

IN THE MATTER OF AN APPEAL TO A PREMIER LEAGUE APPEAL BOARD

B E T W E E N:

EVERTON FOOTBALL CLUB

Appellant

-and-

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED

Respondent

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SUBMISSIONS ON BEHALF OF THE EVERTON FAN ADVISORY BOARD

1. These submissions are made in support of a request by the Everton Fan Advisory Board ("FAB") to rely upon a statement made for consideration by the Appeal Board. The request concerns the appeal lodged by Everton Football Club ("EFC") against a decision of a Premier League ("PL") Commission, dated 17 November 2023.
2. The FAB representatives have produced a jointly prepared statement which sets out the impact that the sanction has on the fans and the wider community in terms of how it is perceived and its wider consequences. The FAB is an independent and democratically elected organisation and is competent to speak on behalf of EFC's fans.

The Relevance of Fan Impact

3. The impact of the sanction imposed on EFC on its fans is a relevant consideration for the Appeal Board.
4. In *Premier League v West Ham United* a PL Commission was concerned with an admitted breach of the Rules after West Ham had entered into (and deliberately concealed) the contracts of players who were partially owned by a third party¹. West Ham admitted a breach of the Rules and received a fine, rather than a points deduction. The Committee gave a number of reasons for its decision, including that:

“..we have considered the position of the players and the fans. They are in no way to blame for this situation. Of course, if the impact upon players and fans was the overriding consideration, there may never be a deduction of points. However, in this case the fans and the players have been fighting against relegation. They have been doing so from between January and April. They have been doing so against the ever-present threat of a deduction of points. Those efforts and that loyalty would be to no avail were we to now, on what might be termed the eve of the end of the season, to deduct points”.

5. Although the timing of any points deduction was also weighed in the balance, the case nonetheless established that fan (and player) impact is a relevant consideration.
6. Further, such a principle was identified - and developed - in the Fan-Led Review of Football Governance (“the Fan-Led Review”), published in November 2021. The Fan-Led Review proposed that any sanctions against clubs should be driven by a

¹ Carlos Tevez and Javier Mascherano

“**guiding principle**” of avoiding sanctions which unfairly affect fans, wherever possible.

7. The majority of the recommendations of the Fan-Led Review have now been accepted by the government. An Independent Regulator for English Football (“IREF”) is being introduced in recognition of the need for football clubs to be protected and preserved as cultural and community assets. That is particularly true of Everton, which is not only one of the oldest and most famous clubs in footballing history, but one which sits right at the heart of the community, as illustrated by its many allied projects such as Everton in the Community: all of which are potentially impacted, directly or indirectly, by the outcome of the Appeal.

8. In its response to the Fan-Led Review the government said:

“20...The [independent] regulator should not directly regulate on-pitch outcomes, **and as a principle should avoid unduly punishing fans for the misdemeanours of a club and its owners/directors....**

21. Sanctions should minimise impacts on fans where possible, and should not directly influence sporting outcomes. Sporting sanctions that directly impact on the competition should be reserved for the respective leagues to apply...

23. The regulator should deploy sanctions in a tailored and proportionate manner. For example, financial penalties may not always be an appropriate sanction to apply to a club already in financial distress, and similarly may have little effect on extremely wealthy clubs or individuals. As above, **sanctions that punish the culprits in isolation, with minimal undue impact on innocent parties such as fans, should be deployed preferentially**” (emphasis added”).

9. This is similarly reflected in the White Paper “A Sustainable Future – Reforming Club Football Governance”, published in February 2023 which has the stated aim of giving fans a voice and putting them “*at the heart of football*”. If this is to mean

anything then - as a minimum - the impact on the fans, and the wider community of which they are part, must be considered when important decisions are taken about them.

Admissibility

10. Rule W71 of the PL Rules provides:

“Any party to an appeal may apply for permission to adduce evidence that was not adduced before the Commission or Interim Commission that heard the complaint or Interim Application (as appropriate). Such permission shall only be granted if it can be shown that the evidence was not available to the party and could not have been obtained by such party with reasonable diligence, at the time at which the Commission or Interim Commission heard the complaint or Interim Application (as appropriate)”.

11. The FAB’s statement was not available in the proceedings before the Commission because:

- a. It was not anticipated that there would be such an unprecedented, punitive sanction;
- b. It could not reasonably be foreseen that the impact of the sanction on the fans would not be taken into account (precedent having established that it would be); and
- c. The importance of fan impact being taken into account is something that has very recently taken on a renewed prominence with the bringing forward of legislation in the King’s Speech with the stated aim of putting fans “at the heart of football” and a guiding principle of avoiding (and considering) impact on fans.

12. It is also relevant to note that whilst disciplinary proceedings of the present kind are not strictly bound by the requirements of natural justice, its most basic

requirements must be adhered to². As to the basic requirements of natural justice, usually now called common law fairness, justice is intuitively understood to require a procedure which pays due respect to persons whose rights are significantly affected by decisions³. The Everton fans are significantly impacted by these proceedings and have something relevant to say about them. By listening to their voices the Appeal Board will ensure that the twin purposes of procedural fairness are served:

- (1) paying due respect to those who are significantly affected by the decision; and
- (2) promoting better decision-making, by providing the Appeal Board with the wider context within which its decision will be taken.

13. For all these reasons, it is vital that the fans' voices are heard and seen to be considered.

The FAB's Statement

14. The statement comprises the following sections:

1. An **introduction** to the statement and its purpose: namely ensuring that the voices of the fans are heard;
2. An explanation of **the FAB**, its origins, its membership, leadership, and how it is constituted;
3. A **brief history of EFC** to give the historical context to the Club including its huge successes on the pitch, and some of the problems that it has faced in its more recent history;

² *Lee v Showman's Guild of Great Britain* [1952] 1 All ER 1175

³ *Osborn v Parole Board* [2014] AC 1115 per Lord Reed at [68]

4. An explanation of **the Club's Values** and in particular its community roots evidence through such ground-breaking and vital projects as Everton in the Community;
5. An introduction to **the Fans**, what makes them unique, and why Everton is truly "the People's Club";
6. Consideration of **the Stadium Project** including what it means for the local community in terms of economic and social benefits, as well as on the international stage;
7. A summary of the issues raised by **the Fan-Led Review**, the government's response, and the White Paper, and their relevance to the issues raised in this Appeal;
8. A brief outline of the **Fan's Perspective** on the sanction in terms of its broader context, including the implications for the club as a community asset and as sporting heritage.

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Park Square Barristers

16 January 2024

For and on behalf of the Everton Fan Advisory Board

Instructed by Dean Kingham, solicitor, Reece Thomas Watson solicitors

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**STATEMENT OF THE EVERTON FOOTBALL CLUB
FAN ADVISORY BOARD**

Introduction

1. This statement has been jointly produced by the representatives of the Everton Football Club Fan Advisory Board (“FAB”). It is made for consideration by the Appeal Board appointed to hear the appeal brought by Everton Football Club (“EFC”).
2. The purpose of this statement is to provide the perspective of the Everton fans on the issues in the Appeal. The fans are as much, if not more, affected by the punishment imposed on the Club than anyone. They live and breathe the club, and in many cases have dedicated their lives to it. They are the long-term custodians of the club and have the responsibility to protect it. They have a bond with the Club that has been sustained through generations. The fans are not concerned only

with Matchdays; Everton Football Club is far more than a football team. It is a cultural institution which sits at the very heart of the community and radiates through it via the many and varied community projects that it has produced, some which we will introduce in this statement. The stark reality is that without Everton Football Club the lives and livelihoods of many in the Liverpool City area would be devastated.

3. It is therefore only right that the fans have a voice in this process: not just in this case, but also in future cases, whatever the club. The fans, through their democratically elected and independent representatives, are best placed to speak to the broader consequences of damaging sanctions on their club. It is often said that “football would be nothing without the fans”, but this is less often practised. We strongly believe that fans of all clubs, even rival ones, should be heard in these circumstances. The Premier League’s emphasis on Fan Engagement must be more than a soundbite.
4. Through this statement we aim to give the fans their voice. In doing so, we will also set out for the Appeal Board the broader context of Everton as one of the best examples of a Community Club, and a prime example of why the government has recognised that football clubs are far more than simply commercial operations. That is nowhere truer than at Everton. It is properly – and proudly – the People’s Club.

The FAB

5. Everton’s Fan Advisory Board (FAB) was set up prior to the 2022-23 season, following recommendations in the Fan-Led Review of Football Governance, and extensive consultation with Everton supporters.

6. Following an independent and democratic process, the FAB was set up with 10 members, who met for the first time on 7 July 2022 in the Club's boardroom. The attendees from the Club included the then CEO, Denise Barrett-Baxendale, Board Member (and former player) Graeme Sharp, as well as other Senior Club management. Elections for officers were held.

7. Elections were held again this season and the current Executive of the FAB is made up of Dave Kelly (Chair), Tony Sampson (Vice-Chair) and Julie Clarke (Secretary), who are the co-authors of this statement. There are 11 members. These are made up of four directly elected members, who are voted for by fans in a process open to any fan who has a supporter number, and seven members representing fan groups: Everton Fans' Forum (EFF), Everton Disabled Supporters' Association (EDSA), Everton Supporters' Club Committee (SCC), Everton Heritage Society (EHS), Everton Women's Supporters' Club (EWSC), Everton Representative of the Football Supporters' Association (EFSA) and Everton International Supporters' Clubs Network (ISCN). Representative groups hold independent meetings each year to vote in their representatives of the FAB. The FAB meets monthly and meets with the Club quarterly, in person at Everton's HQ in Liverpool. There is provision for extraordinary meetings to be called by leaders and members.

8. The FAB is completely independent of the Club, and is at liberty to call fan engagement meetings, conduct media interviews, produce its own content for publication on social media platforms, conduct fan surveys and organise events and initiatives etc. Meetings with the Club follow a format, whereby an agenda is produced and agreed by both the Club and the FAB, depending on the FAB's agreed priorities. Representative groups, mentioned above, hold regular meetings between themselves and with the Club, to discuss operational issues within their remit. The FAB also concerns itself with strategic issues, such as the new stadium

development, finance, development of the women's game and business and technology.

EFC - a Brief History

9. The history of Everton Football Club was etched into the hearts and minds of supporters throughout English football when the Club took a record in 2002 that can never be beaten: the first football club to play 100 seasons in the top division of English football. As this illustrates, Everton's rich history long pre-dates the Premier League.
10. The Club was formed in 1878, formerly known as St Domingo's FC, named after the Methodist church they played for in Stanley Park. Everton went on to become one of the founders of the Football League in 1888, with 11 other clubs. They moved into the UK's first purpose-built football stadium, Goodison Park, in 1892, leaving Anfield for the use of a newly formed Liverpool FC.
11. During this period, the Goodison Park that is more familiar to today's supporters started to take shape. A first double decker stand appeared at the Park End of the ground in 1907. By 1909 it was joined by the huge Main Stand on Goodison Rd which stood until 1971. In English football history, fans witnessed a number of Everton "firsts". Goodison became the first league ground to host an FA Cup Final when over 69,000 spectators watched the 1910 Cup Final replay. Goodison Park became the first league ground to be visited by a ruling monarch when King George V and Queen Mary visited local school children in 1913 and (much later, in 1958) Everton would become the first club to install undersoil heating. Having won the FA Cup for the first time against Newcastle Utd in 1906, Everton picked up their second league title in 1914-15, before the first world war brought football

to a close for four seasons, during which time Everton remained as uncontested champions.

12. The 1920s saw the Club maintain its elite status in the Football League and the emergence of William Ralph "Dixie" Dean. He was to become Everton's all-time favourite son and a household name throughout the country. In his first two seasons Dean had scored 49 goals in 54 matches, but is most renowned for his best season, 1927-28, when the English goalscoring record was set: 60 goals from 39 league games: a record that many think will never be beaten. Had cup, international and representative matches been taken into account, they would record that Dixie ended the 1927-28 season on 100 goals. Following Dean's retirement another great pre-war Everton team soon emerged including the likes of Dean's replacement Tommy Lawton, TG Jones, Cliff Britton and Joe Mercer. Once again, however, the joy Evertonians felt in securing the club's fifth League title was short-lived as the club was once more robbed of creating a footballing dynasty by a World War. 6 years of war service ate massively into the careers of some great players and the team that won the League immediately before the war broke out and the likes of Lawton and Mercer plying their trade with London clubs.

13. In a remarkable twist of anachronistic fate, Everton were at the wrong end of a grossly unfair case of football governance when a player, Tony Kay, who had contravened a betting rule in 1962, before he signed for Everton, was sanctioned to the detriment of the Club. The fact that Kay had been a Sheffield Wednesday player at the time of the reported incident was of no consequence to the outcome. Kay was jailed for nearly two years for his part in the scandal and a subsequent lifetime ban on playing all forms of football. It was not just Kay who lost out, but also Everton. Everton's Manager at the time, Harry Catterick, had described Kay as his unofficial captain. Through no fault of their own the club and its supporters, had been dealt an injustice; punishment for a crime it did not commit. Kay had

cost a sizeable £55,000 fee. The fans had lost a hero and someone who could deliver trophies.

14. The Kay case is an illustration of how overly punitive, draconian sanctions can, looking back, be seen as just that. The expectation for such a player now would be a suspension, but also for them to be supported through counselling for gambling addiction. The case is a stark illustration of the need for circumspection, and for working with players and clubs to address the underlying issues. Sanctions should not be reactionary; they should be considered, measured and, where possible, constructive.
15. For many football supporters 1966 is synonymous with England winning the World Cup, but for Evertonians the most significant Wembley match that year happened a few months beforehand, when Everton were victorious in a remarkable FA Cup Final, beating Sheffield Wednesday 3-2.
16. Everton's Manchester neighbours, United, would become lauded in the 1990s for having produced the "Class of '92", but Everton had already accomplished such a feat almost 30 years earlier, with their team of 1963, including Labone, West, Morrissey and Ray Wilson with the home-produced youth of Wright, Harvey, Husband, Hurst, Royle, Kenyon and Whittle alongside youthful yet expensive Keith Newton, Howard Kendall and Alan Ball. Together these players improved incrementally each year culminating in a Championship triumph - the Club's seventh in 1969-70.
17. Following a decade of trophy near misses, returning as manager, Howard Kendall led the club to its most successful era: two league championships in 1985 and '87 either side of a runner-up spot in 1986, three FA Cup finals with victory in '84 and a European Cup Winners Cup in 1985. With dreams of European glory awaiting, Evertonians' hopes again were dashed again, following the Heysel Stadium disaster. A devastating loss of life was followed by a blanket ban which

placed blame on the behaviour of fans without acknowledgment of the contribution of a dilapidated stadium, poor policing and ticketing issues. For Everton there was to be no mitigation for our fans' impeccable behaviour throughout our European campaign, nor consideration for the loss of players seeking European glory, or the impact on revenue and recruitment. It was the prospect of no European competition that persuaded Kendall, the club's most successful manager, to leave for Bilbao.

18. The Club saw regular appearances at Wembley and in Europe throughout the 1980s and up to the 2000s, with notably great teams and world-renowned players, such as Wayne Rooney: one of many graduates of EFC's Academy to have gone onto great achievements. During this period the Club played at Wembley Stadium 14 times.

19. Having been founder members of the Football League in 1888, Everton went on to become founder members of the Premier League in 1992. At a time in history when football attendances were dropping dramatically and grounds were experiencing attendances of less than half of their capacity, with the full impact of the European ban being felt across English football and the country coming out of a financial crisis, clubs moved to ensure their futures and to encourage a return to full crowds. The benefits of increased exposure, through broadcasting rights, however, still took time to show for Everton, despite its recent league, cup and European successes and, like many other clubs Everton had to work hard to get back to the sort of crowds it had seen in the past. Throughout this period, its core of loyal fans has stuck by the club and there are a sizeable number of fans who can claim to have missed very few (or even none) of the Club's games, home and away, for decades.

20. Bill Kenwright, a lifelong Everton supporter, took ownership of the Club in 1999, as its major shareholder. Soon afterwards, in 2001, a move to a state-of-the-art

stadium at the Kings Dock on Liverpool's waterfront was proposed. This gained some traction but, due to funding issues, those plans were scrapped in 2005. Another proposal, in 2006 was for the Club to move to a proposed site in Kirkby in Liverpool's neighbouring Metropolitan Borough of Knowsley. This proposal split the fan base, who were fiercely against moving outside the city boundaries. Fans set up a group, called 'Keep Everton in Our City' who fought against the proposals and spoke at a subsequent hearing on the matter. Plans for a move to this site were abandoned in November 2010.

21. Bill Kenwright began the process of looking for another investor and, after a succession of short-time investors, Mr Kenwright announced that he was to sell the majority of his shares to Farhad Moshiri, who took overall control as the major shareholder with 49.9% of the Club in February 2016. He later increased his shareholding to 94%. Despite significant investment, it continued to underperform with a succession of high-profile managers.
22. That sets some of the context for where the club currently finds itself: facing a precarious period of instability and an uncertain future. The Grand Old Club playing at the Grand Old Lady (Goodison Park); Founder members of both the Football League and the Premier League; a club that has led by example through the ages, with more 'firsts' to its name than any other; a club that has led when others have followed throughout its history. 'Nils Satis Nisi Optimum' is its mission statement: nothing but the best is good enough. The Club has enjoyed great success over the years, yet regularly, and peculiarly, whenever success has been achieved, events external to the club have conspired against it, dashing the hopes and dreams of supporters, who will continue to support and love the Club their entire lives.

Club Values

23. Goodison Park, the centre of Evertonians' lives for the past 132 years is based in the Parliamentary constituency of Liverpool Walton. In 2017 this was considered the most deprived constituency in England. Everton Football Club lies at the heart of the constituency; it is inter-woven into the lives of the community. Lying just a stone's throw from the main thoroughfare County Road / Walton Lane, Everton has been a major contributor to the area's economy throughout that time.
24. As a club Everton is driven by four values that themselves were determined by its own staff: Family, Authenticity, Determination and Ambition. Those values underpin all that the club aims to do and is seen to do. Employing around 500 permanent staff and 1,000 casual matchday workers Everton was recently voted in the top 75 companies in the UK to work for over a period of 4 consecutive years. The Club's staff are based at Goodison Park, the Everton Free School, the Football College and the Blue Base - home to the club's charity, Everton in the Community. All are based in Walton as well as at the city's iconic Royal Liver Building.
25. The Club is also a principal partner of the Living Wage Foundation and plays an active role on the Living Wage Advisory Council. The club, already the first Premier League club to sign up to the #HerGameToo movement, has an expanding women's network. Working within the community, it supports the career development of women in all aspects of business life, particularly sport.
26. The Everton in the Community charity (EitC), first established in 1988, is now recognised as having developed and delivered many examples of best practice in the world of community-based sports provision. It now secures over £2 million per year in such outreach activity.
27. EitC is one of the UK's top sporting charities and firmly established on the world stage of community sports development. As the Blues' official charity, it is

considered one of the PL's leading community schemes due to the quality and reach of its various programmes.

28. Over the past 35 years, EitC has been at the forefront of social intervention across Merseyside, unafraid to tackle issues which others shied away from. Through its 120 plus dedicated full-time staff and 160+ volunteers, the charity offers more than 50 programmes covering a range of social issues including health, employability, anti-social behaviour, crime, education, dementia, poverty, youth engagement, youth justice and disability.
29. Operating 7 days a week, 365 days a year, EitC supports the most vulnerable and underprivileged members of local communities, and the charity aims to instil confidence in others by creating life-changing opportunities. Throughout its 36 years hundreds of thousands of people have benefited from the magnificent work that they do.
30. The charity's work is vast and includes providing routes into education, training and employment, steering young people away from crime and anti-social behaviour and engaging children and adults, regardless of ability, in physical activity. In addition to helping individuals, EitC helps other charitable groups improve the lives of local people.
31. EitC created history when it became the first "Club - Community" scheme in the country to be awarded funding by the government to open a free-school, a groundbreaking initiative for young people across Merseyside.
32. The school itself takes in around 120 youngsters aged between 14 and 16 who may have not benefitted from traditional methods of education and who have subsequently dropped out of mainstream education. It also offers a sixth form aimed at up to 80 students, 16-19-year-olds who choose to study sport in the environment of a leading PL football club.

33. Housed in a state-of-the-art structure built in the shadows of Goodison Park, the £4.2million facility includes a teaching block, sports hall, a covered 'street' running through the complex and a curving 'creative block' close to the existing buildings. As a centre of learning, Everton Free School dedicates itself to ensuring that every student has access to the best possible curriculum which suits their needs.
34. Overall, the Everton Free School and Everton Football College work to ensure that students reach their full potential in a secure, supportive and stimulating environment while equipping them with the values, skills, attributes and experiences they need for personal success and wellbeing in a multicultural society. They are complemented by the People's Hub, which provides specific community interventions to provide local children with positive activities whilst helping to reduce crime and anti-social behaviour
35. During the Covid pandemic, the club, through its charity, really came into its own. Ten days before the government called for a national lockdown, Everton in the Community decided to postpone its delivery of programmes and sessions. The charity immediately put in place special measures to provide additional support for its participants and, less than one week later, EitC and EFC launched Blue Family: a co-ordinated outreach and engagement campaign aimed at maintaining contact with participants and fans and providing vital support and assistance to some of the most vulnerable, socially isolated and at-risk members of the community. People generously donated money and food to support the campaign, while new and existing partners supported Blue Family with the donation of food and toiletry parcels, home learning materials and baby supplies.
36. Everton staff, volunteers and players united in working together to support those in need. Their efforts included picking up the phone to make welfare calls to elderly Season Ticket Holders and vulnerable participants. Players also recorded workout sessions and read bedtime stories for children, while the Club's chefs and

nutritionists provided healthy recipes for fans to make at home. EitC's Neighbourhood team supported the 10,000+ residents living within the immediate vicinity of Goodison Park. It also provided housing and money management support as well as advice on benefits and Universal Credit, in addition to support for local refugees and asylum seekers through the charity's ongoing relationship with British Red Cross.

37. The charity also worked to provide additional support for the families of its young participants, as well as ensuring appropriate assistance was in place for vulnerable families of its 60 partner schools across the Liverpool City Region.
38. As its delivery takes place in areas of mass deprivation across Liverpool City Region, EitC has increased its outreach work to provide further support to families who have been identified as a top priority and may be struggling due to loss of income.
39. In 2023 EitC became the first charity attached to a Premier League club to open a purpose-built mental health and wellbeing hub. Known as "The People's Place" it provides a dedicated space for the charity to promote mental and physical wellbeing and suicide prevention. The building itself houses the charity's 15 mental health projects and provides wellbeing activities alongside educational and employment support, using virtual reality, immersive experiences and artificial intelligence to complement delivery. The People's Place also offers professional care from health and wellbeing practitioners, GPs and mental health professionals.
40. The Blue Pantry initiative follows on from Everton's Blue Family campaign, which supported over 29,000 individuals and families with urgent support during the COVID-19 pandemic. EitC, in partnership with Fans Supporting Foodbanks and other local charities supports individuals and families with a member-run food pantry available for all in the community. With the effects of the pandemic,

alongside the rise in the cost of living continuing to take its toll on families, the pantry aims to reduce food poverty by providing communities with access to a wide range of top-quality food for a small subscription fee.

41. Established in 2018, 'All Together Now' is the Club's campaign to celebrate diversity and increase awareness of everything done by Everton FC and Everton in the Community to promote equality.

42. Everton's reputation as a Club of 'firsts' has seen pioneering work in promoting inclusivity across the Everton Family. Recent examples include:

- i. Utilising ground-breaking technology to deliver the world's first virtual matchday mascot experience for a boy with severely reduced mobility;
- ii. Everton becoming the first Premier League team to be recognised as breastfeeding friendly;
- iii. Becoming the first professional English club to unveil a new kit using the Club's women's team;
- iv. Partnering with Lil-Lets to battle period poverty and offering free sanitary products across Goodison Park and all EitC facilities.

43. The 'All Together Now' campaign ties together EFC and EitC's collaborative work regarding equality and diversity to ensure all fans, and anyone visiting Goodison Park or its community facilities, feel welcome and catered for at all times.

