

In the Matter of a Regulatory Commission of the Football Association

Before:

His Honour Phillip Sycamore CBE	(Chairperson)
Alison Royston	(Independent Football Panel Member)
Brian Talbot	(Independent Football Panel Member)

Between:

The Football Association

and

Mikkel Beck

Decision and Reasons of the Regulatory Commission

Introduction and Background

1. These are the written reasons and decision made by the Independent Regulatory Commission (“The Commission”) which sat on 10 January 2022 to consider a single charge brought against Mikkel Beck (“MB”), a registered intermediary, by the Football Association (“FA”). The Commission convened remotely by Teams video link.
2. Mr John Edmunds, the FA Judicial Services Co-ordinator, acted as Secretary to the Commission.
3. We considered the evidence within the case file, which included a statement by Sunny Oberoi (the FA Integrity Investigator), a response from Brighton and Hove Albion FC (“the Club”), a statement by Michael Tavarone (FA Senior Player Senior Status Officer), a statement by MB, written submissions and supplemental submissions by Squire Patton Boggs, solicitors for MB.

4. The charge against MB is as follows:

Intermediary Activity conducted on behalf of Matthew Ryan in respect of a Transaction on 1 July 2017

Charges

You are hereby charged with misconduct for the following breach of FA Rule E1.2

Particulars of Misconduct

It is alleged that you concealed and/or misrepresented the reality and/or substance of the above transaction by submitting to The Football Association on Form IM/1 that you acted solely for the club, when you acted for the player, contrary to Regulation A3 of the FA Regulations on Working with Intermediaries 2017/2018.

5. On 2 August 2021 MB was charged with one offence. By way of a reply form dated 17 September 2021 he admitted the charge and requested a paper hearing.
6. This was one of several cases which arose from an initial investigation by HMRC in relation to a different player who had joined Brighton and Hove Albion Football Club ("the Club") and followed an internal review by the Club of all "Club Only" intermediary contracts. In summary, the investigation, which involved a number of transactions completed by the Club between January 2015 and January 2018, related to tax due to HMRC in circumstances in which intermediary work was divided equally between a player and the Club. In these circumstances, when a club pays the player's share of the fee to the intermediary this is treated as a benefit in kind to the player. As such the player would be liable to pay income tax and NIC to HMRC. In addition, the Club would be able to reclaim VAT on its share of the fee (50%). Conversely, if a club was able to demonstrate that the intermediary transaction was entirely for the benefit of the club (100%) then the player would not incur any tax or NIC liability and the club would be able to reclaim VAT on the full payment amount.
7. In this matter the FA's case was that at all material times MB was acting at least in part for the player, Michael Ryan ("MR"). Whilst MB, in his witness statement, asserts that he did not consider himself to be the intermediary for the player, and that it was not his intention to mislead anyone, he has reflected, and now

accepts that the transactions were misrepresented as the services he provided were of benefit to both the Club and MR.

8. MR (date of birth 8 April 1992) is an Australian National who joined the Club on 1 July 2017 from Valencia. This was his first and only contract with the Club, where he remained registered until his transfer to Real Sociedad in July 2021. MB is detailed in the paperwork as involved in this transaction as acting for the Club. MB was assisted by a French lawyer Alexis Rutman (“AR”)
9. The Club signed the representation contract with MB on 15 June 2017, which provided for a payment of £390,000.00 plus VAT on 5 September 2017, a further payment of £390,000.00 plus VAT on 5 September 2018 and a payment of £390,000.00 plus VAT on 5 September 2019 (a total of £1,170,00.00 plus VAT).
10. The intermediary declaration form (IM/1) for the registration of MR dated 1 July 2017 recorded that MB was the intermediary used by the Club and that the player (MR) had not used an intermediary. It is noted that the following words appear in bold type on the form:
“ In each case the information below must be completed in respect of all intermediaries that have conducted Intermediary Activity in relation to the Transaction, whether directly or indirectly (eg including any intermediaries that are subcontracted) and irrespective of whether or not they will receive a fee for their services. Additional information must be provided on the relevant annexes (as applicable).”
11. Although MB was detailed in the paperwork as providing services to the Club only, he was providing services for the benefit of both the Club and MR as he now accepts by his admissions by which he acknowledges that he assisted the Club with advice and also advised MR by providing advice, thus carrying out Intermediary Activity for the benefit of both the Club and MR. MB did not enter into a dual representation contract. He did not have a representation contract with MR but subsequently, on 20 December 2020, he did enter into a representation contract with MR and acted as MR’s intermediary on his transfer to Real Sociedad in July 2021.

