factors which we, as a Commission, should take into account.

BHA

31. (i) BHA have adopted an open, co-operative approach and have undertaken a great deal of work in securing and providing to the FA the evidence relied upon in these proceedings.

(ii) Those disclosures have led to proceedings against Intermediaries and have saved the FA significant time and resource.

(iii) BHA have voluntarily settled sums due and additional sums due to HMRC.

(iv) Notwithstanding the circumstances leading to the Charges from the October 2021 transaction, steps have been taken to avoid a repetition of similar breaches in the future.

(v) The FA do not suggest that the matter previously recorded against BHA in 2015 is an aggravating factor.

PW

32. (i) We have already observed that no other employee of BHA has been made the subject of an individual charge. We consider that this is unusual.

(ii) Nevertheless, PW has accepted the charge and admitted guilt at the earliest opportunity.

(iii) PW has no previous disciplinary findings against him.

(iv) PW has given an explanation for his conduct. We observe that the misrepresentation involved a single breach in relation to a transfer which took place some years ago. PW was at that time a relatively new employee at BHA and had limited exposure to matters involving registration.

(v) PW received no direct financial benefit from the transaction.

33. Mr Dainty had reminded us of the range of sanctions available to us which are set out in Regulations 40 to 51 of the Disciplinary Regulations 2021/2022 as follows:

1. *[40.1]: a reprimand and/or warning as to future conduct;*
2. *[40.2]: a fine;*
3. *[40.3]: suspension from all or any specified football activity [...];*
4. *[40.9]: such further order or other penalty or order as it considers appropriate.*

34. With the exception of the October 2021 transaction, all of the charges against BHA arise out of the same course of conduct. Counsel for the parties agreed with us at the conclusion of the hearing that it was therefore inappropriate to impose a separate sanction in respect of each charge. In relation to the October 2021 charge, having regard to the principle of totality we would not increase the overall sanction.

35. In relation to BHA we are satisfied that the appropriate sanctions are a fine and a warning. We have had regard to all of the mitigating factors referred to above and to the amount paid by BHA to HMRC. For our starting point we have taken a figure of £678,000.00 (one half of the sum paid to HMRC) which we have mitigated to £550,000.00 in the light of the factors identified at paragraph 31 (supra). This figure is

further discounted by one third to reflect the guilty plea at the earliest opportunity, resulting in a fine of £366,600.00

36. In relation to PW we consider that the appropriate sanction is a fine and a warning. In the light of the information we have been provided with about PW and his financial circumstances we have taken a figure of £12,600.00 as our starting point which we have mitigated to £9,000.00 in the light of the factors identified at paragraph 32(supra). This figure is further discounted by one third to reflect the guilty plea at the earliest opportunity, resulting in a fine of £6,000.00.

37. We therefore impose the following sanctions:

1. (i) Brighton and Hove Albion FC is given a warning as to its future conduct in respect of its observance of the Regulations on Working with Intermediaries.

(ii) Brighton and Hove Albion FC is fined £366,600.00

2. (i) Paul Winstanley is given a warning as to his future conduct in respect of his observance of the Regulations on Working with Intermediaries.

(ii) Paul Winstanley is fined £ 6,000.00

A. Sycamore

HH Phillip Sycamore CBE (Chairperson)
Alison Royston
Daniel Mole

16 September 2022