44. In the summer of 2018, EitC launched The Blue Base, a former derelict building in Salop Street, close to Goodison Park, which was transformed into a function centre to act as a pre and post-match lounge for vulnerable and disabled fans on matchdays. The building also hosts 'Pass on the Memories' - a programme that supports the elderly living with dementia or suffering from social isolation while encouraging them to immerse themselves into the Everton family.

45. In 2025, Everton will move away from Goodison Park to its new home on the Liverpool waterfront. The club has, however, taken the decision that it wishes to remain as a presence within the Walton L4 district. Plans have been drawn up to retain the existing buildings in the area with the exception of the stadium itself, but the area currently occupied by the stadium will contain various community facilities.

46. This is a club that has people at its heart. It is impossible to separate the bond between club and people; people and club. The two are inter-woven. This is a unique football led institution; it is a unique football club.

The Fans

47. Like all football fans, Everton fans believe they are the most passionate, fervent and loyal, but when former Manager, David Moyes, described the Club as “the People’s Club” it was for very good reason. It was a quote that landed well with the supporters, who saw themselves as different from fans of local rivals Liverpool, in that there was a stronger connection not only between them and their club, but between them and their community. Many Clubs can garner support from far afield and even overseas. Everton are renowned for having a global and loyal fan base, about which the Club and their fans are extremely proud, but the Club’s place in its community is immutable.

48. It is documented in a survey conducted by YouGov that some 49% of match-going Evertonians live in the Merseyside region, compared to 29% of Liverpool fans. The Club is embedded within the fan base and the fan base is embedded within the Club. There are few places where sports fans regularly turn up for each home game armed with both a match ticket and a bag of groceries for the foodbank that holds a collection within the ground, with the full blessing and support of the

Club. There are many reasons why Everton fans are special, and this is just one of them.

49. Everton's global fanbase is estimated at some 1.4 million people. This is reflected in its huge social media reach, with followings on the various platforms of more than 10 million people. This outstrips the social media reach of other PL clubs, including Aston Villa, West Ham and Newcastle. Everton's reach in North America is particularly strong, in part reflecting its recent history of recruiting high-profile US stars such as Tim Howard and Landon Donovan. Everton is a huge draw in terms of worldwide PL television audiences. Everton FC is unique in being locally grown, but globally loved.

50. The crowd at Goodison Park are often referred to as the proverbial "twelfth man" and Sir Alex Ferguson once said, *"It's always a nightmare going to Goodison. The atmosphere is fantastic"*. After Everton beat Manchester United in a Cup tie in 1953, the wife of the late Sir Matt Busby, who was at the game, said *"It must have been those spectators. I have never heard such sustained roars of encouragement"*. Howard Kendall famously used the roar of the crowd as his team talk, when he opened the dressing room window, for the players to hear the singing and chanting of the 10,000 fans who had travelled to watch the team play at Stoke City. When the Club found itself struggling at the end of the last two seasons, after being forced to sell one of its two highest goal-scorers to stay within financial constraints imposed by PSR, and the other suffering long-term injury, there seemed no way to avoid relegation. To the very end of both those seasons, the 12th man was there, in the stands, to scream and shout its encouragement and drag the ball over the line to secure the much-needed wins. From gathering to send off the team bus from the training ground, to greeting it at the other side, as the team arrived at Goodison Park for games, no fan base could have done more to demonstrate its loyalty and love for its club. Every member of the team said they could not have survived without the loyal support and encouragement of the fans.

51. Loyalty and match support apart, there is one even more important aspect to being an Everton fan. They have, throughout their history, responded to a call to arms any time they see their Club served an injustice, or even when they believe the Club itself is not fulfilling its role as custodian with the probity and due respect they demand as the Club's biggest stakeholders. Nothing demonstrated this more than the hard work that went into campaigning for the past 3 seasons, when the Club was dealt devastating blows, both within and without its control. Representation by fan groups resulted in the Club reflecting on its practices and decision-making and making changes at the top of its organisation to try to resolve issues which many clubs faced in the aftermath of a global pandemic and a war in Europe.

52. The fans are totally committed to their club. It is one among many reasons why we feel that a sporting sanction is punishing the innocent. It is adversely affecting the lives of the fans. It is no coincidence that Everton was the first club in the Premier League to set up a completely independent FAB. Long-established fan groups are represented on the FAB and these groups engage in regular dialogue with the Club, which has long recognised the value of not only listening to supporters' views but also explaining decisions they have taken. In compiling this statement, representatives of all those groups have been included in the process. All the groups are of one voice; that they deserve to be heard during the appeal so that the Appeal Board can fully understand the context of its decision, and the ramifications.

The Stadium Project

53. The development of Everton's new stadium at the Bramley-Moore Dock site has been and always will be one of the most significant episodes in the history of the football club. As the Fan-Led Review into Football Governance correctly stated:

“Football clubs are not simple economic assets, [and] are part of the heritage and culture of their local communities and the country more generally.”

54. Goodison Park has been the home of Everton Football Club since 1892. It has not just represented an historic link to where the Club has played football, but has become a critical focal point and feature for the local community in the Liverpool 4 area.

55. Restricted by being unable to rebuild stands or a new stadium on the footprint of the Goodison Park site, the decision was made to look for an alternative location that matched the ambitions of a successful club in the modern age – on and off the pitch – as well as preserving the Club's rich heritage within the City of Liverpool. This has resulted in one of the Region's and indeed, the country's, largest and most high-profile developments.

56. Since first signing Heads of Agreement with Liverpool Waters Peel in March 2017, and subsequently exchanging contracts in November of the same year to secure a 200-year lease for site, the development has promised to not only bring benefits for Everton Football Club and its supporters, but for the City and the wider City Region.

57. There has been overwhelming support for the development, enhanced by extensive engagement not just with Everton supporters through focus groups and surveys, but also with residents of the Bramley Moore Dock, Goodison Park and the wider City Region. Two public consultations between November 2018 and

2019 prompted over 60,000 responses, expressing support for the stadium location, design, plans to protect historic features, transport and reinvestment in the local community.

58. The new 52,888 capacity stadium has the potential to deliver real improvements for Evertonians. It will mean that more supporters will be able to see their team week in week out and help meet the demand to watch their team (it is estimated that there are currently almost 30,000 on the waiting list for a season ticket). This will offer an improved matchday experience as well as helping attract the best playing and coaching staff.
59. For the City region, the development provides a truly once-in-a-generation opportunity to transform North Liverpool, generating a £1.3bn boost to the local economy, including the creation of more than 15,000 jobs for local people. The stadium, on the banks of The Royal Blue Mersey, will be one of the first sights for many visitors to the city, provide a new city destination and attract 1.4m visitors to the city.
60. It will serve as the catalyst for the regeneration of the Liverpool Waters and Ten Streets developments, provide income for local families working on new developments, generate returns to the City Council that can be reinvested in frontline services, and create significant social value at a time when the pressures on cost of living have never been more acute.
61. The Club has committed £55m towards the preservation, restoration and celebration of Bramley Moore Dock's maritime heritage. This includes the Grade II listed hydraulic tower and Engine House, which will be used year-round as a visitor centre, and the dock walls under the stadium have been preserved should the site ever be required to revert to use as a dock. Outline planning approval has also been received to deliver a unique regeneration programme at Goodison Park

to create new housing, health facilities, education amenities, sheltered housing for elderly people, youth zone and business start-up facilities.

62. Most recently, and importantly, the stadium has been selected as the sole venue across Merseyside to host matches for the UEFA European Football Championship in 2028, underlining the further potential to host major cultural and sporting events, along with the economic and cultural value they will inevitably bring to the Region.

63. At a time when more emphasis is rightly being placed on protecting club heritage, stadiums and the impact football clubs have and how much they contribute to local communities, the imposition of a sanction which could put at risk a development which will bring such clear and obvious benefits to the local community, and beyond, would be an act of the most profound short-sightedness.

The Fan-Led Review

64. The Fan-Led Review was authored by Tracey Crouch MP in response to instruction from the Secretary of State for Culture Media and Sport, in April 2021. This followed an aborted attempt by a group of clubs, including six English clubs to form a breakaway so-called “European Super League” without any consultation with football authorities, or with the government, *but “worst of all, they announced it without any dialogue whatsoever with their own fans”*. Other disturbing matters in English football governance had come to the attention of the Department, including, for example, the expulsion of Bury Football Club from the Football League in 2019, due to serious debt resulting from mismanagement and the perilous state of other long-established clubs, through a combination of financial mismanagement and bad strategic decisions taken by boards, when considering incoming investors and owners, buying and selling of players and inability to

conduct professional due diligence. Ms Crouch set up an expert panel to determine the extant state of finance, regulation and governance in English football and to make recommendations for statutory regulations to protect not only the game and clubs involved, but the communities where those clubs are such an important part of the landscape and social function. One of the recommendations in the report was that clubs should introduce ‘Supporter [*Shadow*] Advisory Boards’.

65. Everton fans took the early findings of the Review extremely seriously and, at the Club’s invitation, immediately formed an independent group of stakeholders called the Everton Stakeholder Steering Group (ESSG) to start the process of developing a proposal for effective and meaningful fan representation at Board level. Everton was the first Premier League club to set up its FAB and we believe it is still the only FAB which is completely independent of the Club. Other clubs’ FAB equivalents have club-appointed members, or even club employees on their boards. The FAB supports the findings of the Fan-Led Review and considers its recommendations should be properly interpreted as fans being able to have *meaningful* engagement with their Club. Furthermore, the FAB believes that the PL’s response to the Fan Led Review, in April 2022, declared a commitment to improved engagement with fans, when they said, “*We agree that fans are of vital importance to the game and their voices should be better listened to across the League*”.

66. Crucially, in terms of enforcement and sanctions, the Review recommended that:

- a. Enforcement is not always the most effective solution, and the Regulator should work with them to ensure compliance; and
- b. Where there is enforcement and sanctions this should be subject to a “**Guiding Principle**” of avoiding impacting fans, wherever possible (p.46).

67. Engagement with the issues arising in this appeal is the wider, non-partisan, duty of all fans of the game. Better governance at club and league level should produce a fairer game where sporting merit is at the fore. The role of fans from all clubs is critical going forward, and entirely consistent with the aims of the Fan-Led Review.

68. The introduction to the government White Paper “A Sustainable Future – Reforming Football Governance” says:

“Football is nothing without its fans - and yet in the last two decades, too many of those fans have been let down, ignored or shut out by their own teams. Historic clubs like Bury have gone to the wall, while others have been governed poorly or put at risk of financial collapse - threatening the stability of the wider pyramid. Too often, some owners have forgotten that they are only the custodians of their club, responsible for just one chapter in its history.

So now we are stepping in to protect our national game and put fans right back at the heart of football...”

69. After the sanction against Everton was announced, the Football Supporters’ Association (“FSA”), a national, democratic and representative body for football supporters in England and Wales, released a statement on 17 November 2023, noting:

“...We’ve seen far too many clubs across the game find themselves in financial trouble, and our sympathy is always with the supporters – they didn’t create the problems, but they are punished alongside their club”¹.

¹ <https://thefsa.org.uk/news/fsa-statement-on-everton-points-deduction/>

The Sanction – the Fans’ Perspective

70. The fans’ response to the sanction is understandable when considered alongside their expectations. Everton fans are informed, intelligent and articulate. Their basic expectations were that the Club would be treated fairly and in accordance with established procedures and earlier decisions. They expected a decision which reflected the fact that the PSR supposedly exist to protect the long-term viability of community assets such as Everton Football Club. The fans reasonably expected that the impact of the sanction would not just be measured in terms of its impact on the commercial operation, but also in terms of its impact on the fans, the players, and the many community projects allied to the Club.

71. Everton fans are left bemused by the assertion that *“a financial penalty for a club that enjoys the support of a wealthy owner is not a sufficient penalty”*. This implies that clubs will be penalised according to whether their owner has personal wealth. It also assumes that such personal wealth is freely available to EFC. Neither inference is proper.

72. In terms of perception, the fans also see that in in the case involving West Ham United, and the signings of Carlos Tevez and Javier Mascherano, the PL Commission took account of the impact on the fans. We see too that this is reflected in the Fan-Led Review, which recommended that there should be a **“Guiding Principle”** of avoiding sanctions which unfairly impact the fans. We understand that this has now been accepted by the government and will be applied moving forward. We therefore cannot see any reason why fan impact should not be considered here.

73. The fans agree wholeheartedly with the PL on one thing: that sustainability and preserving the long-term viability of the Club is essential. Where we differ, but differ significantly, is on the means by which this aim is best achieved. It is illogical to reason that the way to achieve the long-term sustainability of clubs is through the imposition of severe punishments. This may deter others, but yet jeopardise the viability of the club on the receiving end of the punishment. A points deduction is a blunt instrument for dealing with a complex issue. It is neither practical nor pragmatic in addressing the underlying issues that the PSR exist to address.
74. It is not lost on the fans that costs associated with the Stadium Project have been a significant factor in the current predicament. It seems to us that the PL should be doing everything within its power to support the completion of the Stadium Project. The Stadium has economic and cultural benefits that extend far beyond the football pitch, and indeed beyond Everton Football Club. It seems to us that punitive sanctions risk exacerbating the very problems that they are designed to address.
75. In cases where it is deemed that a points penalty must be imposed, the least that the fans expect is that the penalty should be predictable and proportionate. We see that in the very recent decision from the Court of Justice of the European Union in the European Super League Company Case (C-333/21) the Court said that any sanctions policy must be “**transparent, objective precise and non-discriminatory**”². What the fans perceive is rather different. They see that there are no sanctions guidelines built into the PL Rules, and as such no transparency or precision. Rather it seems as if the Commission has arrived at an arbitrary punishment.

² Paragraph 151

76. Fans are also aware that there is fixed penalty of 9 points for clubs who become insolvent. The fans cannot understand why Clubs should be subject to a more punitive sanction for a breach of the PSR than what it would have received had the Club become insolvent. They see that in the guidelines used by the EFL the maximum penalty for a breach of the PSR will never exceed that which applies to insolvency: 12 points.
77. The sanction has also led fans, and not just Everton fans, with the sense that powerful and wealthy clubs will be treated more favourably. The “big 6” clubs enjoyed enormous and rapid investment over many years, giving them greater revenue, and so a huge competitive advantage, when the PSR were introduced. They see investigations into more serious and sustained breaches by those clubs being delayed, and in one case an owner spending more than £1 billion on players subject to deliberately lengthy contracts. The fans see too that the clubs who tried to form a breakaway league faced no action after making ‘voluntary contributions’ into a PL fund of less than £4m each. This prompted the recommendation for an independent regulator which should, once implemented, provide more certainty and consistency. Everton fans feel a deep sense of injustice that their Club has been subject to a process that they are told will soon be overhauled; perhaps as soon as this summer.
78. Our concerns about these issues are not only shared by Everton fans. Fans of many other clubs have reached out to the FAB in support and have voiced their concerns, not only at the unprecedented sanction, but at its impact on the reputation of the PL. Fans want to enjoy the spectacle of an elite sporting competition, contested on the pitch, not in the Courtroom. Fans want to see fairness, consistency and transparency. The failure to apply these principles should act as a warning signal for the fans of other Clubs, Club owners and executives and for the footballing authorities.

79. The sanction imposed on Everton ultimately has ramifications that go far beyond the Team's standing in the league table. Although framed as a "sporting sanction", it will inevitably have direct and indirect financial consequences. The fans are rightly concerned that this brings about the sort of uncertainty which may jeopardise the viability of our historic club, and with it its many and varied community projects, as well as the Stadium. From the fans' perspective there are more proportionate ways that any breach of the PSR can be marked which do not involve such an unfair and long-term impact on the Club, the fans, and the wider community.

Signed: 
Dave Kelly, FAB Chair

Signed: 

Tony Sampson, FAB Vice Chair

Signed: 

Julie Clarke, FAB Secretary

Date: 16 January 2023

FAN LED REVIEW OF FOOTBALL GOVERNANCE

November 2021



FAN LED REVIEW OF FOOTBALL GOVERNANCE

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Foreword

**NO
BALL
GAMES**

Foreword



Like millions of other children my first experience of football was playing it in the street outside my childhood home. I would play for hours with the boys on the estate only pausing for the cars to pass or being called in for tea. My love developed from kicking a ball to watching it on TV, going to Reachfields to cheer on Hythe Town, to collecting Panini stickers, coaching girls and finally getting a season ticket at Spurs.

Despite being banned from playing football at school, simply for being a girl, the passion for the sport has stayed with me throughout my life. Four decades ago while kicking a ball against a wall with 'NO BALL GAMES' pinned to it I would never have dreamt that English football would have been

bouncing from one crisis to another and that I'd be charged with helping the nation's favourite pastime navigate its way beyond and on to a brighter future.

It has been an absolute privilege to chair the Fan Led Review of Football Governance working alongside an exceptional panel and a brilliant team of officials. Since the Review began, triggered by the European Super League (ESL) debacle, the Review team heard over one hundred hours of evidence from passionate fans, club leaders, interest groups, football authorities, financial experts and many others who engage day in and day out with football.

The commitment and passion of the fans who have contributed to the Review has been genuinely humbling to see. Where this passion had been betrayed by owners it has been heartbreaking – and testimony from those who had lost their club in Bury particularly so. The sophistication of thought about the problems of the game and solutions presented by those fans was also remarkable. It is often said that football would be nothing without the fans. The same can be said for this Review and I want to thank each and every one who has contributed.

The Review has formed the firm belief that our national game is at a crossroads with the proposed ESL just one of many, albeit the most recent and clearest, illustrations of deep seated problems in the game. I believe there is a stark choice facing football in this country. Build on its strengths, modernise its governance, make it fairer and stronger still at every level, or do nothing and suffer the inevitable consequences of inaction in towns and cities across the country – more owners gambling the future of football clubs unchecked; more fan groups forced to mobilise and fight to preserve the very existence of the club they love and inevitably more clubs failing with all the pain on communities that brings. As was remarked to the Review, for all the good owners in the game clubs are only one bad owner away from disaster.

For those who say that English football is world leading at club level and there is no need to change I would argue that it is possible simultaneously to celebrate the current global success of the Premier League at the same time as having deep concerns about the fragility of the wider

foundations of the game. It is both true that our game is genuinely world leading and that there is a real risk of widespread failures and a potential collapse of the pyramid as we know it. We ignore the warning signs at our peril and I hope this Review protects the good and the special but sets a clear course for a stronger national game with the interests of fans at its heart.

The Review concluded that English football's fragility is the result of three main factors – misaligned incentives to 'chase success'; club corporate structures that lack governance, diversity or sufficient account of supporters failing to scrutinise decision making, and the inability of the existing regulatory structure to address the new and complex structural challenges created by the scale of modern professional men's football. Football is a sport but it is also big business. As the game has grown and developed its governance has failed to grow and modernise with it.

The Report sets out the conclusions of the Review as to how to address these structural challenges but it is important to stress that the recommendations should be considered holistically and not as a set of individual options from which football can cherry pick. Stronger regulation, better corporate governance, and enshrined protection on heritage issues all lead to greater confidence in the redistribution of finances. Only if taken together can we ensure the long-term sustainability of football.

The main recommendation is for a new Independent Regulator for English Football (IREF) established by an Act of Parliament, which will be focused upon specialist business regulation adapted to the football industry. This would operate a licensing system for professional men's football. The licensing conditions should focus upon measures to ensure financial sustainability via financial regulation (which should be a new system based upon prudential regulation in other industries) and improving decision making at clubs through items such as a new corporate governance code for professional football clubs, improved diversity and better supporter engagement. The licensing system would also allow IREF to protect key items of club heritage via a 'Golden Share' requiring supporter consent to certain actions by a club. Football clubs are important cultural assets and must never be the playthings of owners who are simply their custodians.

The Report also contains important recommendations on parachute payments, alternative revenue sources for other parts of the pyramid and grassroots football (including a new solidarity transfer levy), women's football and player welfare. All of which I hope will be adopted by football and the Government.

I do not apologise for the length of my Report into the Review. The issues are complex legislatively and financially. I hope that when read as a whole it is recognised that a great deal of thought, time and energy has gone into consideration of the contributions which have been made to the Review by fans and others across the game, and in consideration of the recommendations.

The final conclusions reached in the report are mine, but in reaching these conclusions I was assisted by a remarkable Panel of Experts whose commitment to the Review was incredible. Their wisdom and counsel was invaluable and I express my sincere thanks to Dawn Airey, Denise Barrett-Baxendale, Clarke Carlisle, Danny Finkelstein, Roy Hodgson, Dan Jones, David Mahoney, Kevin Miles, Godric Smith, and James Tedford for giving up their time for free. I would also like to acknowledge the assistance of and thank several additional experts who also voluntarily gave their time and assistance to the work of the Review, and in particular Kieran Maguire, Nick Hulme, Anthony Pygram, Tony Burnett, Ashley Brown, Lynsey Twedde, Anna Donegan,

Alexander Juschus, Reuben Wales, Tim Williams, Craig Gleeson and Mark Phillips. I am also very grateful for the input of officials at the Department for Business, Energy & Industrial Strategy, the Department for Levelling Up, Housing & Communities, the Home Office and HM Revenue and Customs. Finally, I would like to sincerely thank the dedicated team of officials who worked on the Review throughout – Chris Anderson, Adam Crockett, Laura Denison, Joanna Braine, Fiona Wood, and Tom Mills.

My happiest football memories include the times I pretended to be Clive Allen weaving around flowerpots to score imaginary cup final goals against the backdoor. The darkest days have been watching clubs like Bury and Macclesfield Town disappear from our communities. Past and present Sports Ministers have often said “football is in the last chance saloon” when it comes to reform. The saloon should be closed. Now is the time for an independent regulator to take on the reform that fans have been crying out for but which the authorities have failed to deliver, and it needs to be done now.

Tracey Crouch MP

Chair of the Independent Fan Led Review of Football Governance

Executive Summary



Executive Summary

“Football clubs should be classed as heritage. They are integral to many families and to cities and towns in a way that’s not replicated in other businesses. Clubs need to be protected from asset stripping and situations such as Bury...”

Contributor to Fan Led Review Online Survey

Background to the Review

1. The Fan Led Review of Football Governance ('the Review') was the result of three points of crisis in our national game. The first – mentioned by the contributor above – was the collapse of Bury. A club founded in 1885, which had existed through countless economic cycles, several wars and 26 different Prime Ministers ceased to exist in 2018-19 with a devastating impact on the local economy and leaving behind a devastated fan base and community. This led to the commitment in the 2019 Conservative Party manifesto to 'set up a fan-led review of football governance...'.
set up a fan-led review of football governance...'
2. The next crisis was COVID-19. For the first time since the Second World War, club football was brought to a complete halt, threatening the continued existence of many professional football clubs. Fortunately, the clubs survived due to a combination of government support and commitment from many football stakeholders, including fans, club owners, and – eventually and after a delay of 6 months – the leagues and Football Association (FA). However, the pandemic and its effects laid bare the fragile nature of the finances of many clubs, as well as the structural challenges of the existing domestic football authorities.
3. The final crisis was the attempt to set up a European Super League (ESL) in April 2021. This new competition would have involved six English clubs as founding members, protected from relegation. It was a threat to the entire English football pyramid and led to an unprecedented outpouring of protests from fans, commentators, clubs and Government. As a result, the Secretary of State for Digital, Culture, Media and Sport (DCMS) announced to Parliament on 19 April 2021:

“.. it’s clearer than ever that we need a proper examination of the long-term future of football. To many fans in this country, the game is now almost unrecognisable from a few decades ago. Season after season, year after year, football fans demonstrate unwavering loyalty and passion by sticking by their clubs. But their loyalty is being abused by a small number of individuals who wield an incredible amount of power and influence.

If the past year has taught us anything, it’s that football is nothing without its fans. These owners should remember that they are only temporary custodians of their clubs, and they forget fans at their peril.

That’s why over the past few months I have been meeting with fans and representative organisations to develop our proposals for a fan-led review. I had always been clear that I didn’t want to launch this until football had returned to normal following the pandemic.