12. We have carefully reviewed the email correspondence which clearly demonstrates, notwithstanding the representation contract between the Club and MB, that the reality was, as MB acknowledges by his admission of the charge, that MB was throughout representing and advancing the best interests of MR. This is apparent from the email correspondence between the Club and MB and the Club and MR.
13. On 20 May 2020 the FA requested MB to provide his observations. He responded on 12 June 2020 and explained that he did not consider MR to have been a client and that he had understood his mandate to be to assist the Club in reaching agreement with MR, assisting the Club and MR in agreeing terms and being the intermediary for communications between MR and the Club.
14. By a letter dated 21 September 2020 the FA asked MR for his comments in relation to the alleged breaches of regulations. MR 's solicitors replied on his behalf on 19 October 2020 and indicated that nobody acted for MR in relation to the transaction and that he represented himself. He explained that the interest from the Club was communicated to him by MB, who he had known for some years and who he considered to be a close friend.
15. As we have already indicated, MB admitted the charge on 7 September 2021 and requested a paper hearing. His solicitors advanced written submissions on his behalf in mitigation and provided a witness statement from MB. In his witness statement MB explains that he had undertaken intermediary activity in three previous international transfers involving MR, all of which were outside of the jurisdiction of the FA. In those transactions, he tells us, he acted for the club only and entered into representation contracts solely with the clubs.
16. In its submissions on sanction dated 28 September 2021 the FA reminds us of the powers available to us on sanction and submits that the suspension threshold has been crossed.

Sanction

17. The range of sanctions available to us, which are set out in Regulations 40 to 51 of the Disciplinary Regulations 2021/2022 are 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 [...];*

[40.9]: such further order or other penalty or order as it considers

16. We remind ourselves that in determining the appropriate sanction, we should also take into account any aggravating or mitigating factors including, but not limited to the participant's disciplinary record. . We have given careful consideration to the mitigation which has been advanced on behalf of MB and to the representations from the FA. MB made a frank admission at an early stage of the proceedings and acknowledged in his witness statement his established relationship with MR and his recognition that he was acting, at least in part, as the intermediary for MR.

17. The regulations also give us power to suspend any penalty to be imposed if there are "clear and compelling reasons" for doing so.

18. We recognise that MB, a Danish citizen, who has been an intermediary for more than twenty years, has no previous disciplinary record. He had not conducted Intermediary Activity in respect of the jurisdiction of the FA for 10 years before this transfer but acknowledges that he is bound by and is deemed to have knowledge of the rules and regulations of the FA. The fees involved in the transaction were significant. HMRC was deprived of Player's Income Tax, National Insurance and of VAT, given that the Club was able to reclaim 100% of the VAT instead of the 50% it would have been able to claim had the transaction been correctly registered. MB admitted the charges at an early stage of the proceedings and as such is entitled to credit for that early admission.

19. We have given careful consideration to the mitigation which has been advanced on behalf of MB and to the representations from the FA.

20. Sanction is a matter for the Commission in accordance with the principles in the Disciplinary Regulations 2021/2022. There are no standard sanctions or sanctioning guidelines. We have regard to the seriousness of the breach of the Intermediary Regulations.

21. The transaction took place several years ago. As we have observed MB has no previous disciplinary record and he has cooperated fully with the FA in dealing with this matter and has expressed remorse. Although MB maintains that he made no financial gain from the manner in which the transaction was structured the fact remains that HMRC was deprived of a significant amount of tax due.

22. This was a serious breach of the Regulations and we remind ourselves of the Observations made in The Football Association v Hartlepool United and Others (4 July 2018), *“ 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.”*

23. This involved a single transaction in which the fees were significant. There was a substantial loss to HMRC. MB is entitled to credit for his early admission of the charge.

24. We are satisfied that the threshold for suspension has been crossed. We have also considered our powers to suspend any penalty in full or in part and have concluded that in so far as the period of suspension to be imposed there are no “clear and compelling reasons” for so doing. We have regard to the substantial amount of money and loss to HMRC involved in the transaction, the mitigation which has been advanced and in particular, to the length of time which has elapsed since the transaction, the absence of any previous disciplinary record or any further conduct by MB in breach of the Regulations since this transaction. We have noted the financial information provided by MB contained in the supplemental submissions of his solicitors of 4 October 2021. He is entitled to credit for his early admission of the charge, which we have applied by reducing by one third the period of suspension which would have been imposed had he not made that admission.

25. We impose the following sanctions:

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

(ii) Mikkel Beck is hereby suspended from all Intermediary Activity for a period of 8 months, effective from 4 March 2022.

(iii) Mikkel Beck is fined £35,000.00.

HH Phillip Sycamore CBE (Chairperson)

P. Sycamore

Alison Royston

Brian Talbot

25 February 2022