Sadly, these clubs have made it clear that I have no choice. They have decided to put money before fans. So today I have been left with no choice but to formally trigger the launch of our fan-led review of football.”

4. The terms of reference for the Review were issued on 22 April 2021. These charged the Review with the aim to ‘*explore ways of improving the governance, ownership and financial sustainability of clubs in English football, building on the strengths of the football pyramid.*’ The full terms of reference are included at Annex B.

Review

5. The Review Panel met for the first time in late May 2021. After this, evidence was heard from a wide range of football stakeholders, including representatives of supporters of over 130 football clubs, the Football Supporters’ Association (FSA), Kick it Out, the Football Association (FA), the Premier League, English Football League (EFL), National League, League Managers’ Association and Professional Footballers’ Association (PFA). The Panel also heard from football club owners, including the so-called “Big Six” and others throughout the pyramid. A number of evidence sessions were also held with experts in finance and other relevant areas as well as interest groups including Our Beautiful Game, FA Equality Now, and Fair Game. In all, over 100 hours of evidence was heard by the Review Panel or Chair, and a list of those who contributed evidence is at Annex C.
6. In July 2021, the Review also conducted an online survey seeking views on the issues being considered. This received over 20,000 responses and the results are summarised at Annex D.

7. Following this initial phase, the preliminary findings of the Review were published on 22 July 2021. Since the publication of these preliminary findings the Review has continued to investigate the issues and is grateful for the contribution of the many experts who were willing to assist its work, including the supervision team at the Financial Conduct Authority (FCA) and others.
8. The Review was primarily set up to address the challenges encountered in men's professional football and the evidence that it received was overwhelmingly focused on these challenges. Unless otherwise stated, the findings of this Review and the recommendations set out in the report relate to men's professional football. However, the passion of those involved and their commitment to the development of women's football was incredible and the unique issues of women's football are specifically addressed in a dedicated chapter 10.

The Findings of the Review

9. This report sets out the conclusions reached by the Review and its recommendations to ensure the future of English club football.
10. There is much to celebrate about English football. The Premier League is the leading football league in the world and one of the biggest leagues of any sport. The Championship is by far the biggest 'second division' in football. The strength and depth of the English football pyramid is admired across the globe, and the development of women's football in recent years has been remarkable. The work of clubs in their communities has always been incredible and a source of real assistance to many in need but was demonstrated more than ever during the height of the COVID-19 pandemic. Given all of the above, it is even more important that the future of football clubs is ensured by addressing the challenges faced by the game.
11. **Chapter 1** explores the structural challenges facing English club football that result in the need for reform. The key findings of chapter 1 are:
 - a. The incentives in the game are leading to many clubs with fragile finances which were further exposed by COVID-19.
 - b. Many clubs are poorly run, with reckless decision making chasing an illusion of success and a disconnect between the interests of fans and owners.
 - c. Regulation and oversight of the game at the domestic level is not up to the challenge of solving the structural challenges and specialist business regulation that will be needed.
12. **Chapter 2** considers options for addressing the structural challenges identified in chapter 1. To ensure that a long-term and healthy future is possible the Review has concluded that sophisticated business regulation tailored to the specifics of the football industry is needed. This is very different to traditional sports regulation. The Review considered several regulatory models and concluded that this regulation needs to be led by an independent regulator, created by an Act of Parliament. This regulator should be independent from football clubs and government, and have a clear statutory objective with strong investigatory and enforcement powers. The new Independent Regulator for English Football (IREF) would not operate in areas of traditional sports regulation which will be left to the existing authorities.

13. The Review also concluded that the new regime should be delivered through a new licensing system, administered by IREF which would apply to the professional game (i.e. the top division of the National League and above). This creates a mechanism for IREF to enforce its requirements on clubs. It also allows IREF flexibility to introduce requirements tailored to address the problems identified in the industry, adjusted for different sized clubs, as well as to adapt these over time as the landscape changes.
14. **Chapters 3 – 8** set out the Review's recommendations for licence conditions to be introduced by IREF to address the problems identified by evidence received.
15. **Chapter 3** sets out a new approach to the financial sustainability of clubs based on regulatory models operated by regulators in other industries such as the Financial Conduct Authority. The Review considered that in the context of football, any financial regulation needs to consider five important factors:
 - a. ensuring long-term financial stability – clearly the single most important factor in the context of the challenges facing English football,
 - b. avoiding monopolisation of leagues,
 - c. international competitiveness,
 - d. minimising burdens on clubs or an expensive system and
 - e. ensuring compatibility with other rules (for example UEFA).
16. The Review looked at models of financial regulation operated in many sports around the world, including the existing approaches to financial regulation adopted by the Premier League and EFL. It concluded that none of these approaches balanced the factors outlined sufficiently to be an effective long-term solution.
17. The Review therefore concluded that a new system was required. The proposed system is based on capital and liquidity requirements used alongside the financial resilience supervision model operated by the FCA (similar rules are used by the Prudential Regulation Authority and are currently being considered in the energy supply industry in light of recent company failings in the market). At its core, this is a relatively simple system and would be adapted to the nuances of the football industry. Clubs would work with IREF to ensure they have adequate finances and processes in place. Firstly, clubs would be obliged to ensure they have enough cash coming into the business, control of costs and suitable processes and systems to ensure the sustainability of the business. Clubs would need buffers in place for shocks and unforeseen circumstances. IREF would look at clubs' plans, conduct its own analysis and if a club plan is not credible, does not have enough liquidity, costs are too high or risk not accounted for properly, IREF would be able to demand an improvement in finances (e.g. inject some cash into the business or lower the wage bill).
18. Under the proposed new approach, a club would be able to invest in order to seek to improve its competitive position but this will no longer be to gamble with a club's future. For a club to do this, the money would need to be in the club upfront and committed. Further, the Review has concluded that, on balance due to the fragile state of club finances, if the activity of one or a few profligate clubs driven by owner subsidies are objectively

assessed as being destabilising to the long-term sustainability of the wider league in which it competes, IREF should be able to block further owner injections on financial stability and proportionality grounds.

19. The Review has also concluded that the new financial system should involve real time financial monitoring, with an ability to intervene at an early stage if required. As a last resort, clubs would also be required to have a transition plan – an agreed series of actions to undertake triggered by certain financial markers to ensure stability of a club whilst a new owner is sought. This will mean that IREF would intervene well before financial collapse, which is not necessarily true of other possible approaches.
20. The system of financial regulation outlined above would be a significant change for the industry. In order to smooth the transition to the new system and allow it to operate as soon as possible after the relevant legislation is passed, it is recommended that IREF be set up in ‘*shadow form*’. This would involve IREF being set up and the recruitment of experienced regulators, particularly on prudential regulation, who would work with the industry before the related legislation receives Royal Assent.
21. **Chapter 4** considers who should be allowed to be the owner or directors of a football club. These are the parties whose actions can lead to the success and growth of a club or to disaster. An owner should be a suitable custodian of a community asset. A director should have the necessary skills and experience to run a football club.
22. Having considered the existing tests operated by the Premier League, EFL and FA, the Review has concluded that IREF should replace these tests with a single test for owners, and a different test for directors. In both tests, the applicant should be disqualified if they are subject to one or more disqualifying conditions, which shall initially be the same as those provided for in Section F of the Premier League handbook. Further, each test should contain an element of ongoing monitoring and, in the case of owners re-testing on three yearly intervals.
23. *Owners’ test* – The Owners’ test should apply to any party (or parties acting in concert) who hold voting rights of 25% or more of the club’s share capital as well as to the ultimate beneficial owner(s). In addition to not being subject to any disqualification criteria, prospective new owners should also be required to:
 - a. submit a business plan for assessment by IREF.
 - b. evidence of sufficient financial resources to cover three years.
 - c. be subject to enhanced due diligence checks on source of funds to be developed in accordance with the Home Office and National Crime Agency (NCA).
 - d. pass an Integrity Test.
24. *Directors’ test* – The directors’ test should apply to all directors, shadow directors and senior club executives (as well as any ‘advisers’ or ‘consultants’ who perform a similar function). In addition to not being subject to the disqualification criteria, a prospective director should be required to:
 - a. demonstrate that they have the necessary professional qualifications, and/or transferable skills, and/or relevant experience to run the club.

- b. pass an integrity test in the same manner as prospective owners.
 - c. declare any conflicts of interest.
 - d. declare any personal, professional or business links with the owner of the club in question, or any other club owner (past or present).
25. In both cases, the integrity tests would subject applicants to more scrutiny than has been applied to football in the past, but which is known in other industries. The Review has concluded that an approach based on that used in financial services, including the '*Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector*'¹ should be adopted. This would involve an assessment by IREF of whether the proposed owner or director is of good character such that they should be allowed to be the custodian of an important community asset. The proposed approach should be (but not limited to):
- a. A proposed owner be considered as of good character if there is no reliable evidence to consider otherwise and IREF has no reasonable grounds to doubt their good repute;
 - b. IREF would consider all relevant information in relation to the character of the proposed owner, such as:
 - i. criminal matters not sufficient to be disqualifying conditions.
 - ii. civil, administrative or professional sanctions against the proposed acquirer.
 - iii. any other relevant information from credible and reliable sources.
 - iv. the propriety of the proposed acquirer in past business dealings (including honesty in dealing with regulatory authorities, matters such as refusal of licences, reasons for dismissal from employment or fiduciary positions etc).
 - v. frequent 'minor' matters which cumulatively suggest that the proposed owner is not of good repute.
 - vi. consideration of the integrity and reputation of any close family member or business associate of the proposed owner.
26. **Chapter 5** considers corporate governance, noting that good corporate governance can help better decision making by subjecting the actions of a club to proper scrutiny and challenge, as well as skills based recruitment, and diversity of skills and experience. The chapter recommends that there should be a new, compulsory corporate governance code for football. This should be based on the UK Sport and Sport England Code for Sports Governance, including proportional requirements with greater demands on clubs in the PL as compared to National League clubs. This will include mandatory requirements for items such as independent non-executive directors, skills based recruitment of directors and an express recognition of the stewardship duty owed to a community asset such as a football club (i.e. that an owner/director should be required to operate to ensure the club should exist long after they have departed).
27. **Chapter 6** addresses equality, diversity and inclusion. Aside from a clear moral case, improving diversity is also a key aspect of driving better business decisions by football clubs. Diverse companies perform better with detailed long-term studies by McKinsey & Co

¹ https://esas-joint-committee.europa.eu/Publications/Guidelines/JC_QH_GLs_EN.pdf

reporting that *'the business case [for diversity] remains robust but also that the relationship between diversity on executive teams and the likelihood of financial outperformance has strengthened over time'*.²

28. In order to achieve this improved performance from diversity, the Review considers that each club should be required to have an Equality, Diversity & Inclusion (EDI) Action Plan, which would be assessed as part of the annual club licensing process. These plans would set out the club's objectives for EDI, and importantly, how the club is going to achieve them for the upcoming season. IREF would then scrutinise these documents for approval at the start of the season, ensuring they are robust and challenging. As part of the annual licensing process, IREF would also consider the performance of the club against its previous plan. If IREF deemed there to be insufficient progress made against the organisation's plans, it would be able to enforce financial or regulatory punishments.
29. The Review also concluded that the football authorities should work more closely to ensure consistent campaigns and where possible, pooling resources to increase the impact of these important initiatives. There should also be a new, single depository for reporting and collecting reports on discriminatory incidents.
30. **Chapter 7** considers ways to improve supporter engagement in the running of their clubs. As well as the importance of supporters having a voice in a significant cultural part of their lives, it makes business sense for clubs to liaise closely with their most important stakeholder and develop plans with their views at the forefront.
31. The Review investigated a variety of approaches for supporter engagement. The Review concluded that IREF's role is to set a minimum baseline of engagement across all licenced clubs. It therefore could not set multiple requirements as these would not be deliverable across all licenced clubs, though clubs should consider multiple engagement strategies, including town hall style fan forums, structured dialogue, fan elected directors, shadow boards and supporter shareholders.
32. Chapter 7 sets out the Review's conclusion that each club be required to have a 'Shadow Board' of elected supporter representatives which would be consulted by the club on all material off pitch matters. The mechanism for selecting the Shadow Board members should be independent of the club, and result in members from a cross section of the supporter base. In order to allow full discussion, the members of the Shadow Board should be subject to suitable confidentiality obligations though these obligations should allow members of the Shadow Board to discuss most matters, although not confidential items including financial matters, with the wider fan base.
33. **Chapter 8** provides for measures to protect club heritage. The loss of club heritage, most frequently stadiums, is often a consequence of badly run clubs. The Review also considered that in recognition of the cultural, civic and community role of clubs there should be additional protection for key items of club heritage, including preventing the club from joining new competitions not affiliated to FIFA, UEFA and the FA.

² <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>

34. The Review has therefore concluded that each club should be required to provide for a special share – a ‘*Golden Share*’ – in its articles of association. This share should be held by a democratically run Community Benefit Society formed under the Cooperative and Community Benefit Societies Act 2014 for the benefit of the club’s supporters. In most cases, this can be an existing Supporters’ Trust, provided that the constitution of such a Trust meets specified requirements. The Golden Share would require the consent of the shareholder to certain actions by the club – specifically selling the club stadium or permanently relocating it outside of its local area, joining a new competition not affiliated to FIFA, UEFA and the FA, or changing the club badge, the club name or first team home colours.
35. The Review is confident that this model can work and heard from several clubs that they would be comfortable with the proposal as well as from others who are already working on similar models with their own fan base. The Review notes the successful operation of this model by Brentford.
36. The Review also noted that the Golden Share approach has limitations, and accordingly it has also considered other ways that might provide protection for items such as club stadiums. This included investigation of items such as planning law, and the Review has concluded that the government should explore ways to clarify some aspects of planning law to provide additional protections.
37. **Chapter 9** considers financial distributions and specific reforms that might assist the revenue and sustainability of clubs at the lower levels of the pyramid.
38. The Review carefully investigated these issues, including the financial disparity between the leagues (particularly between the Premier League and Championship), measures taken to address these to date such as parachute payments (i.e. payments to relegated teams to soften the financial blow of relegation) and the impact this disparity has on the pyramid. It concluded that there is a strong case for some additional distributions from the Premier League to the rest of football. In simple terms, even modest additional funding allied with sensible cost controls could secure the long-term financial future of League One and League Two clubs as well as make a substantial contribution to the grassroots game.
39. The Review considered carefully whether the Review or IREF itself should directly intervene on the question of financial distributions. On balance, it considered that it would be preferable that this should be left to the football authorities to resolve. However, given the poor history of the industry reaching agreement, IREF should be given backstop powers that can be used if no solution is found.
40. The Review also carefully considered the question of so-called parachute payments. On balance, the Review concluded that although the intention of parachute payments is laudable the system should be reformed as part of wider reform of distributions. This reform needs to deliver an evidence based solution, with compromises on both sides and creative thinking to resolve the apparent impasse between the Premier League and EFL on this issue. The Review was made aware that the Leagues are in discussions on parachute payments, and it is hoped that they will reach a mutually beneficial conclusion. If football

cannot find a solution by the end of the year, the Review has concluded that the Premier League and the EFL should jointly commission external advice to develop a solution to parachute payments as well as wider distribution issues.

41. However, if football cannot find a solution ahead of the introduction of legislation to implement the reforms set out in this report then IREF should be given backstop powers to intervene and impose a solution. The formation of IREF is therefore a deadline for the football authorities to resolve this issue or face an imposed solution. External involvement in this process would be another example of football's failure to put aside self interest and protect the long-term interests of the game.
42. The Review also investigated the impact of salary costs, by far each club's biggest cost, in a relegation scenario. The Review concluded that a pragmatic solution would be for a new clause to be introduced to player contracts adjusting salaries by a fixed percentage on both promotion (upwards) and relegation (downwards). In this way, relegation risks can be mitigated but players can also be rewarded for success. Providing for a fixed percentage increase or decrease also avoids the amount of the uplift or decrease becoming part of a competitive recruitment scenario.
43. In addition to consideration of increasing distributions and reforming parachute payments, the Review has also considered other possible approaches to provide greater support throughout the football pyramid. Of these, the Review considered that the most progressive intervention is a new solidarity transfer levy paid by Premier League clubs on buying players from overseas or from other Premier League clubs. This would work in a similar way to stamp duty and distribute revenues across the pyramid and into grassroots.
44. If a 10% levy had been applied in the last 5 seasons, an estimated £160 million per year could have been raised for redistribution. This would be a relatively modest cost to Premier League clubs (particularly given the relative financial advantage of the Premier League over other European leagues because broadcast income will grow in years to come) but annually, could be game changing to the rest of the football pyramid. One year's payments illustratively could fund all of the below, which would benefit men's, women's, boys' and girls' football for the long term:
 - A grant to ensure that League One and League Two clubs broke even³
 - 80 adult 3G pitches
 - 100 adult grass pitches
 - 100 children's/small sided grass pitches
 - 30 two team changing rooms (including referee facilities).⁴
45. The final aspect of chapter 9 is consideration of ways that lower league clubs might generate additional revenue for themselves. In particular, it notes that there are two areas that clubs are being prevented from doing so by regulation and law – the use of synthetic pitches in League Two and sale of alcohol. Given the widespread acceptance of use of modern synthetic pitches at the highest levels of the game – including by UEFA in the

³ Deloitte (2021) Annual Review of Football finance. This is illustrative and any funding would not directly be paid to offset losses per se as this could encourage further loss making

⁴ Sport England – 2nd quarter 2021 facility cost updates

Champions League – the Review concluded that clubs should be allowed a degree of flexibility in the use of pitches. This might involve a ‘grace period’ before they are required to change to a grass pitch.

46. In regard to alcohol sales, the Review concluded that in light of the potential benefits to club sustainability and doubts about the effectiveness of the current law, the possibility of amending the law should be explored via a small scale pilot scheme at League Two and National League level carefully designed in conjunction with police advice alongside a possible review of the legislation, which would be the first such review in nearly 40 years of its existence.
47. **Chapter 10** moves from considering issues in men’s football to considering ways to grow women’s football. Although the bulk of the evidence to the Review concerned men’s football it also heard from many involved in the women’s game. It is clear that women’s football has an exciting future. All those involved in this – including the FA – deserve great credit.
48. The Review also heard that despite this success and women’s football being, today, the top participation sport for women and girls in England⁵, it faces its own significant challenges which are very different to those faced by the men’s game. The Review concluded that there is a potential for women’s football to have a powerful future, but that it is clearly at a crucial point in development. There are a number of fundamental issues that require resolution in women’s football to allow it to move forward on a sustainable footing for the future. Crucial issues, such as establishing the value of women’s football, its financial structure, support from the Premier League, and league structure cannot be resolved in isolation. They require a holistic examination, research and evidence based resolution to enable the sport to move forward strongly.
49. The Review concluded that it is only right that exactly 100 years after the FA banned women’s football, the future of women’s football is the subject to its own separate review to fully consider the issues. The Review therefore recommends that women’s football should have a dedicated review to consider the issues in detail and provide tailored solutions.
50. **Chapter 11** addresses issues of player welfare. Although this was not directly included in the Review’s Terms of Reference, the Review was presented with some concerning evidence regarding the impact of involvement with professional football on young and retired players. The common theme linking those exiting the game at academy stage and post professional career is an apparent gap in provision of aftercare. The Review concluded that football needs to do better and be more joined up in its approach – including better sharing of best practice. This should involve as an urgent priority, football stakeholders working together to devise a holistic and comprehensive player welfare system to fully support players exiting the game, particularly at Academy level but including retiring players, including proactive mental health care and support.
51. The comments in the preceding paragraphs related to club academies, but there were also additional and greater concerns regarding private academies which are not affiliated to clubs or the FA. The Review therefore concluded that the FA should proactively encourage

⁵ <https://www.thefa.com/womens-girls-football>

private football academies to affiliate to the local County Football Associations to ensure appropriate standards of safeguarding and education for young players, including exploring ways to incentivise this affiliation, perhaps through operation of a 'kite mark' scheme or similar and prohibiting registered academies from playing friendly matches against unregistered private academies.

Strategic Recommendations

- 52.** The Review makes a number of detailed recommendations, which each relate to an overall strategic recommendation. The full list of recommendations is summarised at Annex A, and the strategic recommendations are:
- (A)** To ensure the long-term sustainability of football, the Government should create a new independent regulator for English football (IREF)
 - (B)** To ensure financial sustainability of the professional game, IREF should oversee financial regulation in football.
 - (C)** New owners' and directors' tests for clubs should be established by IREF replacing the three existing tests and ensuring that only good custodians and qualified directors can run these vital assets.
 - (D)** Football needs a new approach to corporate governance to support a long-term sustainable future of the game.
 - (E)** Football needs to improve equality, diversity and inclusion in clubs with committed EDI Action Plans regularly assessed by IREF.
 - (F)** As a uniquely important stakeholder, supporters should be properly consulted by their clubs in taking key decisions by means of a Shadow Board.
 - (G)** Football clubs are a vital part of their local communities, in recognition of this there should be additional protection for key items of club heritage.
 - (H)** Fair distributions are vital to the long term health of football. The Premier League should guarantee its support to the pyramid and make additional, proportionate contributions to further support football.
 - (I)** Women's football should be treated with parity and given its own dedicated review.
 - (J)** As an urgent matter, the welfare of players exiting the game needs to be better protected – particularly at a young age.

Chapter 1. The Case for Reform



Introduction

- 1.1** As noted in the introduction to this report, this Review was established in response to three crises – the collapse of Bury, COVID-19 and finally the attempt by six English clubs to join a new European Super League – an existential threat to the English football pyramid.
- 1.2** The Review benefitted from over 100 hours of engagement, involving representatives of over 130 clubs, approximately 21,000 survey responses and the benefit of extensive expert input and research. This has identified a number of structural challenges which are set out in this chapter. Subsequent chapters will consider solutions to these problems.

Why does football matter?

- 1.3** Football is the national game and most popular sport in England. It boasts 14.1 million grassroots players⁶, 35 million fans attending the top four leagues per season and over 40,000⁷ association football clubs – more than any other country. England also has the oldest national governing body in the Football Association (FA), the joint-first national team, the oldest national knockout competition (the FA Cup) as well as the oldest national league, the English Football League (EFL).
- 1.4** The English Premier League (Premier League), established in 1992, has also grown into one of the most famous and lucrative sports leagues in the world. It is the most watched league on earth⁸, featuring the most games covered of all European leagues per season. Out of the top 30 global highest revenue-generating clubs in the Deloitte Football Money League, 12 are English, more than double the next most represented country.⁹
- 1.5** Football clubs also sit at the heart of their communities and are more than just a business. They are central to local identity and woven into the fabric of community life. The rich history surrounding football clubs is invaluable to their fans, with many clubs having existed for over one hundred years. They play a huge and often invisible role in unifying communities across generations, race, class and gender. They are a source of pride, and often in hard times comfort as well as practical assistance. In many places they are also a crucial part of the local economy.
- 1.6** Through evidence gathered from fans and Supporters' Trusts, the Review heard from a substantial number of clubs who have strong bonds with their communities, stretching further than their fan base. One example is Brentford Football Club who engage with thousands of young people across West London each year, offering initiatives such as weekly multi-sport sessions, mentoring, volunteering and training opportunities for young people. There are many other excellent similar examples at all levels of the football pyramid.

⁶ The FA – The Social and Economic Value of Grassroots Football in England

⁷ From a study by Fifa 2006 – there are around 40,000 clubs registered with the FA, which is 11,000 more than any other country, the closest being the Brazilian Football Confederation who have 29,000 registered clubs

⁸ <https://www.premierleague.com/this-is-pl/the-fans/686489?articleId=686489>

⁹ Deloitte (2021), Football Money League

What is the economic impact and how does the market work?

- 1.7** English football generates significant levels of income and its growth has out-performed international comparators. In the last season of the old football system 1991/1992, the 22 clubs in the top division had collective revenues of £170 million a year. By the 2018/19 season, the collective turnover of the 20 Premier League clubs had increased to £5.15 billion.¹⁰ The Premier League has revenues far in excess of any other country – €2.4 billion more than Spain, the next biggest league in terms of revenue.¹¹
- 1.8** Nor is it just the Premier League that has experienced growth or that outperforms comparative leagues in Europe. In the second, third and fourth tiers of English football, revenues have increased from £93 million in 1991/92, to just under £1 billion in 2019/20.¹²
- 1.9** This success generates vast economic activity. Premier League transfers totalled £1.8 billion during the 2019/20 season, with a further £266 million in transfers from the EFL clubs' transfer combined expenditure. The Premier League also exported £1.1 billion of broadcast rights around the globe in 2016/17.¹³ International broadcast revenues were higher than the combined total of the other four major European leagues. In comparison to other major global brands, Ernst and Young (EY) estimate the Premier League overseas rights are more than twice the combined value of the broadcast exports of the major North American sports leagues.¹⁴
- 1.10** The unparalleled commercial value of the sport supports the provision of public services, with £2.2 billion of taxes paid to the UK Government during the 2019/20 season.¹⁵ It also creates jobs at home, with over 12,000 FTE jobs directly supported by the Premier League and a further 52,000 indirectly supported down the supply chain.
- 1.11** In addition to the commercial value of the sport, the elite game inspires both participation and significant investment in grassroots football. The Premier League funding of the Football Foundation since 2000 has contributed almost £500 million towards new facilities for schools, local clubs and communities.¹⁶

What are the structural challenges in football?

- 1.12** Since the Premier League started, the popularity of football has soared, television audiences have grown across the globe, sponsors have seen opportunity, and external investment has poured into the game. Football has been outstanding at increasing income. This success story of English football is a credit to the hard work and vision of countless people over many years but it is possible to simultaneously celebrate this achievement at the same time as having serious concerns about the future viability of football in this country. This Review has seen significant evidence of a range of impending financial problems in football. This brings the risk of significant long-term damage to the game and widespread failures by clubs.

¹⁰ Deloitte (2021) Annual Review of Football Finances – Databook

¹¹ *ibid*

¹² *ibid*

¹³ EY(2019) The Economic and Social Value of the Premier League

¹⁴ Including NFL, NBA, MLB and NHL (excluding Canada)

¹⁵ Deloitte (2021) Annual report of football finance – Databook

¹⁶ This is Premier League: Commitment to communities

- 1.13** There are three main reasons why football clubs are at this precipice, which are set out in more detail below:
- a. The incentives of the game mean many clubs are gambling for success, leading to clubs facing financial distress.
 - b. Clubs are too often being run recklessly, owners make decisions with personal impunity frequently leaving communities and others to deal with the consequences/fall out of their decisions and fans are cut out of their clubs and key decisions.
 - c. The regulations and oversight of the game are not up to the task of ensuring a sustainable future for clubs.

A. The incentives in the game are leading to many clubs facing financial distress

- 1.14** The incentives of the game drive reckless decision making seeking to gain, and then maintain, the financial rewards of competing at a higher level. Deloitte estimates that promotion to the Premier League is now worth £170 million to a promoted Championship club. European competition revenues are also significant – particularly playing in the Champions League. At the 2021 Champions League final, Chelsea reportedly received £95 million in prize money, which included money earned by progressing through each stage of the tournament, with the true number likely to have been much higher.¹⁷
- 1.15** Clubs see the riches at the top of the game and therefore chase success, or are driven by fear of relegation. They recruit new talent and increase the wage bill, in the hope this will improve on pitch performance. To stay competitive, other clubs are forced to spend as well. In the Championship, this is exacerbated by relegated clubs with parachute payments which massively boosts the income of relegated clubs as compared to others. Evidence provided to the Review has shown these clubs can ‘gazump’ rivals for the best talent or at the very least push wage costs up. This creates a perpetual vicious cycle as other clubs try to compete. In such a market, it is easy to see how wage costs could rise significantly but relative performance remains unchanged.
- 1.16** As a result, many English clubs are spending far more than they should, particularly on wage costs. UEFA has undertaken analysis which indicates that to have a chance of breaking even, total wages as a proportion of turnover should not go above 70%. However, in the Premier League this rate is 73% on average. Outside the six teams with the highest turnover, it is 87%. In the Championship, the rate is even worse, at 120%. In some instances, this figure is almost 200%. Rick Parry, Chairman of the English Football League and former Chief Executive of the Premier League, has described the speculative financing as *‘the most expensive lottery ticket on the planet’*.
- 1.17** Nor does the financial situation necessarily improve once a club wins the lottery by getting to the Premier League as they are driven to spend to avoid relegation or try to progress to competing in Europe. A recent example of this can be seen in Brighton and Hove Albion¹⁸ which has shown that just trying to remain in the Premier League is costly. The club’s costs mainly relate to players, in the form of wages and transfers. In reaching the Premier

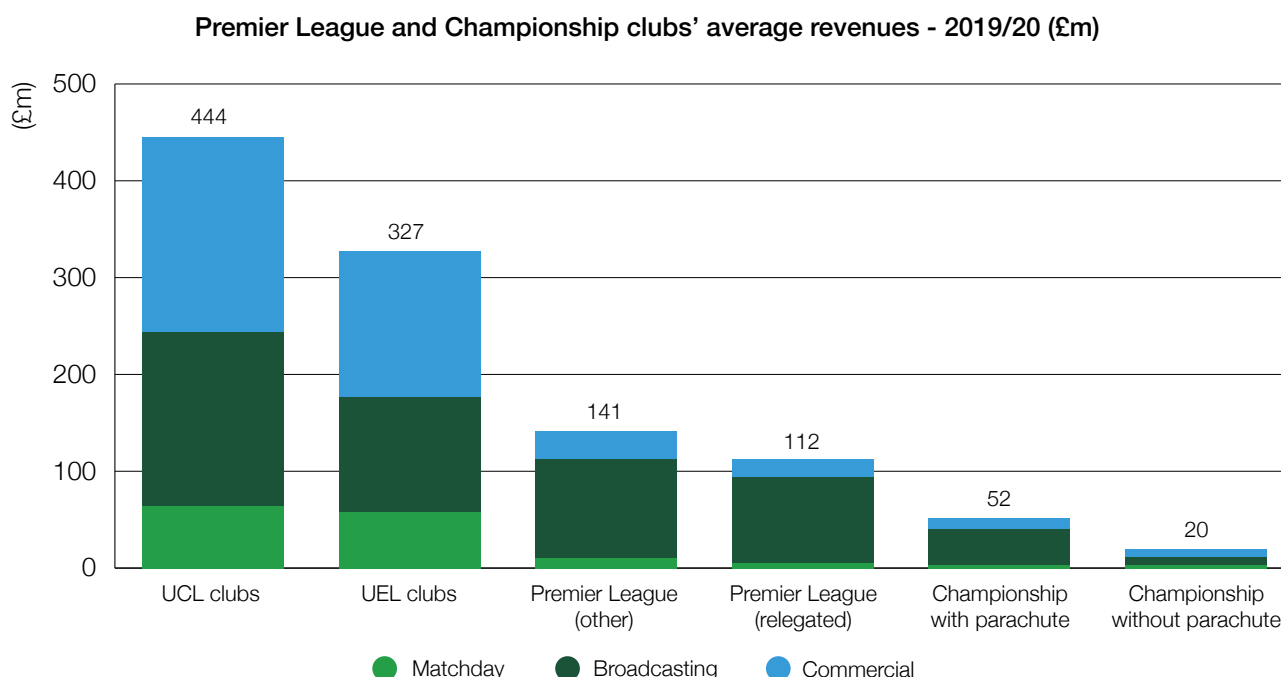
¹⁷ <https://www.football.london/chelsea-fc/how-much-prize-money-chelsea-20708028>

¹⁸ Brighton case study <http://priceoffootball.com/brighton-2019-20-reel-around-the-fountain/>

League, Brighton made an operating loss in every year from 2011 to 2017, operating in its 2017 promotion season with a record loss of £38.9 million and a wage/income ratio of 138%. In the first season in the Premier League, income increased significantly and the club made an operating profit of £12.8 million. The club avoided relegation in that season – and went straight back to making operating losses (£19.4 million and £63.9 million in subsequent seasons alongside wage/turnover ratios above the UEFA ‘safe’ figure of 70% in both seasons). The club’s debt increased to over £300 million from £191 million in 2017. Brighton’s on pitch performance resulting from this spending is credible, but in none of the seasons covered by these financials did it finish higher than 15th. So despite achieving and maintaining Premier League status at a modest level, Brighton’s financial position was no better in 2020 – and arguably worse – than it was in 2017 despite the huge increase in its income.

- 1.18** The result is unsurprising. In the Premier League, pre-tax losses were £966 million in 2019/20, with huge losses expected for the 2020/21 season due to the additional COVID-19 impact. Since the 1999/2000 season 17 out of the 21 (80%) seasons of the Premier League have seen collective pre-tax losses. Further, despite the huge revenue generation, collective losses in that time have been almost £3 billion as clubs spend high to stay in the league, and spend higher to compete or try to compete for a chance in the Champions League.
- 1.19** In the Championship, losses have been even worse as clubs spend well beyond their means in aim of promotion to the Premier League, exacerbated by relegated clubs with parachute payments. Since 2010/11, Championship clubs have made a loss every season. Those pre-tax losses have been almost £2.5 billion – almost as much as the Premier League but in half the time and despite significantly lower revenues compared to Premier League clubs. In both leagues, debt is also rising significantly and currently stands at an aggregate £5.3 billion.

Chart 1: Premier League and Championship club revenues 2019/20 (£m)



Note: UCL clubs comprised Manchester City, Liverpool, Chelsea and Tottenham Hotspur. UEL clubs comprised Arsenal, Manchester United and Wolverhampton Wanderers. Championship clubs with parachute comprised Cardiff City, Fulham, Huddersfield Town, Stoke City, Swansea City and West Bromwich Albion.

Source: Premier League; UEFA; Deloitte analysis

- 1.20** Since the formation of the Premier League in 1992, clubs have fallen into administration 62 times, some more than once. A number of these clubs have survived, for example Leeds United, Leicester City, Portsmouth, and Exeter City. Some of the clubs which have gone into administration have gone on to be promoted through the leagues and are now financially stable. Although none of these administrations was ‘pain free’ for those involved these clubs at least survived. There is also an unacceptable number of clubs who could not be saved: Bury, Macclesfield Town, and Rushden & Diamonds – all falling into liquidation, and taking with them huge chunks of history, heritage and the hearts of a community.
- 1.21** The Review has therefore concluded that the financial incentives of the game are warping decision making, at all levels of football. Clubs are locked into perpetual cycles of spending far more than they should. Losses are accumulating and debts rising. Clubs are completely exposed to the good will of owners and lenders and there is no in-built resilience in clubs as a result. Clubs, on a wide scale are facing the financial precipice and the consequences of widespread losses would be catastrophic. Change is needed and it needs to be bold.

B. Clubs can be poorly run, with poor decisions and there is a disconnect between the interests of fans and owners

- 1.22** The long-term health of football relies on clubs being run sensibly, making rational decisions and planning for a long-term sustainable future. A common theme in clubs facing difficulties is owners and directors making reckless short term decisions which result in negative outcomes for the club aided by a lack of good corporate governance structures to challenge decisions, consistent financial losses, poor fan engagement and as a result, unstable futures. A good example is Birmingham City where evidence, submitted during the Review, alleged that the club is currently over £100 million in debt, has breached Profit and Sustainability rules and is in a situation where the club and the ground are owned by different people, under a complicated offshore ownership structure.
- 1.23** Good corporate governance can help with decision making, providing a diversity of opinion and expertise to clubs' decisions, as well as transparency and accountability. This ensures good decisions are more likely and improves the confidence of fans in the running of their club.
- 1.24** However there are many examples in football of corporate governance that would not be tolerated in other industries. This is true even in the Premier League, where arguably the worst example in recent times was Newcastle United which, until the recent takeover, has had a Board of one, the person in question being also the company's top executive officer. Other obvious examples of poor governance include Reading and Derby County which both appear to lack proper board structures. Reading spent approximately twice its revenue on wages in 2019/20 and Derby County has just gone into administration. A proper system of corporate governance would have subjected the very risky business decisions by these clubs to scrutiny and challenge.
- 1.25** Engaging with fans is also an important part of good club decision making. There are a number of clubs and owners who follow strong fan engagement practices. However, the evidence from the Football Supporters' Association is that despite existing EFL and Premier League rules containing requirements for fan consultation, there '*...has been limited progress on delivering the relatively unambitious minimum standards...*'.¹⁹ The European Super League is the highest profile example of a massive disconnection between clubs and their fan bases, and a clear example of why better fan engagement is needed.
- 1.26** Another outcome of poor business decisions and lack of engagement with fans is the loss of club heritage. According to the Football Supporters' Association, in the last 25 years, more than 60 clubs have lost ownership of their stadium, training ground or other property. Clubs who lose ownership of their ground have also often been forced to relocate away from their hometown. The highest profile example is Coventry City which played in Northampton between 2013 – 2014, and in Birmingham in 2019 – 2021. However, there are many others including Darlington which spent 5 years playing 13 miles away from Darlington, Scarborough Athletic which was based 18 miles away from its home town for 10 years, and most infamously Wimbledon – moved to Milton Keynes as a new team MK Dons.

¹⁹ FSA Evidence Submission to Review, para 40 page 142 (available at <https://thefsa.org.uk/wp-content/uploads/2021/07/FSA-FLR-Evidence-Submission-v3-DIGITAL.pdf>)

- 1.27** The Review have also seen evidence of decision making where no regard has been given to the fans and communities of those clubs. There have been attempts to change club names (Hull City), and changes to strip (Cardiff City) and location (MK Dons/Wimbledon). Although these case studies are less frequent, the importance of club heritage to local communities and fans means that there is a special case to offer additional protections as is done in order to protect other items of non-sporting cultural heritage.

“Owners have driven century old clubs to ruin. Above all else this is the issue, no one should lose their club due to its community value. Clubs and assets should be protected from vultures”

Contributor to Fan Led Review Online Survey

- 1.28** The evidence of poor decision making by clubs at the very least raises questions of whether or not the right people are becoming the owners or directors of clubs. The Review has seen evidence of numerous failings of the current Owners’ and Directors’ tests (‘ODT’), with the resultant acquisition of clubs by owners unsuited to the custodianship of important cultural, heritage assets, as well as the appointment of unsuitable directors who do not effectively contribute to the running of the club. Examples of unsuitable owners include, but are not limited to:
- a. Owners with long histories of prior business bankruptcies
 - b. Owners who acquired clubs without proof of funds (albeit that such loophole has apparently been closed);
 - c. Owners who have subsequently been imprisoned for offences including money laundering;
 - d. Owners with serious criminal convictions;
 - e. Clubs changing from stability under long-term owners to near extinction in three years;
 - f. Owners who engaged in multiple legal disputes with the club, other owners and fans;
 - g. Offshore hedge funds with unclear ownership acquiring clubs;
 - h. A club being put into administration by an owner who had only purchased the club two weeks earlier;
 - i. Owners who appear to have done little or no diligence prior to acquiring the club; and
 - j. Directors appointed to club boards despite no significant prior experience.
- 1.29** It would be wrong to put all owners into the same box. The Review has also seen examples of owners who have supported their club for no other reason than commitment to their local area and done it well, like Accrington Stanley. The Review has also seen evidence of successful owners, those who make selfless investments into their club year after year, who are good people with sound motives without whom many clubs would not exist but living in a system where the price of prudence and sound finance is often ‘failure’ on the pitch given the unreasonable incentives and lack of controls. Rotherham United is a good

example of a club with an owner who seems to try and run the club on a sustainable basis yet who are disadvantaged in trying to compete in the Championship. And even where the current owner of a club is ‘good’ as said by one fan group in evidence ‘A club is only one bad owner away from disaster’ or the system can drive a well meaning owner to make reckless decisions.

“I’m a Wycombe Wanderers fan and the current owners are superb. But in the past we have had terrible owner who tried to sell our ground. So it shows for every good owner there is a bad one”

Contributor to Fan Led Review Online Survey

C. Regulation and oversight of the game is substandard Loss of public confidence

1.30 Lack of public confidence likely stems at least in part from a system that is confused and where clarity on the roles of regulators is opaque. Evidence taken through the Review showed key stakeholders have lost confidence in the current domestic football authorities. This was echoed in the results of the Fan Led Review Online Survey, which ran in July 2021, and amongst other questions, asked “How do you rate the performance of each of the following regulatory bodies as regulators in English football?” The table below sets out the results, which shows the number of people rating the performance above average (good and very good), particularly of the FA, Premier League and EFL, is low. With the exception of the National League, the majority consensus from this survey was that the performance of the authorities is below average (poor and very poor).

Table 1: Fan perception of football authorities’ performance

| Authority | Good and Very Good | Average | Poor and Very Poor | Don't Know | Total Responses |
|----------------------|--------------------|---------|--------------------|------------|-----------------|
| Football Association | 15% | 37% | 44% | 3% | 17,907 |
| Premier League | 15% | 27% | 56% | 2% | 17,819 |
| EFL | 14% | 27% | 49% | 10% | 17,832 |
| National League | 16% | 23% | 26% | 35% | 17,773 |

Source: Fan Led Review Online Survey

1.31 Of course, the financial instability and other severe problems faced by the game itself questions the efficacy of the existing regulatory system. It was this system under which the problems arose. As football has grown, the complexity, sophistication and range of

challenges has expanded, likely to a point beyond what could have been foreseen when the current structures were created, thus straining the ability of the current domestic authorities to address the many problems arising.

Conflicted Regulators

- 1.32** The constitutional set up of the existing authorities is also inherently conflicted, with the rules of regulation being set by the parties that are to be regulated. In the Premier League for example 14 votes from clubs are required to pass a rule change and in the EFL for a change in regulations to be carried, it must be passed by a majority of votes cast by all member clubs, and at the same time, passed by a majority of the votes cast by all member clubs in the Championship. Understandably, clubs are incentivised to prioritise their own interests rather than taking a long-term view of what is best for the game. One example of this is the EFL's corporate governance reforms. The EFL instructed a leading sports QC to recommend improvements to its governance but did not adopt the recommendations in full with member clubs rejecting fully independent EFL board membership in favour of retaining club appointed directors.
- 1.33** There is also an inherent conflict with an organisation taking disciplinary action against their own shareholders, particularly where that action might have significant negative commercial impact on the organisation. This can disincentivise enforcement action, or even the allocation of sufficient resources to investigation and enforcement functions.

Lack of resource

- 1.34** Even where there are rules in place, the Review has heard that the authorities are under-resourced, particularly when faced with enforcing rules against sophisticated modern businesses. An effective regulatory system should undertake investigation and reach a conclusion in a timely manner; but this is not always the case in football leading to an unsatisfactory situation that suits no-one involved. As noted by the Court of Appeal in a recent judgement relating to a legal action involving Manchester City and the Premier League:

*“ This is an investigation which commenced in December 2018. It is surprising, and a matter of legitimate public concern, that so little progress has been made after two and a half years – during which, it may be noted, the club has twice been crowned as Premier League champions. ”*²⁰

²⁰ Manchester City Football Club Limited v The Football Association Premier League and Others [2021] EWCA Civ 1110

Missed opportunities for reform

- 1.35** In the past, the domestic authorities have had multiple opportunities for reform with little or no progress made. The 2011 DCMS Select Committee's report set out a package of conclusions and recommendations including the creation of a modern, accountable and representative FA Board; the implementation of a licensing framework administered by the Football Association in close cooperation with the professional game; and changes to the decision-making structures within the FA, specifically in relation to the Council.
- 1.36** There was also an expectation following the 2011 DCMS Select Committee's report that the football authorities would agree and publish a joint response setting out the process for how they intend to take forward their plans to address these immediate priorities – this was not produced.
- 1.37** Another example was the unanimous resolution passed by the FA Council in October 2019, which also called on the FA to produce proposals for reform. The resolution stated *'it believes that these failures [failure of Bury and others] indicate that the current financial and governance regulatory framework in the professional and semi professional game needs strengthening'* – this proposal has not been acted on.
- 1.38** In fairness, it should be noted that the domestic authorities have all taken some recent steps to improve the way in which they operate. The National League has undertaken significant constitutional reform by addressing the difficulties in its voting structure. The FA has taken small steps towards a more modern independent board with the creation of two new independent non-executive director roles. The Premier League is working towards reforms of its own constitution by adopting the Wates Corporate Governance principles for large private companies. Further it is understood that the EFL is taking steps to improve its own financial enforcement mechanisms. All these steps are welcome and the authorities are strongly urged to continue the process of reform. However, many of these simple changes have been called for by stakeholders for some time – including the 2011 DCMS Select Committee report some 10 years ago. They still do not go far enough. The problems football is facing are complex and pressing and cannot wait for further reform – which there is no guarantee the authorities will be able to deliver.

Lack of one voice

- 1.39** When the COVID-19 pandemic struck, football clubs stepped up right across the country underlining the deep roots and connection to their communities. Many clubs up and down the country were at the forefront of the response to COVID-19. Many turning themselves almost entirely into community support organisations to help provide practical and moral support. Whilst all this was happening many were internally questioning their own future viability as businesses.
- 1.40** The football authorities' response to the dire financial situation they, and many businesses, found themselves in during the pandemic perhaps best illustrates the different vested interests at play within the game and how they can restrict the ability of the authorities to take unified action. The Government made it clear early on in the pandemic that it was not going to provide specific funding for Premier League and EFL clubs given the billions spent in the transfer window that summer (2020). Despite this, it took until December for the two

organisations to come to an agreement on a financial support package for the EFL. The issue was characterised by one commentator as *'nearly six months of gridlock, uncertainty and bickering with the government'*.²¹

Lack of accountable leadership

- 1.41** The system lacks clearly accountable leadership. As an example, Leyton Orient had stable ownership for many years but was transferred to new ownership, leading to dramatic consequences for the club. Instead of intervening, the EFL maintained that they were “only a competition organiser”, a phrase we heard repeatedly throughout the Review including from Bury fans. And failures of the EFL to intervene during a turbulent period for Charlton Athletic, despite supporter pleas, leading to legal action. Similarly, several fans groups reported to the Review that the FA offered no assistance when they were faced with difficulties threatening the viability of their clubs. It is not clear to clubs and fans if the authorities do not want to or cannot intervene, or if the system prevents them from doing so.
- 1.42** A sub-standard regulatory system has overlaps and underlaps of regulation. Oversight should look across issues and competitions, to deliver for the whole game. But there are varying levels of oversight, including the Premier League, EFL, National League, and the FA. Issues can fall between bodies; the European Super League proposal was an issue without a clear lead body to deal with it. Owners' tests or financial rules have interest from all competitions, although in some instances no clearly accountable body. This is not conducive to good outcomes.

“Football authorities have shown they are either not willing or capable of doing this, particularly league authorities, and therefore change should be forced upon them”

Contributor to Fan Led Review Online Survey

The Need for Action

- 1.43** Some will argue, given the apparent success of English football, why change? The Review has formed the firm belief that our national game is at a crossroads with the proposed ESL just one of many, albeit the most recent and clearest, illustrations of the many deep seated problems in the game. It is at real risk of widespread failures and a potential collapse of the pyramid as we know it. There is a stark choice facing football. Build on its many strengths, modernise its governance, make it fairer and stronger still at every level or do nothing and suffer the inevitable consequences of inaction in towns and cities across the country –

²¹ <https://www.theguardian.com/football/2020/dec/03/premier-league-agrees-bailout-with-efl-to-help-struggling-clubs>

more owners gambling the future of football clubs unchecked; more fan groups forced to mobilise and fight to preserve the very existence of the club they love and inevitably more clubs failing with all the pain on communities that brings.

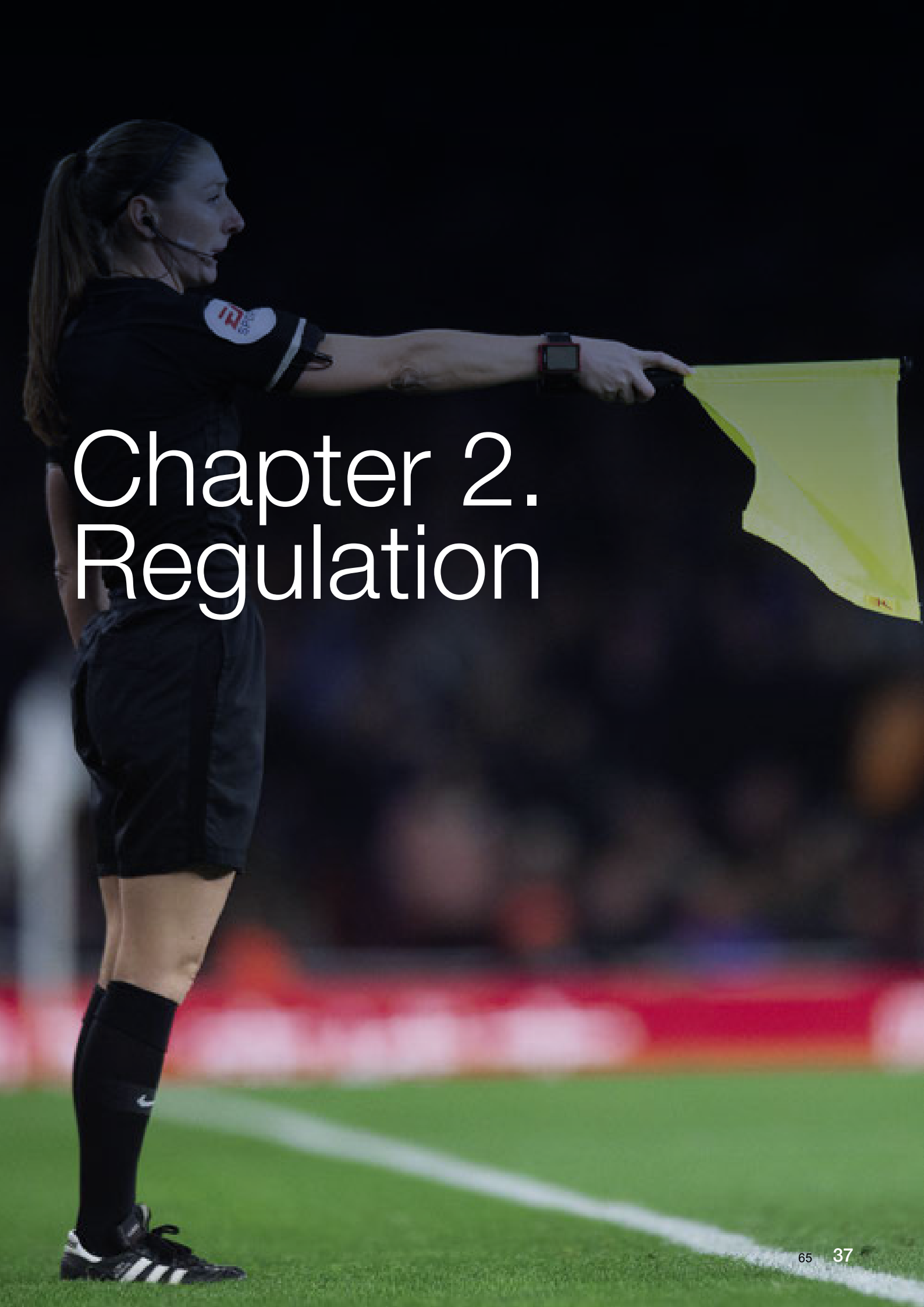
1.44 Action must be taken, and with the previous track record of the authorities not responding to advice there is no evidence to suggest that this time it will be different. The time has come for the Government to take action, that is why a new independent regulator is needed to help fix the rising problems and ensure the future stability of our beautiful game.

Summary

1.45 In summary, the Review has concluded that:

- The men's game is at the financial precipice, because the incentives are driving poor and reckless decision making.
- This is exacerbated because corporate governance in clubs can be poor, there is too often too little diversity of thought and owners can act with impunity, ignoring the interests of fans.
- Added to this, the short term interests of owners and long-term interests of fans are not always aligned.
- The system of regulation in place is poorly designed, there is a conflict of interest as regulations are overseen by those that are regulated, football is unable to act at pace or make changes to its setup and there is a lack of clear regulatory leadership.
- Fans have lost faith in the football authorities.

1.46 It is for these reasons that this Review has concluded that change must follow to ensure the long-term health of the men's game.



Chapter 2. Regulation

Introduction

- 2.1** Chapter 1 has shown a clear problem in football. The Review has concluded that there is a strong case that without intervention, football at many levels risks financial collapse.
- 2.2** Ensuring a long-term and healthy future is possible, but football needs radical reform, with a complete overhaul of the existing approach to business regulation. The Review has considered how best to do this including whether the Government should intervene. The Review started from the point that the bar for Government intervention is high and assessed the alternatives. The Review has considered four alternatives:
- A.** Leave poorly run clubs to collapse and allow the market to resolve issues
 - B.** Allow a football led solution, building on 150 years of self-regulation
 - C.** A co-regulatory approach
 - D.** Independent regulation.

Option A – Leave to the market

- 2.3** If football governance is left as is then there is an existing system for club failures. Clubs either go into administration or, in extreme, liquidation. In fact, the current football system and UK insolvency system have engaged in a number of times.²² The last two years have seen collapses at Bury, Bolton Wanderers, Derby County, Macclesfield Town, and Wigan Athletic.
- 2.4** In an administration, the legally appointed administrator will attempt to keep the club going by resolving or restructuring debts and seek a new owner for the club. League rules also impose some bespoke requirements as compared to an administration in other industries. The highest profile is the ‘football creditors’ rule whereby a protected class of creditors must receive full payment before a club is allowed to continue in the league. In a liquidation, the club is wound up and its assets sold to try to discharge the club’s debts. Ultimately, another club will replace the club in the league. The existing club ceases to exist, though a ‘phoenix club’ can be created in the same community which then restarts at a lower point in the pyramid.
- 2.5** This system generally leads to: non football creditors being repaid a fraction of what they are owed; significant job losses in a club; the club’s best players being sold; a long distressing period of uncertainty for a club’s fans; vulnerability to unsuitable owners looking to take advantage of a club and points deductions impacting the sporting outcome of competitions. In extreme, clubs go out of existence with a devastating impact on local communities. Given the perilous state of the game, and the systemic nature of problems identified, it is not unreasonable to consider that wide scale failures could happen at the same time.

²² At least 48 times since 2000

2.6 Consequently, this approach is deeply unsatisfactory. There are superior options.

Option B – A football led response

2.7 When it comes to the rules of the game, the model of self-regulation has operated for 150 years, having been created at a time when regulation of any kind was uncommon in society. However, society has changed a lot since then, and football itself has changed hugely in the last 30 years. It is no longer just a sport – it is big business. In 1991/92, the revenue of the top 22 clubs was £170 million combined. Premier League revenues were over £5 billion before the pandemic.²³

2.8 The range of issues faced by those overseeing the current regime has correspondingly increased in complexity. The set up of the system, with regulation split across several bodies, is not optimal – a regulator should be thinking about issues in the round and connecting different parts of the regime. The bodies that make the rules lack the clearly defined objectives of a normal regulator. They also have strong commercial interests and are effectively controlled by those that are to be regulated. That is a clear conflict and makes meaningful change hard to achieve.

2.9 The nature of regulation is changing and faces sophisticated businesses, complex market shaping regulation and distributional issues. Original regulations covered team kit, the rules of the game or eligibility of players. However, given the nature of the problems, reform needs to include complex issues like cost controls. This involves designing a system to prevent clubs going out of business while balancing competing factors like avoiding red tape and ensuring healthy competition. These are not the areas of traditional sports governance and to regulate them effectively will need new skills and expertise not currently in the game. The problems to be addressed are not core football regulation addressed by traditional self regulation, but specialist business regulation.

Option C – Co-regulation

2.10 Co-regulation usually involves the industry or professions developing and administering its own rules but with the Government providing legislative backing to enable the arrangements to be enforced.²⁴ This approach can strengthen a self-regulatory system as requirements being enforced are set out in law. While a self-regulation model is in essence a voluntary system, co-regulation can be stronger because of its legal footing.

2.11 A system of co-regulation could be employed in football. However, in this case it is not viable for a number of reasons:

- Problems would remain around the constitutional setup of the leagues and authorities that would enforce this system. These bodies have commercial interests and are made up of the clubs who are to be regulated, both representing a conflict of interest and an unsatisfactory approach to regulation.
- The issue of the current system being overseen by several bodies, who are disjointed and disconnected, with overlaps and underlaps of oversight, still remains.

²³ Deloitte (2021) Annual Review of Football Finance – Databook

²⁴ <https://www.oecd.org/gov/regulatory-policy/42245468.pdf>

- Football authorities would need to come back to Parliament to request new and additional regulation if new issues occur. Legislative change can be slow, therefore this model is slow and lacks agility.
- As with self-regulation new and complex issues are business regulation that sports and football currently do not have experience or expertise.

Option D – Independent regulation

2.12 The terms of reference for the Review specifically included considering calls for an independent regulator in English football. The Review has assessed this option against the three root causes of problems identified in chapter 1:

- the incentives of the game mean clubs are at the financial precipice
- the way clubs are run and the misaligned interests of fans and owners
- the existing regulatory setup is not able to correct problems.

2.13 Finances – Given the dire state of football finances, bold leadership and difficult decisions are needed. Current oversight of financial rules is led by leagues, made up by the clubs that will be regulated. Taking bold decisions and being able to secure support for that change is very difficult. Most importantly, there is a clear conflict of interest between the interests of clubs and their direct or indirect involvement in oversight of the system that regulates them. Independent regulation is the only way to overcome this issue as it will not have a conflict of interest. As a statutory body with a clearly defined purpose an independent regulator will listen to but not be constrained by the voices of clubs, enabling it to effect change in a timely way.

2.14 How clubs are run – If football led, oversight of this issue would be led by the leagues, which are run by the clubs. By definition, this must tip interests in favour of owners. It seems unrealistic that leagues (that would enforce rules) would be able to objectively balance the range of stakeholders in the same manner as an independent body. These are complex issues and an independent regulator should have a statutory objective to look after the interests of fans but also reflect the views of all parties.

2.15 Regulatory setup – The Review has considered best practice in other important industries where a proactive regulator helps shape that industry to deliver good outcomes – for example in financial services. While many of these systems have their own rules and industry codes in a similar manner to football, oversight of the system by a regulator has been a force for good. It is hard to argue that football would not benefit from a regulatory system overseen by an independent body focused on the long-term interests of fans, clubs and the wider game.

2.16 An independent regulator can also be more adaptable and flexible to problems in football. Unlike the other options considered, where regulatory change requires securing a mandate or approval from clubs or the Government, an independent regulator can take a swifter approach to updating regulations – especially on contentious issues. In the other models considered, securing agreement from enough clubs could be difficult. Taking action and enforcing against the biggest and most powerful clubs is an issue in self-regulation (for

example, there may be commercial or political reasons why enforcement is constrained). However, an independent body is free to take action against offending clubs, separate from large or influential clubs.

- 2.17** An independent regulator is a holistic solution. It would involve just one body thinking about a whole football solution to business regulation problems, rather than the current system where problems are thought of in isolation, on a league-by-league or issue-by-issue basis. An independent body would be well placed to see the bigger picture and think across issues and competitions. A system with an independent regulator also avoids duplication of work or the risk of problems falling between bodies. Instead there would be a single, clearly accountable body addressing the identified problems.
- 2.18** As noted above, the problems faced by football and potential solutions involve complex issues of specialist business regulations rather than traditional sports governance. This is a specialist area and an independent regulator could be set up to be more focused on these issues than traditional sports regulators, including the recruitment of staff with skills and experience from regulators in other industries that have faced similar problems.
- 2.19** The Review has therefore concluded that regulation needs to be led by an independent regulator, created by an Act of Parliament. This would mean the system has the strongest legal footing available, with a clear purpose and powers set out as law of England. All of the necessary design features, including clear objectives, flexibility, acting at speed, thinking across issues and avoiding conflicts of interest can be built into the DNA of IREF, through the legislation. In order to regulate clubs, a clear legal footing is needed to ensure compliance with obligations and to avoid challenge. This body would be created with the intention of objectively supporting the industry to a long-term sustainable position, protecting historic civic and cultural assets and allowing football to continue to bring joy to millions of fans every weekend.

Strategic Recommendation (A)

To ensure the long-term sustainability of football, the Government should create a new independent regulator for English football (IREF)

- 2.20** The following sets out what a new regulator should be responsible for and how it would work.

How should IREF operate?

- 2.21** IREF needs to be a modern, nimble and forward thinking regulator. Bold decision making will be key. Leadership and staff will need to be of the highest calibre and IREF should be actively encouraged to use the powers Parliament gives it in order to effect real change.
- 2.22** This can be achieved through a clear objective, a sensible scope and the way it is set up and resourced. IREF should have the flexibility to be able to adapt to issues of the day, using a range of tools and relying on upfront rules, advocacy or enforcement to achieve

its objective. As part of this, IREF should use a collaborative model of regulation, working alongside clubs to deliver good outcomes for the benefit of fans. It should of course impose sanctions where needed, but it may be quicker to work with clubs to solve issues rather than instantly jumping to enforcement or new regulation.

- 2.23** Swift action is also crucial and IREF should have a statutory duty to operate in a speedy way. It must be evidence driven, proportionate and only intervene when necessary. These are all principles of good public policy and are complementary with better regulation best practice. This can create a world-class body that will be helpful to industry as a whole and maintain the stability of the game for the benefit of fans and communities.
- 2.24** As discussed below, IREF will also need to be accountable: to fans, communities, clubs and to Parliament. It should be given clear measures of success. It must also demonstrate value for money and achieve its goals while balancing its operating costs.

Footing and set up

- 2.25** IREF should be the independent regulator of English football, established in statute. Independence means operations and decision making are independent from the Government and political interference. IREF should also be independent of the FA, the Leagues, and the football clubs that will be regulated.

IREF's objectives

Primary objective

- 2.26** IREF will need a clear statutory objective, which the IREF board and employees would need to achieve. A clear remit sets its purpose and dictates to the board and its employees what it is trying to achieve, how it should assess any given problem and the outcomes it should deliver. It is absolutely crucial to both the operations and the future success of IREF.
- 2.27** The objective set for IREF needs to tackle the problems identified and also dictate what it is aiming to achieve. The Review has heard evidence of a number of problems as set out in chapter 1, including poor management of clubs, sub-standard corporate governance, a lack of fan involvement in key decisions, unsustainable financial gambling and costs that have spiralled out of control. The long-term health of football is under threat. Any objective should be seeking to resolve these issues.
- 2.28** This is a fan-led review and football is clearly not always working in the long-term interests of fans. The Review has also heard considerable evidence of the benefit that football clubs provide to local communities. The Review has already demonstrated the important role football plays for fans and local communities. For these reasons, the objective should include acting in the interests of fans and communities. There is no one else more important.
- 2.29** As will be discussed in chapter 3 on financial regulation, thinking about some of the policy issues in isolation will lead to poor outcomes. Accordingly, competitiveness of, and within, English football should also be a part of the objective of IREF. IREF should be tasked with

thinking dynamically about the way the industry operates, and not solely focus on one issue. This should allow investment to continue to flow, our teams to do well in international competitions and to keep English football as the world's premier club competitions.

Recommendation 1

IREF should have a statutory objective of ensuring English football is sustainable and competitive for the benefit of existing and future fans and the local communities football clubs serve. It should have further duties to promote other aspects of the game.

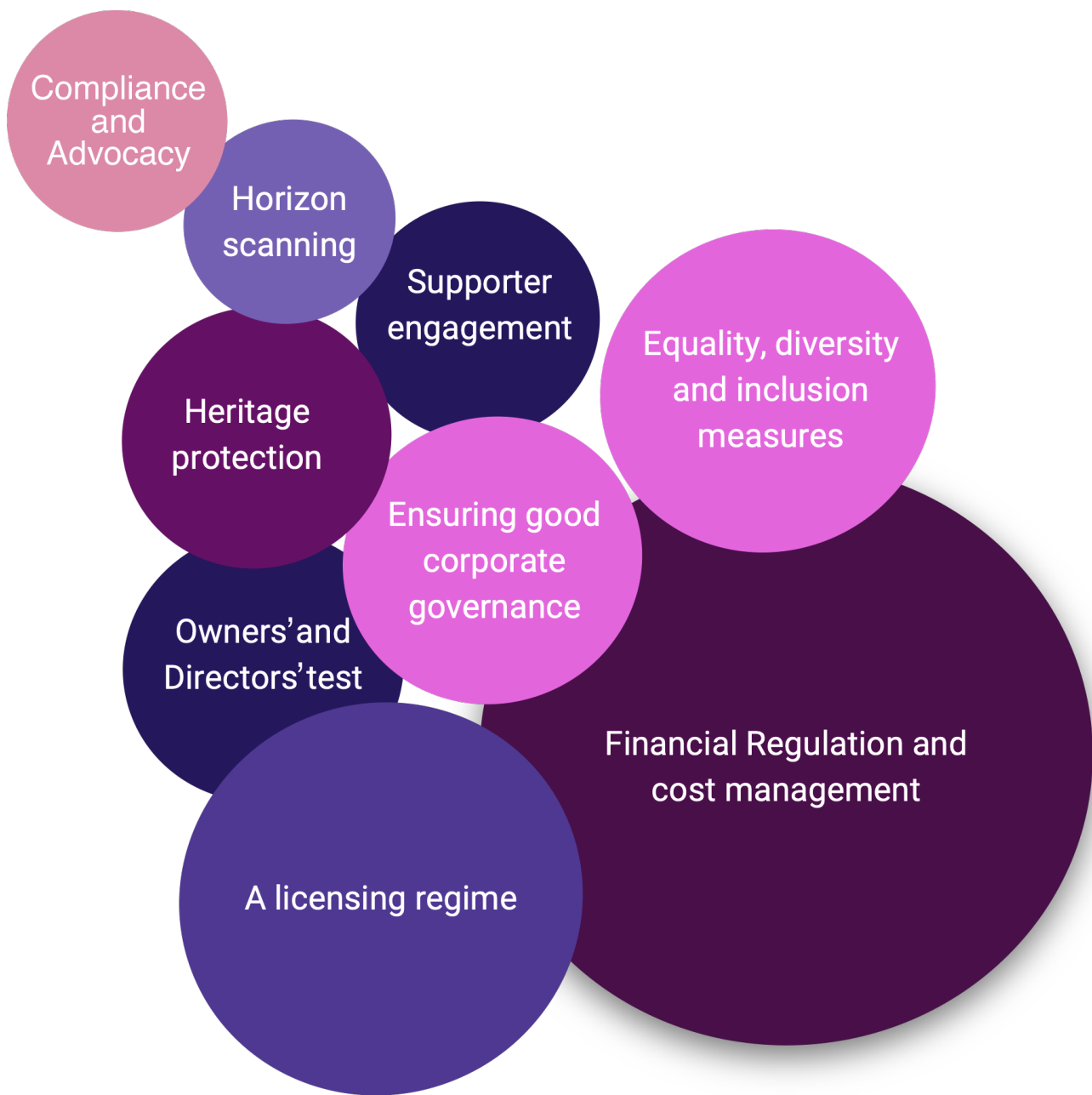
Duties

2.30 It is common practice for regulators to have duties, and IREF should be no exception. These are secondary objectives that regulators must take account of in exercising their functions. For IREF, duties would include (but not be limited to):

- A duty to assess, report and act on the health of finances in football and on distributions and flows in the game.
- Having regard to English football's position as the premier global location of domestic football.
- To undertake its work in a timely manner.
- Ensuring equality, diversity and inclusion is a key part of the set up of clubs.

The scope of activities

2.31 Based on the problems identified by the Review, the initial focus of IREF should be on financial sustainability requirements. More detail on this is discussed in chapter 3. This should include measures on finance but also to try to improve decision making by clubs by implementing measures such as good corporate governance and improved diversity. Through the licence regime referenced below, IREF will ensure clubs only play in FIFA, UEFA and FA sanctioned leagues. The diagram below shows the activities IREF would oversee.



2.32 It is also important to be clear on issues that are out of scope. IREF should be focused on addressing the problems identified in the Review and ensuring a future for the game. The proposed objectives for IREF would mean that it should not be responsible for matters related to commercial decisions of clubs or sporting matters such as the rules of the game. While it is a legitimate area of significant interest to fans, IREF should not set the level of ticket prices or merchandise prices. These are commercial decisions that clubs should be free to make. The system is only concerned with activity by clubs that presents a risk to sustainability of a club or the game, or compromises IREF's ability to meet its statutory objective. The rules of the game are and should remain for the national and international associations and organising committees.

Licensing

- 2.33** IREF will need a way to give regulation effect. The Review has concluded that the new system should be delivered through a new licensing system, administered by IREF. Introducing a requirement for a club to have a licence creates a mechanism for IREF to enforce its requirements on clubs, as well as giving it flexibility to introduce requirements tailored to address the problems identified in the industry as well as to adapt them over time as the landscape changes.
- 2.34** Under this system, any football club playing in professional men’s football, i.e. Step 5 or above of the football pyramid (the Premier League, English Football League or National League) will need IREF to grant a licence to be able to operate. This is the level of the game that substantively is professional and the regime does need limits. Further, it is likely that compliance burdens would be disproportionate for semi professional teams, below level five in the pyramid.
- 2.35** It is envisaged that the club will be the licence holder. Clubs will need to apply for a licence and confirm annually that they are compliant with their obligations. Non-compliance with these licence conditions could lead to a range of sanctions.
- 2.36** The proposed model would mean that IREF creates a series of licence conditions that would need to be adhered to, with the intention of achieving a sustainable future for the game. These licence conditions would seek to address the key problems identified in the game, which could of course evolve over time.
- 2.37** Other models such as a statutory code of conduct or prescribing detailed obligations for clubs in legislation are inferior. They are slow to respond to new and emerging issues; any response to a new issue would need legislative change to give effect, which can take years. Such models favour a one size fits all approach and are highly prescriptive whereas in contrast a licence condition could be drafted with simpler obligations for smaller clubs. Therefore, to meet the goal of a nimble and bold regulator, the Review thinks a more flexible licensing regime is best.
- 2.38** As part of this flexibility, IREF should be able to amend licence conditions over time in order to respond to any changes in the football industry. It should be able to create new licence conditions after consultation with the industry, if it deems necessary in order for it to meet its statutory objective. It should also be able to remove licence conditions if they are no longer necessary. Licence conditions should only be included or removed if necessary to IREF achieving its statutory objective. There will also need to be an appeals mechanism for regulatory changes or decisions like licence changes (or enforcement). Appeals should be designed to be swift but avoid undue claims or swamping of IREF.

Recommendation 2

In achieving its objectives, IREF should utilise a licensing system under which each club operating in professional men’s football, i.e Step 5 level (National League) or above would be required to hold a licence to operate, and be subject to various licence conditions. Licence fees should be based on a sliding scale of broadcast revenue.

Enforcement, powers and advocacy

- 2.39 Within any regulatory system, there needs to be a way of ensuring compliance with rules and regulations. When football clubs are suspected of breaching a licence condition, IREF should intervene to stop and turnaround poor behaviour and/or open an investigation which could result in sanctions to penalise clubs/owners.
- 2.40 Given the difficulties that the existing authorities have faced in investigation and enforcement, as well as the current risks to football’s long-term health, it is clear that IREF must have significant investigatory and enforcement powers. Without this threat, problems will get worse, not better. However, investigations and sanctions are not the only compliance mechanisms. It is common practice in many regulators to practice ‘advocacy and compliance’ at an early stage, i.e. working with clubs to steer them to good behaviour.
- 2.41 The table below sets out the three key parts of the regime and our vision for how suspected issues in the industry should be resolved.

Table 2: the three stages of investigation

| | | |
|----|---------------------------|---|
| 01 | Advocacy and compliance | <ul style="list-style-type: none"> • Enforcement is not always the most effective solution • This is a new regime and will need a bedding in period • IREF should work with clubs, steering them to be compliant, when possible • It would help them understand obligations/best practice |
| 02 | Investigation | <ul style="list-style-type: none"> • When advocacy doesn’t work or isn’t appropriate, investigations will be needed • Information gathering powers are needed to build robust legal cases • Statutory timetable - ensuring timely conclusions |
| 03 | Enforcement and Sanctions | <ul style="list-style-type: none"> • Choosing the right penalty is hard • Guiding principle of avoiding impacting on fans, where possible • Include fines, points deductions, transfer bans, individual sanctions and in the most extreme IREF administrators |

2.42 Powers – In order to be effective, IREF will need strong investigatory powers and the following prerequisites:

- IREF regulations/licence requirements have to be adhered to.
- IREF will be able to demand proportionate information from clubs, to assess compliance. Information must be provided in a timely way and be accurate, with legal mechanisms for IREF to obtain information even if a club is reluctant or not cooperative.
- IREF should have interim powers for suspected licence breaches in order to immediately stop or alter particularly heinous actions by clubs, pending an investigation. This will, of course, need appropriate checks and balances.

2.43 Investigations – IREF should have a statutory timetable for investigations to ensure penalties are applied as quickly as possible. Licence holders would not be able to act in a way to frustrate this statutory requirement. A licence breach will need to be clearly demonstrated, to a high legal and analytical standard, consistent with administrative models of investigatory work in other regulators.

2.44 Sanctions – If a club is found to have breached its obligations, sanctions will be needed. The Review has considered this issue and concluded that wherever possible, sanctions should avoid penalising fans of affected clubs, but instead ownership and/or management. If sporting advantage has been gained, other sanctions should be available. IREF should publish guidelines on how it would make an assessment of the relevant sanction, driven by a guiding principle of avoiding sanctions which unfairly affect fans, wherever possible.

2.45 Sanctions are the deterrent effect to non-compliant clubs and the ‘teeth’ of the regime. IREF should have a range of sanctions including:

- Compelling/ordering a club to stop non-compliant behaviour or forcing a club to meet its obligations.
- Compensating those that have been adversely affected.
- Reputational regulation – e.g. naming and shaming.
- Fines.
- Points deductions (and relegations).
- Transfer bans.
- Individual sanctions against owners and directors, including bans from involvement in football.
- At the most extreme end, owners could be forced to pass stewardship/control of certain decisions within a club, to an IREF appointed administrator.

2.46 Decisions – Case work and enforcement are complex and will require specialist expertise. As is the case with other regulators, an independent panel of experts should be appointed to decide on contested cases, both on whether a breach has occurred and the level of any sanction. This would call on experts from the finance, legal, economics and football industries.

Recommendation 3

IREF to operate a system of advocacy to help clubs comply with rules, but also have strong investigatory and enforcement powers.

The board, operations and governance

- 2.47** IREF will need a board and a chair. It is recommended that the chair and board would be appointed by a panel of experts, itself separate from the Government. Rules in sport mean that authorities should be outside the scope of government influence – hence the need for this separation. IREF’s board would make decisions that deliver its objectives. The board should be independent of clubs. It should have a range of expertise, from a range of industries, with outstanding expertise of successfully working on boards. As the national governing body of English football, observer status for the FA on the IREF board should also be considered.
- 2.48** IREF’s board will need to be accountable for its actions, decisions, how it operates and for providing value for money. IREF will be accountable to Parliament, and the Digital, Culture, Media and Sport Select Committee should meet the IREF Chair and or Chief Executive at least once a year. This will include an assessment of operational performance and value for money.
- 2.49** IREF should publish an annual report setting out its operational and financial performance for the previous year. This report should set out its performance in achieving its statutory objective. IREF should have specific quantified performance measures that all stakeholders can hold it to account to.

Recommendation 4

IREF should have a chair and board with expertise from a range of industries, appointed by a panel of experts separate from the Government. The FA should have observer status on the IREF board.

Recommendation 5

IREF should publish an annual report setting out its operational and financial performance for the previous year and be accountable to Parliament, meeting with the Digital, Culture, Media and Sport Select Committee at least once a year to review its operational performance and value for money.

Staff and expertise

2.50 IREF will need staff with a range of expertise at all levels of the organisation. This will include people with a deep understanding of the football industry and how clubs are run. Understanding of company finances, corporate governance and sector regulation will also be essential. In addition, expertise in financial services, accountancy, policy and economics will be needed. IREF will need legal staff as well as staff with expertise in regulation, enforcement and casework. Knowledge and experience of licensing regimes, including granting licences, will be necessary. To maintain independence we recommend that IREF staff are not civil servants which also allows more flexible recruitment.

Location

2.51 There are benefits and challenges of creating IREF as a new standalone body or within an existing body. If it was part of, or incubated in, an existing body it would receive welcome initial support in establishing itself. It could call on expertise and back office support to help its success. However, it is not clear which other body IREF could be located in due to the range of issues in its remit, though perhaps the Financial Conduct Authority (FCA) comes closest.

2.52 Within football, as has been noted, the leagues are run by their clubs, who vote on key issues. Due to the risk of regulatory capture, the need for sensitive work away from those that are regulated and the importance of full independence, it is not credible that those that are to be regulated would house and run IREF.

2.53 The Review has considered whether there is a role for the FA to either become or house IREF in the short term. As set out in the letter to the Secretary of State which presented the interim findings for this Review, the FA might at some point be a suitable location for IREF. This is part of the reason that the Review has recommended that the FA have observer status at the board of IREF. However, the Review has concluded that this is not appropriate at this time. It is important that IREF is free to make the tough decisions the proposed new regime will require, free from pressure from clubs and interests it would be regulating. The existing constitutional setup of the FA would not allow this.

2.54 In addition, the FA's current constitutional and governance arrangements inhibit the FA's ability to effect change, for instance in those matters where the FA Board can be overruled by the FA Council. The FA Council, committee and shareholder set up is archaic and not sufficiently reflective of the modern game, or fans. More importantly, the FA Board itself retains a majority of professional game and national game representatives (with a former Premier League CEO also retaining observer status). The addition of two additional independent non-executive directors and appointment of Debbie Hewitt as Chair is a welcome step but these changes still do not deliver a majority of independent non-executive directors on the FA Board. The constitution and governance of the FA needs significant further reform to allow the independent and timely decision making necessary for IREF.

2.55 The FA has also not played a significant role in directly regulating many of the matters proposed to be covered by IREF at club level. Whilst it has powers to authorise competition rules, it does not set the rules of professional leagues nor have the ability to impose rules

on the leagues that it considers in the best interests of the game. The rules of the FA (Rule B) that relate to competition authorisation have been strengthened recently and this is welcome. However, the reform needs to go much further if there is to be confidence in the FA as a potential independent regulator.

- 2.56** Finally, because the FA has not played a direct role in most of club regulation it is questionable if its current regulatory resources and mechanisms are anywhere near sufficient. There would need to be a huge investment in the regulatory function, and large scale recruitment of staff with experience of (economic) regulators to enable the FA to handle the complex issues of business regulation that it is proposed will be addressed by IREF.

Funding

- 2.57** It will be a matter for the Government and industry to determine the costs of introducing IREF. After it is established, it will need to be funded sustainably and it seems most logical that the industry which will benefit from the introduction of IREF should pay the costs. Accordingly, it is recommended IREF should calculate the licence fee based on a sliding scale of the value of revenue received by a club from broadcasting. Each club in the same division will pay the same fee, with clubs in leagues that earn more broadcast revenue paying a higher proportion of the running costs of IREF. The majority of these costs will fall on Premier League clubs, but the Review does not expect the cost per club to be excessive – especially relative to the important role this new body will have. Fines and revenues from enforcement of the regime could be used to offset some of IREF's operating costs.

Shadow Regulation

- 2.58** The new regulatory regime is likely to be a step change for football. It will introduce new ways of operating and new obligations. In order for IREF to become operationally functional as soon as legislation receives Royal Assent, it should be set up in a non-statutory form before legislation is complete. Some initial funding may be needed to be provided by the Government in order for the system to be operational as early as possible
- 2.59** The Government should seek a world-class interim leader for IREF and start recruiting staff, ahead of legislation. This new unit would work with clubs, leagues, fans, other regulators and bodies like UEFA to build its capability and expertise. It should start developing interim advice and guidelines on the new regime, how it would work in practice and best practice. Where possible, it could also start to implement and run aspects of the regime, where it can seek agreement from clubs.

Recommendation 6

IREF should be set up in a shadow form, working with the industry to ensure it is operationally functional as soon as legislation comes into force.

Chapter 3. Financial Regulation

Match N

GROUN
ADMISSION PRIC

ADULTS £10

CONCESSIONS £5.

JUNIORS
(UNDER 16) £2.0

MAIN STAND
TRANSFER £2.0

“No club should be allowed to go out of business. They should be protected like a graded building. Football means so much to communities and to see a club like Bury disappearing is an absolute tragedy”.

Contributor to Fan Led Review Online Survey

Introduction

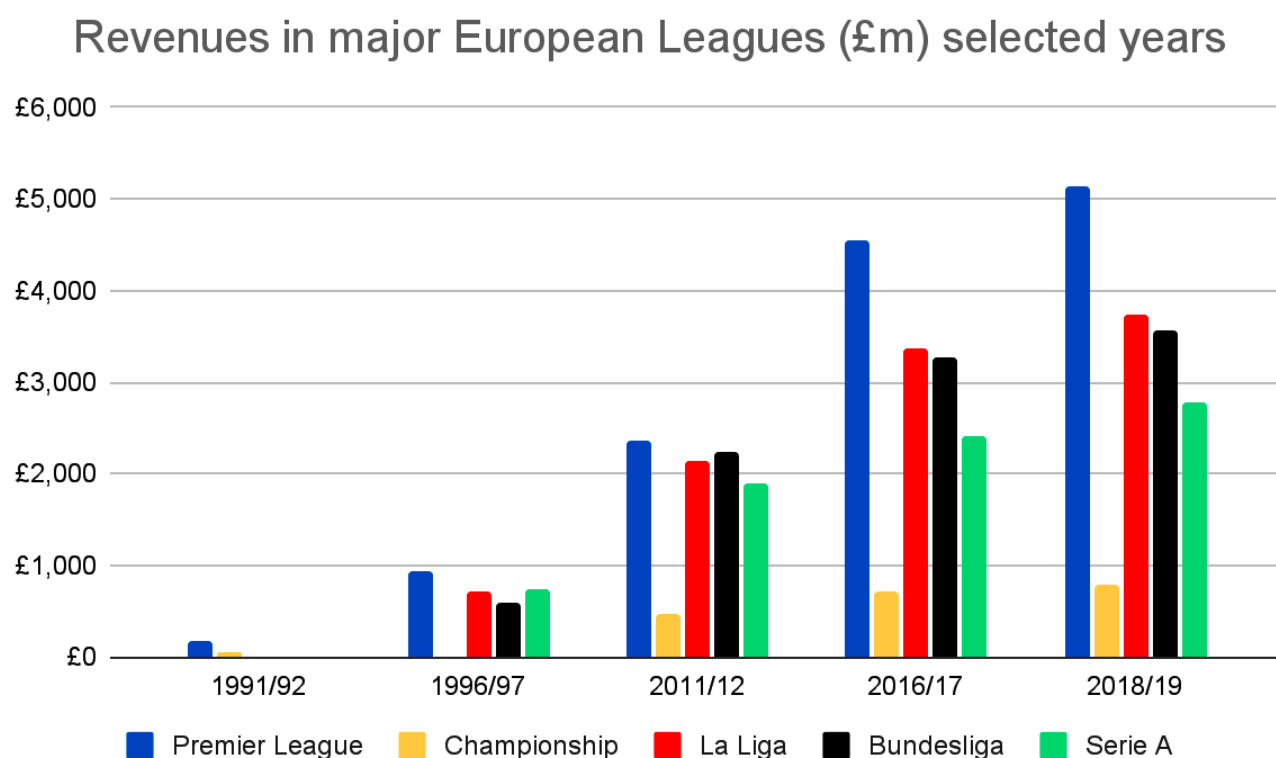
- 3.1** In many ways football is the same as it has always been. But one of the biggest changes in football, particularly since the inception of the Premier League, has been the financialisation of the game. Money is now crucial to success. It allows clubs to invest in training facilities and academies to develop better talent. It allows clubs to invest in their stadiums to allow more fans to watch games in good, safe, and accessible facilities. It also allows clubs to invest in their playing squad and improve fortunes on the pitch. Whether we like it or not, finances are a central part of football.
- 3.2** As the Review concluded in chapter 1, large numbers of football clubs are at a financial precipice and without intervention dire consequences will follow for fans, players and the local communities that clubs serve. This has led to industry analysts stating that club finances are *‘fragile and highly operationally geared’* which has been only further *‘exposed by revenue losses caused by COVID-19’*.²⁵ A long-term, sustainable solution is needed.
- 3.3** As set out in chapter 2, oversight of solutions and a financial regime needs to be independent, avoiding vested interests. Tough decisions will be needed, away from undue lobbying and the ability to be radical will be crucial. And it will need to be done in a joined up way, alongside wider reforms. The introduction of IREF gives an opportunity to do this and to address the financial problems of clubs. A key focus of IREF’s licensing system should be to introduce conditions which provide a solution to the fragility of club finances.

The Financial Context

- 3.4** English football generates significant levels of income. Its financial performance has been a great success far out-performing our international comparators.

²⁵ Deloitte (2021) Annual Review of Football Finance

Chart 2: Selected revenue generation of European football leagues

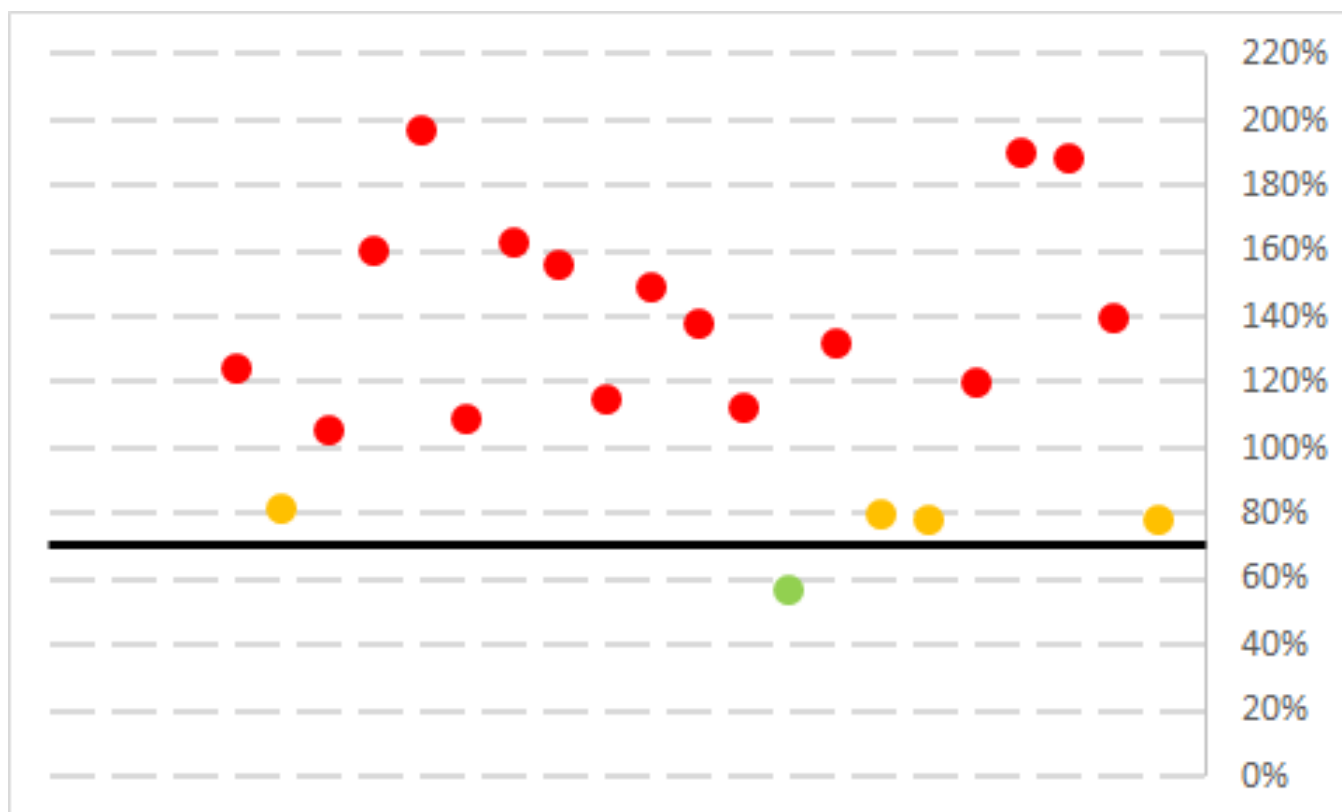


Source: Deloitte, Eurostat, DCMS analysis. No data for European leagues 1991/92

- 3.5** Despite football's ability to generate huge sums of money, the finances in parts of the game are in a perilous state. In chapter 1, the Review has shown just how stark these figures are.
- 3.6** Evidence to the Review showed that the biggest cause of these financial problems is out of control costs at almost every level of the game. This is mainly driven by player wage costs. UEFA considers that for clubs to have a chance of breaking even, total wages as a proportion of turnover should not go above 70%. However, in the Premier League this rate is 73% on average. Outside the 6 teams with the highest turnover, it is 87%. In the Championship, it is even worse, at 120%. The chart below shows for 2019/20 the turnover of Championship clubs as a percentage of turnover. The axis is set at UEFA's recommended maximum ratio of 70%. Only one club was below that level, and it was in receipt of parachute payments. Sixteen were spending more just on wages than they received in revenue. Seven were above 150%.²⁶

²⁶ Deloitte (2021) Annual Review of Football Finance

Chart 3: Championship club wages as a percentage of turnover 2019/20



Source: Deloitte

The current system of regulation and oversight

- 3.7** Many sports have cost or financial regulations. The Premier League and Championship have a system called ‘*profit and sustainability*’ rules. EFL League One and League Two use a different system called salary cost management protocol, capping wages as a proportion of turnover.²⁷
- 3.8** Under profit and sustainability rules, clubs are allowed to incur a certain level of losses over a three year period, dependent on their league. Not all of a club’s expenditure counts towards their profit and sustainability under existing rules; for example, stadium investment is not included in the calculation. The rules apply differently to the Premier League and Championship:
- Premier League clubs are allowed to incur £105 million of permissible losses on a rolling three year period.

²⁷ <https://www.efl.com/-more/governance/efl-rules--regulations/efl-regulations/appendix-5-financial-fair-play-regulations/>

- Championship clubs are allowed to incur £39 million of permissible losses on a rolling three year period (though clubs who have spent part of the period in the Premier League are permitted higher losses).

- 3.9** In addition, clubs entering European competitions must comply with UEFA's rules. Under UEFA's current system, clubs are limited to losses of €30 million over three years, although clubs can spend as much as they like on infrastructure. UEFA is currently consulting on changes to its regime, including requirements around club balance sheets, capping salary costs as a proportion of turnover, and potentially a luxury tax imposed on clubs spending over a set limit.
- 3.10** The Review has concluded in chapter 1, as have many in football, that the existing approach is clearly inadequately constraining reckless financial spending. The current regime of financial regulation is not forcing clubs to act in a long-term, sustainable way; clubs can gamble up to the point where they are at financial ruin and before the current rules kick in. Clubs have also been able to find novel ways to circumnavigate the rules, for example selling stadiums and leasing them back. Owners can walk away and leave a club in a dire financial state. And enforcement and deterrence are minimal, with action slow to conclude or non-existent. The rules and regulations need to change.
- 3.11** The Review has looked at the evidence, taken representations from all parts of the industry and considered the existing system and bodies. This includes experts in economic regulation and detailed, expert advice from members of the Supervision team at the Financial Conduct Authority (FCA). As a consequence, many different models of regulation and how they would be implemented have been considered.

The objectives of financial regulation

- 3.12** To get costs under control and do financial regulation well, lessons can be taken from other industries where there is a substantial body of literature on how to achieve good outcomes in a market. While those industries are often concerned with price or allowable revenues, there is still significant relevance to intervening on costs. In the context of football, any financial regulation needs to consider and balance five important factors:
- a. ensuring long-term financial stability.
 - b. avoiding monopolisation of leagues.
 - c. international competitiveness.
 - d. minimising burdens on clubs or an expensive system.
 - e. ensuring compatibility with other rules (for example UEFA).
- 3.13** **Ensuring long-term sustainability** – this ensures that clubs, at all levels, have a long-term future. This is the core problem evidenced to the Review and was at the heart of the original reasons for it. It is therefore the most important objective for financial regulation in order to secure the future of the game, though the Review considers that approaches meeting multiple objectives are possible.

- 3.14 Avoiding concentration of power by one or two teams** – healthy in-league competition brings excitement to fans and retains interest in the league. Regulation could lock in incumbents, leading to further dominance of English football or closing off improvements for aspirational clubs. It could also mean the same clubs are promoted and relegated each season throughout the pyramid.
- 3.15 International competitiveness** – English clubs are successful internationally and this should be retained, where possible. Clubs should continue to be able to compete to attract and retain the best talent, relative to their international competitors. To fans of the largest clubs, this is among the most important considerations, though it is unsurprisingly less important for fans of clubs lower down the pyramid. UEFA's actions, including its own cost control regime, will also have a role in influencing international competitiveness.
- 3.16 Business burdens** – any regime should avoid being unduly burdensome and costly to those it is regulating. Otherwise, it adds unnecessary costs and reduces the impact of the intervention.
- 3.17 Compatibility with other systems** – any regime needs to be consistent with or complementary to other regimes. If requirements on Premier League clubs were at odds with UEFA requirements, then the intervention will not work.
- 3.18** All these factors have been carefully considered. However, the biggest issue seen by the Review, and the biggest threat to the future of English clubs and the heritage they embody, is about costs and sustainability. Therefore any regime should prioritise long-term sustainability and cost controls.
















Strategic Recommendation (B)

To ensure financial sustainability of the professional game, IREF should oversee financial regulation in football.

Assessing different approaches to financial regulation

- 3.19** As has been noted above, financial regulation is common across many sports. The Review has spoken to a number of experts and assessed a number of existing approaches to financial regulation in sport.
- 3.20** The table below shows our assessment of some of the different approaches to financial regulation in sport. As UEFA is currently finalising its reforms we have not included compatibility as a criteria in our assessment.

Table 3: Assessment of the effectiveness of existing financial regulation in sport²⁸

| Type of regulation | Financial sustainability | International competitiveness | Domestic competitive mix | Avoidance of red tape/ cost effectiveness |
|------------------------------------|---|---|--|---|
| Profit and sustainability |  |  |  |  |
| Fixed salary cap |  |  |  |  |
| Fixed salary cap with a luxury tax |  |  |  |  |
| Wages capped relative to turnover |  |  | |  |

3.21 Profit and sustainability rules have clearly not succeeded in promoting sustainability across the Premier League and EFL. Reform and better enforcement might improve these rules to the extent that they are able to promote sustainability. However, there are no guarantees that this reform or enforcement would happen due to the concerns about the ability of this system to operate in a holistic, non partisan manner in the best interests of the overall game. The other weakness in this approach is that clubs could effectively continue to spend to the point they run out of money. There is no buffer in the system, if say, an owner pulls funding without needing to pre-fund long term commitments to cover expenses that might be beyond the means of a club.

3.22 A fixed salary cap is common in American sports. This approach would aid the competitive mix of English football and because it only requires an assessment of costs, may be relatively easy to administer. However, this approach could simply shift spending to transfer fees, with selling clubs knowing buying clubs were cash rich. Internationally, it may also put English clubs at a competitive disadvantage.

3.23 A fixed salary cap, combined with a luxury tax is the approach used in Major League Baseball. Clubs are limited in what they spend on player costs, but are allowed to go above this cap if they pay an additional tax to the benefit of its competitors. However, as with the fixed salary cap, this approach may just encourage spending on transfer fees and it may simply entrench dominance of the very wealthiest clubs who can incur the luxury tax costs. Profligate owners would have no constraint on continuing to spend, undermining long-term sustainability and incurring additional tax costs as they do so. The system could also be burdensome as calculating the cap, the tax and administering the system would be challenging.

²⁸ More footballs means the system is better at meeting the objective

3.24 Capping wage costs as a proportion of turnover has some merit, and a variant of this is currently in place for Leagues One and Two. It is likely the option that most entrenches dominance of the richest clubs in a division. In this instance the clubs with the largest turnover will be able to spend highest on its team, leading to dominance on the pitch. Success will lead to more prize money and sponsorship, thus increasing their turnover and amount the club can spend on wages, therefore perpetuating the cycle. That said, if the turnover of clubs is more even, and as a measure to get costs under control, this approach could effectively ensure sustainability.

Proposed Capital and Liquidity financial regulation

3.25 An advantage of a Review such as this is the freedom to consider different approaches in trying to reform how football finances work, to get costs under control, for the benefit of the long-term health of the game. The Review spoke to a range of industry, academic and technical experts as well as experts from other industries. This has included the FCA, which has provided invaluable advice that has shaped the preferred approach to financial regulation. The approach below delivers the best mix of sustainability, domestic competitive mix, international competitiveness and minimises burdens.

3.26 At a high level, the proposed system is based on capital and liquidity requirements used by the FCA and the financial resilience supervision model also operated by the FCA (similar rules are used by the Prudential Regulation Authority). At its core, this is a relatively simple system. Clubs would work with IREF to ensure they have adequate finances and processes in place to keep operating. Firstly, clubs would be obliged to ensure they have enough cash coming into the business, control of costs, and suitable processes and systems to ensure the sustainability of the business. Clubs would need buffers in place for shocks and unforeseen circumstances. IREF would look at clubs' plans, conduct its own analysis and if the club plans are not credible, does not have enough liquidity, costs are too high or risk not accounted for properly, IREF would be able to demand an improvement in finances (e.g. inject some cash into the business or lower the wage bill) and ultimately have the necessary powers to force the club to do so.

3.27 This is a proven model that can accommodate organisations of many different sizes in a flexible manner and without imposing a disproportionate administrative burden. Further, the proposed approach seeks, by placing the onus on clubs, to drive good behaviours at clubs by forcing them to think through financial requirements and risk management. It should ensure financial sustainability of clubs, allow for investment and support competition. Unlike other models, it offers clubs significant flexibility. On the other hand, the proactive engagement between clubs and IREF would mean that issues are identified early and intervention is made long before the club is at risk of collapse.

3.28 The following is not intended to settle the detailed requirements of the proposed system. Regulation is needed that adapts to the nuances and specifics of football. In order to get the individual requirements right, IREF will need to undertake detailed consultation with the industry.

Recommendation 7

The Government should introduce a financial regulation regime operated by IREF based on prudential regulation.

Overarching requirement

- 3.29** The overarching purpose of the proposed system will be for IREF to impose a licence requirement for clubs **to have adequate financial and non-financial resources** (e.g. cash in the business and processes or risk planning) in order to meet their committed spending and foreseeable risks.

Capital and liquidity requirements

- 3.30** In demonstrating adequate financial resources, clubs would be required to hold sufficient capital (in order for the club to be able to absorb losses or respond to shocks) and liquidity (in order for the club to be able to operate and meet its obligations). This can come from its normal business operations, or from a subsidy from owners. Clubs would need to demonstrate that they have the required cash and this cannot be pulled out of the business.
- 3.31** It is important to note that any requirements will relate to the financial resources of the English or Welsh incorporated company that is the member of the relevant league. It will be a requirement that capital and cash be held in the local entity that holds the licence without the club owner and/or other companies being able to withdraw cash.
- 3.32** In outline, the proposed system for development will be as follows:
- a.** The cash and capital requirements will be assessed on an individual club basis. Each club will be required to submit documentation setting out its planned income and expenditure, business plan, as well as the risks considered by the club and its plans for managing such risks. This will propose capital and cash requirements for an appropriate period of time set by IREF.
 - b.** IREF will review the documents submitted by the club and if this identifies a problem, or IREF considers that a club has been too optimistic in its projections or cavalier regarding risk, then IREF will have the power to impose remedial solutions, including increasing capital and/or cash if IREF considers necessary.

Owner Subsidies

- 3.33** One of the most difficult issues to deal with is the question of owner subsidies. There are examples within the English game where wealthy owners have transformed clubs into champions (Manchester City and Chelsea) or even allowed a smaller club to operate above

its natural means to the benefit of its city and supporters (Brighton & Hove Albion). The openness to investment and opportunity for development of clubs is generally perceived to make English football attractive for investment.

- 3.34** On the other hand, the many clubs where owners have ceased to be willing or able to continue to fund losses have encountered deep difficulties. As noted in the report of the independent QC into the failure of Bury:

*“the real cause of Bury FC’s collapse is the fact that Clubs are able to fund player wages not just from normal operating income but by means of cash injections from their owners. This can make Clubs completely reliant on owner funding to remain competitive on the pitch. If such an owner becomes no longer ready, willing and/or able (for whatever reason) to provide such funding, the Club is inevitably plunged into deep financial crisis. In such cases, unless a new owner comes along with sufficient funding to meet the Club’s commitments, there is nothing that the EFL can do to save the Club.”*²⁹

- 3.35** Further, even where an owner is able to continue to fund an individual club, the activities of that club may cause disruption at other clubs as they overspend in order to compete. This will ultimately inject wage inflation, destabilise football and it is questionable whether or not a credible regulator could allow this.
- 3.36** The proposed approach of setting capital and liquidity requirements based on the club’s plans will allow clubs to invest utilising owner funding but will reduce the risk involved in reliance on owner funding. A club will be able to invest in order to seek to improve its competitive position but this will no longer be gambling with a club’s future. For a club to do this, money will need to be in the club upfront and committed.
- 3.37** The most difficult question is whether or not there should be a limit on the amount of money an owner can inject. If there is no limit, a club would be able to grow rapidly but at risk of destabilising other clubs, injecting inflation as others are forced to invest to try to compete with the growing club. If a limit is imposed the opportunity for short term club growth would be limited and English clubs may be less attractive for future investment.
- 3.38** On balance, due to the fragile state of club finances, the Review considers that IREF should have a proportionality mechanism when assessing owner injections. In outline, this would involve a limit being set on the level of owner subsidy based on the size of a club’s existing finances (which would grow over time if the investment was successful and the club grew).

²⁹ <https://www.efl.com/siteassets/image/201920/governance-reviews/bury-review..pdf--adobe-acrobat-pro.pdf>

In addition, if the activity of one or a few profligate clubs is objectively assessed as being destabilising to the long-term sustainability of the wider league, IREF would be permitted to block further owner injections on financial stability and proportionality grounds.

Recommendation 8

IREF should have a proportionality mechanism managing the level of owner subsidies based on the size of a club's existing finances or if owner injections at one or a few clubs is destabilising the long-term sustainability of the wider league.

Real Time Financial Monitoring

- 3.39** IREF will monitor compliance with a club's financial requirements throughout the licence period on a real time basis. This will involve regular filings by the clubs during each season which will be monitored by IREF.
- 3.40** In the event that this monitoring shows any reasons for concern at a club, IREF will have powers to gather information, engage with the club to improve its position and address problems at an early stage. In the event that IREF and the club are unable to agree solutions, IREF will also have powers to force the club to take remedial action to improve its financial situation and/or prevent the club from worsening the situation by, for example, spending further money on new player acquisitions.

Risk Planning and Transition Plan

- 3.41** The fourth element of the proposed new system will be a requirement for each club to undertake and implement planning for business risks. This will include a requirement to provide 'stress tests' to IREF (i.e. reports as to the impact on a club's business of certain negative scenarios) and to have a 'transition plan' which is agreed with IREF. The transition plan would be a plan for the most extreme negative scenarios and operate to buy time for a club to transition to a new ownership structure. The aim of this approach is to end the practice of clubs continuing with failing business plans and/or making a bad situation worse gambling on an upturn in 'on pitch' fortunes until they fall into administration. The proactive nature of this system should mean this is only engaged very rarely, if at all. But it is still prudent to have a planned system in place for this eventuality.
- 3.42** The transition plan will consist of certain steps that will be taken by the club if the club's financial resources fall to a set trigger point. The trigger point will be agreed with IREF on a club-by-club basis.
- 3.43** The transition plan will be required to be a credible and realistic assessment of how financial and non-financial resources will be maintained at a club while ownership of the club changes under stressed circumstances. The key principle is survivability of the club whilst avoiding insolvency until a new owner can be found.

Regulating Agents

- 3.44** One aspect of the regulatory environment in football that was raised as a significant contributor to the inflationary pressures on club finances is the activity of football agents. The Review was also aware that there have been real difficulties encountered by domestic and international governing bodies in trying to regulate agents.
- 3.45** It is not hard to credibly argue that spending by football clubs on agents has contributed to the financial pressure on clubs. Information published by FIFA on international transfers over a ten year period showed a 69.1% increase in the involvement of agents, and an increase in fees paid to agents from \$131.1 million in 2011 to \$640.5 million in 2019.³⁰ This figure was reportedly four times that in 2015 when the previous FIFA regulatory regime was ended – leading to ‘de-regulation’ of the industry. In total, FIFA reported that agent fees for the period were over \$3.5 billion – a figure which does not include any fees paid for domestic transfers, or for contract renewals.³¹
- 3.46** English football is the world’s biggest market for agents. The same FIFA report lists agent fees by Member Associations – with England comfortably at the top with a total spending over the decade covered by the report of \$919.5 million. Again, it bears stating this number does not include fees paid for domestic transfers or contract renewals. It is significantly more than was spent by other Member Associations – including the other major European leagues. Italy’s reported spending was closest to England with \$761 million, but other major leagues such as Germany (\$375.7 million), Spain (\$263.8 million), and France (\$189.7 million) were dwarfed by English spending.
- 3.47** There have also been a number of concerning media reports of involvement by agents in criminal matters, including:
- a. bribery and corruption involving a club official in England.³²
 - b. prohibited approaches to and dealings with young players.³³
 - c. people smuggling of young players from Africa.³⁴
 - d. money laundering.³⁵
 - e. fraud.³⁶
 - f. involvement in organised crime.³⁷

³⁰ FIFA (2021) Ten years of international transfers

³¹ Ibid

³² <https://www.telegraph.co.uk/news/2020/01/17/football-sale-agents-manager-sentenced-corruption-scandal/> and <https://www.thesun.co.uk/sport/football/8951950/fa-bans-ten-agents-breaking-rules/>

³³ <https://www.bbc.com/news/uk-58600845>

³⁴ <https://www.dailymail.co.uk/sport/football/article-9257739/How-Manchester-Uniteds-new-38m-prodigy-Amad-Diallo-trafficked-Africa.html>

³⁵ <https://www.getfootballnewsfrance.com/2019/bakari-sanogo-tottenham-midfielder-moussa-sissokos-agent-caught-up-in-legal-trouble/> and <https://www.bbc.co.uk/news/world-europe-49662132>

³⁶ <https://www.goal.com/en-us/news/agent-who-negotiated-casillas-move-to-porto-has-four-year/1269gkpw8yll1kisjdc8j8ve1>

³⁷ <https://www.dailyrecord.co.uk/news/scottish-news/agonny-young-scots-footballer-stars-23807915>

- 3.48** It is concerning that English clubs appear to pay so much more money to agents than any other. It is also concerning that the lack of regulation of agents could not only be costing clubs money that could otherwise be better spent, but that criminal activity may also be involved, including exploitation of children. Further, Her Majesty's Revenue and Customs (HMRC) has had concerns for many years regarding losses to the Treasury caused by the artificial structuring of agent activity.
- 3.49** As English football is spending the most money on agents, it has potentially the most to gain from improvements in the situation. However, as the FIFA and newspaper reports make clear the issues are not unique to the English game. The Review has therefore considered that an international, game wide solution would be preferable to any attempt by IREF to regulate agents. Further, the Review considered that regulation of agents would be beyond the natural scope of the recommended objectives and would result in a significant increase in costs.
- 3.50** The world governing body for football, FIFA, has recognised the need for better international regulation and raised significant concerns regarding the functioning of agents in the game, referencing *'the law of the jungle currently in place, with conflicts of interests rife and exorbitant "commissions" being earned left and right.'*³⁸ FIFA has therefore proposed a number of reforms, including a proposed cap on commissions.
- 3.51** Given the potential benefits to the finances of English clubs of a more sensible agents market, as well as the moral case for protecting players and clubs from criminality and limiting tax evasion, the Review considers that the government should work with FIFA to support its efforts to improve regulation of agents.

Recommendation 9

The Government should explore ways to support the regulation of football agents operating in English football by working with relevant authorities including FIFA.

Next steps – Shadow regulation

- 3.52** The system of financial regulation outlined above will be a significant change for the industry. As set out in chapter 2, in order to smooth the transition to the new system and allow it to be operable as soon as possible after the relevant legislation is passed, it is recommended that IREF be set up in shadow form. This would involve IREF being set up and the recruitment of experienced Regulators, particularly on the prudential regulation, who would work with the industry before the legislation receives Royal Assent.

³⁸ <https://www.fifa.com/legal/football-regulatory/stakeholders/fifa-fund-for-players/news/reform-proposals-concerning-football-agents-regulations>

3.53 In the interim, once set up, the shadow team should work with the football authorities and take on ownership of football financial regulation, as transition to the new model takes place. This would mean oversight and enforcement of Profit and Sustainability and the Salary Cost Management Protocol. Part of the reason for this is to build understanding and relationships with the industry. But equally important, developing the right approach to the transition in football to the new capital and liquidity model.

Chapter 4. Tests for Owners and Directors of Football Clubs

BLACKPOOL ARE BA
THE TANGERINE DREAM IS BACK ON



“The fit and proper persons test has failed to stop many owners who are not ‘fit and proper’. It’s a disaster of a system”

Contributor to Fan Led Review Online Survey

Introduction

- 4.1** Football clubs are among the longest surviving institutions in English life – with some existing professional clubs having been founded as far back as the 1860s. Any club owner is merely the latest in a long line; a temporary custodian of a community asset which hopefully will continue to exist for centuries after they have departed. The owners and directors of a club are the parties whose management decisions can lead to a club’s success and growth or which can lead a club to ruin. The Review has seen too many examples of the latter, and therefore alongside the financial regulation recommended in the previous chapter, ensuring the right people are involved in running clubs will be an important task for IREF.
- 4.2** The approach of the current Owners’ and Directors’ Tests is to look objectively at any areas which might prohibit an individual from becoming a new owner or director (including shadow directors) of a football club. This includes matters such as criminal convictions, bans by sports professional bodies or breaches of certain football regulations ie. match fixing. However, as set out in chapter 1 there have been many instances of owners and directors whose suitability is at the very least questionable.
- 4.3** The introduction of IREF provides an opportunity to take a fresh look at who is permitted to be an owner or director of a football club. If sustainability of clubs is to be achieved, IREF will need to ensure that any prospective owner is a suitable custodian of this valuable community asset and that any directors have the skills and experience to contribute to the day to day running of the club.
- 4.4** It is not inconceivable that ensuring clubs have suitable owners and better qualified directors will also help to achieve better business decision-making, as part of addressing the unsustainable financial operations of clubs. In simple terms, better owners should make better decisions and experienced directors should be better able to offer challenge and scrutiny of a club’s proposed actions.
- 4.5** This chapter recommends an approach to replace the current Owners’ and Directors’ Tests used in football. For the purposes of this chapter, we will use the term ‘Owner’ to include the ultimate beneficial owner or person with significant control of a club. This should be applicable to all those who own a minimum of 25% share in the club (or any parties acting in concert who, in aggregate, hold a minimum of 25% shares in the club).

- 4.6** The term ‘Director’ will include shadow directors and should also extend to any key individuals at the club, who are not on the Board, but who are discharging executive management functions, or advisory roles similar to those of an executive manager or director regardless of the title that such advisor might have.

The Tests

- 4.7** Currently, there are three Owners’ and Directors’ Tests in English football. The Premier League and EFL separately administer an Owners’ and Directors’ Test for clubs in their own leagues. The FA administers an Owners’ and Directors’ Test to clubs in the National League, the three leagues below, the Women’s Super League (WSL) and the Women’s Championship.
- 4.8** The creation of a IREF offers the opportunity to introduce consistency of approach in men’s professional football by having a unified approach. IREF will be able to introduce tests that owners and/or directors of clubs will be required to pass in order for a club to obtain a licence.

Strategic Recommendation (C)

New owners’ and directors’ tests for clubs should be established by IREF replacing the three existing tests and ensuring that only good custodians and qualified directors can run these vital assets.

- 4.9** The respective roles, duties, and obligations of club owners, and the directors appointed to oversee their management, are, and should be, different. It is therefore logical that this difference should be reflected by specific requirements in the tests. It is proposed that there be two tests – one for owners and one for directors.

Recommendation 10

Through licence conditions, the new Owners’ and Directors’ Test should be split into two parts, one test for owners’ (i.e. those who own a minimum of 25% shares in the club alone or acting in concert with others) and one test for directors as well as shadow directors, executive management and any individuals holding those roles regardless of job title.

Test Criteria

Disqualifying Conditions

4.10 Though varied, the three tests in operation today broadly cover objective factors that disqualify individuals from being an owner or director of a football club. These include past involvement with club bankruptcies, dishonest dealings with the football authorities, control or influence at multiple clubs, criminal convictions (including overseas), personal insolvencies, suspension or ban from another sport, being barred from entry to the UK, and being a football agent. These are assessed at the point that the individual seeks to become an owner or director of a club, and the individual is required to sign an annual statement lodged with the relevant authority that they remain free from any of the disqualifying factors.

Owners' Test

4.11 As temporary custodians of a community asset, the Owners' Test should, in addition to any disqualification criteria, check an individual's integrity, their ability to ensure the club is financially stable, and that they will run the club sustainably and in accordance with the relevant financial rules and regulations. In order to consider these factors, the new Owners' test should involve the review of a business plan, a check of financial resources and enhanced due diligence on the source of such resources, as well as an integrity test based on existing integrity tests which have already been developed by the Financial Conduct Authority, Prudential Regulation Authority, Ofcom and the Home Office.

4.12 The Owners' Test should be applicable to all those individuals who own more than a 25% share in the club (or any parties acting in concert who in aggregate hold 25% or more of shares in the club).

4.13 It is envisaged that an enhanced due diligence check on source of funds will be designed and developed by IREF with relevant stakeholders including the Home Office and National Crime Agency. The test should include banking checks and ensuring the individual(s) have no links to money laundering or other criminality.

4.14 When providing evidence of sufficient funds the owner should be required to evidence funds for club's financial plans for at least a three year period.

4.15 The owner should also be required to submit a business plan for assessment by IREF outlining:

- a. their strategy for the club
- b. how they will run the club as financially sustainable
- c. their plans regarding the community and heritage assets attached to the club,
- d. financial projections
- e. proposed corporate structure of the club post acquisition
- f. proposed corporate governance structure of the club post acquisition, including how it will meet the requirements of the proposed new Football Code
- g. commitment to an Equality, Diversity and Inclusion action plan
- h. declare any conflicts of interest to IREF, to consider and manage.

- 4.16** As set out in the proposals for financial regulation, if IREF is concerned about the financial resources of the owner and/or the feasibility or level of risk in the business plan then in addition to refusing the application, IREF would have the option of imposing capital and cash requirements.
- 4.17** As noted, the new integrity test is based on those developed in other industries and will be an assessment by IREF of whether the proposed owner is of good character such that they should be allowed to be the custodian of an important community asset. Based on best practice in other industries, the proposed approach should be (but not limited to):
- a.** A proposed owner be considered as of good character if there is no reliable evidence to consider otherwise and IREF has no reasonable grounds to doubt their good repute;
 - b.** IREF will consider all relevant information in relation to the character of the proposed owner, such as:
 - i.** criminal matters not sufficient to be disqualifying conditions.
 - ii.** civil, administrative or professional sanctions against the proposed acquirer.
 - iii.** any other relevant information from credible and reliable sources.
 - iv.** the propriety of the proposed acquirer in past business dealings (including honesty in dealing with regulatory authorities, matters such as refusal of licences, reasons for dismissal from employment or fiduciary positions etc).
 - v.** frequent ‘minor’ matters which cumulatively suggest that the proposed owner is not of good repute.
 - vi.** consideration of the integrity and reputation of any close family member or business associate of the proposed owner.

Recommendation 11

In addition to not being subject to any disqualification criteria based on existing rules, prospective new owners should also be required to:

- a.** submit a business plan for assessment by IREF (to include financial forecasts).
- b.** evidence sufficient financial resources to meet the requirements of the business plan.
- c.** be subject to enhanced due diligence checks on source of funds to be developed with the Home Office and National Crime Agency.
- d.** pass an integrity test.

Directors' Test

- 4.18** A director should also be tested whether they possess the necessary skills and experience to be able to suitably contribute to, and manage, the affairs of the club on a day-to-day basis thus helping to ensure the stability of the club.
- 4.19** There are, of course, multiple ways that directors might be able to contribute to a board, and that diversity of boards is to be encouraged, it is not proposed that there should be an overly prescriptive approach to what constitutes suitable skills and experience. It is also important not to unduly restrict access to boards to those who may be able to contribute but who have not come from a traditional background or career path. It is therefore recommended that this criteria should be able to be fulfilled by completion of an IREF approved directors course with an organisation such as the Institute of Directors.
- 4.20** Directors will, of course, operate a position of trust in a community asset. It is therefore appropriate that each director should also be subject to an integrity test.

Recommendation 12

In addition to not being subject to the disqualification criteria, a prospective director should also be required to:

- a. demonstrate that they have the necessary professional qualifications, and/or transferable skills, and/or relevant experience to run the club.
- b. pass an integrity test in the same manner as prospective owners.
- c. declare any conflicts of interest.
- d. declare any personal, professional or business links with the owner of the club in question, or any other club owner (past or present).

- 4.21** In recognition of the proposed new Code for Football Governance set out in chapter 5, each club will be expected to demonstrate what recruitment process it followed that has led to the proposed appointment.

How will IREF facilitate the test?

- 4.22** One criticism of the existing Owners' and Directors' Test is that they are facilitated on entry only, with any future checks on owners or directors limited to filing of an annual compliance statement. However, whilst it might be desirable to test all owners and directors on an annual basis, to do this across 115 clubs each year would be impractical for IREF. In the case of directors, this would also make little sense given the criteria – by definition a director will not have become less experienced after joining a club board.

4.23 The Review has therefore sought a middle ground between the existing ‘entry only’ approach, and annual checks. Whilst the current approach seems sensible for directors, in regard to owners it is recommended that the full test on entry and annual compliance statements of the current approach be supplemented by a three yearly review of each owner. It is likely that subsequent tests will be less burdensome as they will be able to build on the initial tests.

Recommendation 13

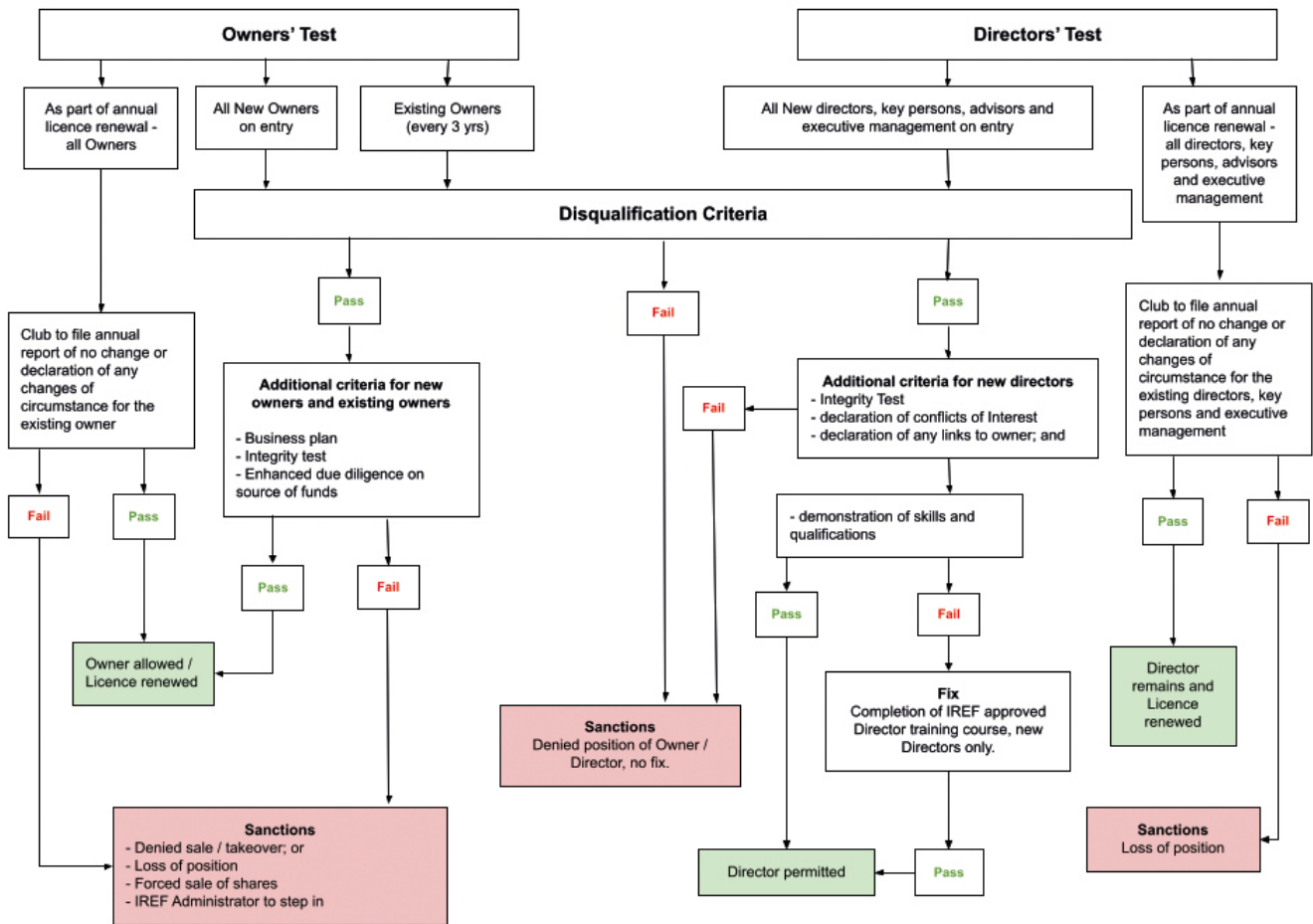
IREF should conduct, and where possible, publish the results of the Owners’ Test and the Directors’ Test:

- a. on entry – for any new owner or director.
- b. annually – any appointed owner or director should be required to declare to IREF, as an annual compliance statement, any changes in circumstance within one month of said change, or at the stage of annual licence renewal, if no changes have occurred.
- c. every three years – for owners only. Any existing owner should re-pass the test on a three year review.

4.24 Moving to a new system of regular checks on owners will clearly not happen overnight. It is therefore recommended that tests be conducted on owners on a staggered basis over three years, with the ‘highest risk’ clubs and owners being prioritised in year one. Thereafter, in addition to new club owners being tested on entry, in order to avoid an undue burden on IREF owners should be tested on a staggered three year rolling basis such that in any one year only one third of club owners will be subject to review.

4.25 In order to improve confidence in the operation of the national game, and clubs in particular, the outcomes of all tests should be made public. IREF may need to withhold details that are of a sensitive nature.

Chart 4 – Operation of the new Owners’ and Directors’ Test.



Sanctions and Consequences

- 4.26** Under the proposed system, a club will hold a business operation licence issued by IREF, which will include conditions that its owners and directors must pass. Utilising this licence condition, IREF should have full powers to block an individual becoming an owner and director of a club, including revoking licences. However, this will clearly be a last resort and will have severe consequences for a club and its fans.
- 4.27** It is therefore recommended that IREF should also have the power to impose a range of disciplinary sanctions for breaches of licence conditions, including (in the case of breach after an initial approval) on any individual owner or director. IREF should also have power to appoint an administrator to run a club in serious situations short of licence revocation.

Recommendation 14

IREF should have a range of sanctions to enforce breaches of Owners' and Directors' tests.

- 4.28** For accountability and transparency it should be a licence condition that clubs declare to IREF the identity of the Ultimate Beneficial Owner (UBO) of the company. This is especially important where clubs are owned by offshore entities, and where the investors in those entities are unknown, or where clubs are controlled by complex company structures.

Recommendation 15

It should be a licence condition that the identity of the Ultimate Beneficial Owner (UBO) of a club be declared to IREF.

Chapter 5. Corporate Governance



Introduction

- 5.1** A test for Owners and Directors of football clubs should be designed to ensure that the right people with the right skills are in the right positions. However, even the right people can make poor decisions. No system can prevent this entirely and it is generally accepted that good corporate governance can promote better decision making. This chapter considers corporate governance in the context of football clubs and promoting their sustainability.
- 5.2** Corporate governance at its most basic level, is a system of rules and practices that determine how a company operates and how it aligns the interests of all of its stakeholders. Good corporate governance should not be seen as a challenge, but as an opportunity. It delivers better business outcomes, ensuring effective decision making through diversity of opinion and expertise. It can help a company regulate and reduce risk as well as allowing challenges on unilateral decision making and accountability for business actions, which can lead to positive performance and financial viability.
- 5.3** The Review heard numerous examples of reckless ‘gambling’ behaviour in pursuit of on the pitch success, as well as some highly questionable business ventures pursued by clubs. It is reasonable to believe that some of the worst decisions that have been made by football clubs in the past would have at least been less likely if the relevant club had adopted proper governance practices, as such decisions would have been subject to review and independent scrutiny.
- 5.4** Good corporate governance will also help demonstrate to all stakeholders in a club that it is well managed, allowing fans to have confidence that their club is being well run with properly scrutinised decisions and actions. This will go some way to establishing trust between fans and those running their clubs. It will also allow the Government to have greater confidence that the current custodians of clubs as civic, cultural and heritage assets will act in responsible ways.
- 5.5** Football is a unique business in its nature. The fan loyalty of a football club is nothing like a customer of a normal business. This fact, coupled with the unlikelihood of removing poor performing club owners, means that there is no incentive for league clubs to implement good corporate governance frameworks. It is therefore right that IREF should impose corporate governance requirements as part of its licensing regime.

Strategic Recommendation (D)

Football needs a new approach to corporate governance to support a long-term sustainable future of the game.

- 5.6** A corporate governance code is a proven model for improving corporate governance. In sport, the UK Government's strategy for an active nation, 'Sporting Future',³⁹ led to the introduction of The Sport England and UK Sport Code for Sports Governance ('Sports Governance Code'). This aims at protecting the value for money the public receives from investment into sport and to maximise the effectiveness of those investments. Under this approach, sports bodies in receipt of public funding are required to implement the Sports Governance Code.
- 5.7** It is distinctly odd that, due to the work of UK Sport and Sport England, many English sports and teams, often with a fraction of the resources of even lower league football clubs, are operating (or at least working towards) significantly better corporate governance standards than some of the country's biggest sporting institutions.
- 5.8** Unfortunately, the Sports Governance Code has not reached into professional men's football as clubs are not generally in receipt of public funds. The requirement for a licence and the related conditions offers an opportunity to address this. The Review has therefore concluded that a licence condition should be introduced for a new Code for Football Club Governance based on the Sports Governance Code.

Recommendation 16

A new Code for Football Governance based on the Sports Governance Code should be introduced for licenced clubs, with compliance being a licensing condition.

- 5.9** As it is envisaged that the licensing process shall be annual, this means that clubs should be required to provide evidence of how they are meeting the Football Code on an annual basis. In order to ensure that clubs are operating in a transparent manner, and to give fans confidence in the way their club is run, these details should be published on the club's website.

³⁹ <https://www.gov.uk/government/publications/sporting-future-a-new-strategy-for-an-active-nation>

Recommendation 17

As a condition of the licence, clubs should be required to publicly present evidence of compliance with the Code for Football Governance on an annual basis.

How to make the code proportionate?

- 5.10** Introduction of new corporate governance requirements will be a positive development for English football, but it is important to avoid placing an undue burden on clubs. The Sports Governance Code sets out an overriding series of principles, with detailed requirements under each. The requirements for the Sports Governance Code are set out in three ‘tiers’, with Tier 1 applying to smaller investments, Tier 3 applying to the larger investments, and Tier 2 for situations where UK Sport and Sport England considers that the requirements should exceed Tier 1 but it would not be proportionate to apply the full Tier 3 requirements.
- 5.11** The Football Code, on design, should align closely to the Sports Governance Code whilst also reflecting the particular issues heard in the evidence to the Review. In particular, it is recommended that the Football Code adopt a tiered approach to accommodate the vast difference in scale and resources of the clubs across the pyramid. This would involve a bottom tier, ‘Tier C’, of minimum mandatory requirements, a ‘Tier A’, as the top level of mandatory requirements, and a ‘Tier B’ which transitions clubs towards the top Tier.

Recommendation 18

The Code for Football Governance should adopt a model which includes a proportionate approach to the governance requirements. Tier A should involve the highest level of requirements and should apply to Premier League and Championship clubs, with Tier B applicable to Leagues One and Two, with minimum standards applying to Tier C to the National League.

- 5.12** The recommended application of this approach to the club structure proposed is:
- a. Premier League – Tier A.
 - b. Championship – Tier A.
 - c. League One – Tier B.
 - d. League Two – Tier B.
 - e. National League – Tier C.

- 5.13** In this approach, clubs will be required to improve their governance as they progress up divisions. In order to avoid placing an undue burden upon clubs in the often short period between promotion being achieved and a new season, an appropriate transition period should be allowed for clubs as they progress. However, once a club is operating at a higher tier of governance the burden of continued compliance is minimal. It is therefore recommended that the requirements operate with a ‘ratchet’, in that once a club complies with a higher governance tier they should continue to be required to operate at that tier regardless of the division in which they play.

Recommendation 19

The Code for Football Governance should also operate with a ‘ratchet’ system in that a club cannot drop a Tier in its governance. The Code for Football Governance should allow a period of settlement for clubs who are promoted and therefore required to adhere to new requirements.

- 5.14** Although most clubs covered by the licence will be solely UK based, there is a significant minority of clubs with overseas entities in their ownership chain. As it is proposed that the licence will be held by the English incorporated entity that is the member of the relevant league, the governance requirements will apply to that entity and not any overseas parent company.

Principles and Requirements

Principles

- 5.15** Like the Sports Governance Code, it is recommended the Football Code should also be based around five principles with bespoke requirements for football clubs developed under each:
- a. Structure** – Clubs shall have a clear and appropriate governance structure, led by a board which is collectively responsible for the long-term success of the organisation and exclusively vested with the power to lead it. The board shall be properly constituted, and shall operate effectively.
 - b. People** – Clubs shall recruit and engage people with appropriate diversity, independence, skills, experience and knowledge to take effective decisions that further the organisation’s goals.
 - c. Communication** – Clubs shall be transparent and accountable, engaging effectively with stakeholders and nurturing internal democracy.
 - d. Standards and Conduct** – Clubs shall uphold high standards of integrity, and engage in regular and effective evaluation to drive continuous improvement.
 - e. Policies and Processes** – Clubs shall comply with all applicable laws and regulations, undertake responsible financial strategic planning, and have appropriate controls and risk management procedures.

- 5.16** In addition to the five principles, in recognition of the societal role of football clubs, it is recommended that stewardship is at the heart of the Football Code. This is the essential duty to protect the club and to ensure its sustainability for the community on which it relies. This duty should be reflected through the Football Code.

Requirements

- 5.17** IREF should develop detailed requirements for the Football Code in accordance with each of the five principles. These should utilise the minimum requirements of the Sports Governance Code. In addition to such minimum requirements, and in recognition of the evidence presented to the Review of the problems within football, it is recommended that the basic mandatory requirements, to be included across all tiers, include some additional items which should apply to all licenced clubs:
- a. Independent Non-Executive Directors** – each club should have a board, 30% of which should be independent non-executive directors, to provide expertise as well as challenge and scrutiny to decisions. In this context an independent director should have no close association with the club owner, whether in a personal or business context and will cease to be considered independent after an appropriate length of time on the club board.
 - b. Director appointments** – all clubs should be required to maintain and regularly review a board skills matrix to ensure that the board has the appropriate composition to effectively manage the day-to-day running of the club. Clubs should adopt a formal, rigorous, inclusive and transparent merit based approach for all board appointments.
 - c. Disclosure of director remuneration** – for transparency of those charged with running a community asset and to allow all stakeholders to have confidence in the functioning and independence of board members, there should be disclosure of all benefits received by non executive directors, including salary, free tickets and hospitality, and any gifts or other benefits (such as foreign trips paid for by the club owner). The individual and total value of non cash items should also be disclosed.
 - d. Equality, Diversity and Inclusion Action Plan** requirements should be mandatory for all clubs. The board shall set out, promote, and support the implementation of minimum good governance standards, with respect to diversity and inclusion throughout its club; and within its fan base.
 - e. Financial Transparency** – to provide transparency for fans and other stakeholders, all clubs should be expected to publish high quality easy to understand financial information. In this, it is recommended that the excellent approach adopted by Plymouth Argyle that present the club's financial information in freely available and easily understood terms should form the basis of the regulatory requirements.
 - f. Engagement** – to improve general engagement, each club shall develop and deliver a people plan and strategy for engaging with, and listening to, its fans, community and stakeholders. (In line with the recommendations being made on fan engagement in chapter 7 of this report).
 - g. Welfare, Safety and Safeguarding** – the board should appoint a director as its lead in this area to ensure appropriate prioritisation and focus on the welfare and safety of the club's players, staff and match day fans;

- h. Stewardship** – to reflect the civic and community importance of clubs, all club boards should be expected to report on how it is discharging its role as a temporary steward of that precious community asset.

Recommendation 20

The Code for Football Governance should adopt basic minimum requirements which will apply to all clubs including those in the Sports Governance Code, and additional minimum requirements relating to directors, equality and diversity, fan engagement, welfare and stewardship.

Apply and Explain

- 5.18** The traditional UK approach to corporate governance is to provide for a ‘comply or explain’ model of governance requirements. However, given the relative immaturity of the football corporate governance structures it is recommended that an ‘apply and explain’ model, advocated by the King IV Report on Corporate Governance in South Africa,⁴⁰ would be more appropriate to the Football Code.
- 5.19** This approach would mean all requirements set out under the key principles must be applied by all clubs, in an understandable way, most suitable to that club in their appropriate tier. This would require all clubs to comply with all the requirements but allow them to provide an explanation as to how the principles of the code were applied. IREF should consider the best approach alongside development of the Football Code.

Recommendation 21

The Code for Football Governance should adopt an ‘apply and explain’ model for implementation of its requirements.

Corporate Governance within the Authorities

- 5.20** Whilst this chapter is focussed on improving governance within clubs, the corporate governance of the English football authorities is also vital to the future of the game. The Review heard repeated evidence from numerous sources that decision making has been subject to the control of vested interests within the game.
- 5.21** Existing football authorities have taken some steps to recognising the importance of improving corporate governance as recognised in chapter 1. These attempts are welcomed.

⁴⁰ <https://www.adams.africa/wp-content/uploads/2016/11/King-IV-Report.pdf>

5.22 However, in order to improve their own decision making, and to give the public confidence in their operation, it is recommended that the English football authorities continue to improve their corporate governance and independence from the vested interests of the game. In particular, boards that consist of a majority of independent directors and are able to securely act in the best interests of the game without fear of losing their position should be considered as a minimum requirement. The Review would also like to see historic oddities such as the need for the FA Chair to be approved by the FA Council removed.

Recommendation 22

The English football authorities should continue to reform their own corporate governance to create independence in decision making from the vested interests in the game, including boards of at least 50% independent directors and the removal of historic oddities such as the need for the FA Chair to be approved by the FA Council.

Chapter 6. Equality, Diversity and Inclusion



Introduction

- 6.1** Football should be a game for all. The England Men’s incredible journey to the Euro 2020 final was underpinned by a diverse group of players from all corners of the country. The sport has led the way on diversity in many ways on the pitch, with 25% of all Premier League players either black or dual heritage.⁴¹
- 6.2** However, this acts as a disguise for other groups that are not as well represented and for areas of the game that are not as diverse:
- a.** In 2019 there were 10 British Asians out of a total of 4,000 professional players in the English game.⁴²
 - b.** Despite evidence of more inclusive attitudes inside football academies, no active male professional player has felt able to publicly acknowledge their homosexuality since Justin Fashanu over thirty years ago, a stark contrast to women’s football.
 - c.** There is just one black or Asian referee in the professional game and no black or Asian person has ever officiated at a major final in the 150-year history of English football.⁴³
 - d.** At the time of writing, there are currently only seven black managers in the 92 professional football clubs in England and Wales.⁴⁴
 - e.** In 2019, the law firm Farrer & Co found that across all professional football clubs, only 7% of board directors were female, with just one club meeting the 30% target of other industries and only 7% of clubs having a woman in a leadership position on the board.⁴⁵
- 6.3** Aside from a clear moral case, improving diversity is also a key aspect of driving better business decisions by football clubs. Diverse companies perform better, with detailed long-term studies by McKinsey & Co reporting that *‘the business case [for diversity] remains robust but also that the relationship between diversity on executive teams and the likelihood of financial outperformance has strengthened over time.’*⁴⁶
- 6.4** It would be wrong not to acknowledge that there has been some action taken by the football authorities. The FA’s “Football Leadership Diversity Code”, launched in October 2020 and focused on improving diversity in recruitment of senior club positions, is a step in the right direction. The Premier League also updated its own Equality, Diversity and Inclusion Standard (PLEDIS) in 2021 to build on the Premier League Equality Standard, which was created in 2015.

⁴¹ Kick It Out

⁴² Kilvington, Daniel (2019)

⁴³ The Football Association

⁴⁴ Kick It Out

⁴⁵ <https://www.farrer.co.uk/news-and-insights/professional-sports-clubs-bottom-of-the-league-on-female-representation-53-have-no-women-on-their-board/>

⁴⁶ <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>

- 6.5** There has also been great work to drive inclusion and diversity in the stands with the introduction of multiple new supporter groups representing diverse sections of the supporter base through the “Fans for Diversity” movement. There are now over 50 LGBTQ+ fans groups, providing a great opportunity to promote a more inclusive culture. This has been crucial in helping to make football grounds places where LGBTQ+ fans feel a sense of safety and belonging.
- 6.6** Similar progress has been made with the recruitment of diverse fans groups across other underrepresented groups. This is to be encouraged and will help drive change to behavioural standards within a small group of fans inconsistent with the inclusive culture we want to see within football.
- 6.7** Although these efforts are leading to welcome change in the game, there was a significant amount of evidence to the Review that there is still much work to be done to ensure the game is open and welcoming to people of all backgrounds. It is clear that football still needs to put in place some basic first steps towards increasing diversity.
- 6.8** The introduction of IREF presents an opportunity to set clear equality, diversity and inclusion (‘EDI’) objectives and standards that clubs should be meeting as part of their licensing conditions. There will also be an important and ongoing role for the existing football authorities. However, in seeking to make improvements to diversity, experts made clear to the Review that there is a delicate balance to be struck between making interventions to ensure real change and reducing action to a “box-ticking” exercise.

Strategic Recommendation (E)

Football needs to improve equality, diversity and inclusion in clubs with committed EDI Action Plans regularly assessed by IREF.

Equality, Diversity and Inclusion Action Plan

- 6.9** EDI should form a strong pillar of good corporate governance. It should be seen as a central part of any organisation’s business plan and not an ‘add on’.
- 6.10** The FA’s “Football Leadership Diversity Code” (FLDC) is an important piece of work that, it is hoped, will encourage diversity and inclusion within football. It includes requirements for the creation of an EDI plan, annual reporting and “comply or explain” expectations, all of which are welcome. The first annual FLDC progress update was published in November 2021 and showed that only two out of the eight recruitment targets set were met. The publishing of this data is an important step but also demonstrates there is still a way to go on EDI within football.
- 6.11** However, the FLDC is currently voluntary. It is also focused only on senior leadership and coaching, and only includes two characteristics (ethnicity and gender). It could, and should, go further to include other underrepresented groups such as LGBTQ+, disabled people, and people from lower socioeconomic groups. PLEDIS has introduced more extensive

requirements for Premier League clubs but of course this only applies to Premier League clubs – 20 of the 115 teams proposed to be covered by an IREF licence. There is therefore an opportunity for IREF to accelerate change by mandating an EDI Action Plan as part of the business documents it requires from clubs every year.

- 6.12** Sport England and UK Sport committed to refreshing its Code for Sports Governance for publishing later this year. Major changes have been announced on EDI, including the requirement for those at the top level of funding to agree a Diversity and Inclusion action plan with Sport England and UK Sport. These plans are expected to be “*ambitious and robust and set out clearly how partners will work to improve diversity and inclusion across their whole organisation*”.⁴⁷
- 6.13** This best practice should be replicated by IREF, with each club presenting a robust and transparent EDI Action Plan for the upcoming season as part of the licensing process.
- 6.14** The EDI Action Plans should set out the club’s objectives for EDI, and importantly, how they are going to achieve them for the upcoming season. IREF would then scrutinise these documents for approval at the start of the season, ensuring they are robust and challenging. As part of the annual licensing process, IREF would also consider the performance of the club against its previous plan. If IREF deemed there to be insufficient progress made against the organisation’s plans, it would be able to enforce financial or regulatory sanctions.
- 6.15** It is important that these EDI Action Plans do not duplicate or add unnecessary burden on the many clubs that are already doing impactful work on EDI. The plans should utilise the expertise already built up through the FLDC and PLEDIS. Club EDI Action Plans should also be published in order to improve transparency and provide a reputational incentive for clubs to achieve their stated aims.
- 6.16** The advantage of IREF’s approach will be that it can cover all clubs in the English professional football pyramid – providing clear and consistent objectives at every level. This lack of consistency and clarity was repeatedly named in evidence to the Review as one of the major obstacles to driving positive change within football. It will also include other underrepresented groups (e.g. all characteristics protected under the Equality Act 2010 as well as lower socioeconomic groups) and includes all aspects of the organisation, not just leadership and coaching.

Recommendation 23

IREF should mandate that each club has an Equality, Diversity and Inclusion Action Plan, focusing on the organisation’s EDI objectives and how it is going to achieve them, assessed as part of the annual licensing process.

⁴⁷ <https://www.sportengland.org/news/changes-made-strengthen-code-sports-governance>

Duplication of Effort

- 6.17** Although IREF will create an exciting opportunity to improve club action on EDI, there will be an important and continuing role for the existing football authorities.
- 6.18** As noted above, there have been efforts made within football to tackle discrimination and promote EDI. In addition to the FLDC and PLEDIS, there has been the Premier League’s “No Room For Racism” campaign and other similar initiatives by the EFL. These are commendable and positive projects. However, the Review heard evidence that the number of different initiatives and campaigns risks confusing stakeholders and diluting the clear message.
- 6.19** Discrimination and EDI exist in the same forms between different leagues but there is not one consistent approach. The Review heard that this leads to a duplication of resources and effort. As well as the various campaigns, there is a lack of a consistent expectation and format within football to share any representation or discrimination data. There are many duplicative requests of clubs, which only serves to reduce clarity and offer excuses to those looking for them.
- 6.20** The football authorities should therefore be encouraged to work more closely with stakeholders, including Women in Football and Kick It Out, to clarify and distill their message and requirements. They should also look to pool their resources and reduce silo working to ensure an even greater and more meaningful impact.

Recommendation 24

The football authorities should work more closely to ensure consistent campaigns across the various organisations, and where possible, pooling resources to increase the impact of these important initiatives.

Lack of Data

- 6.21** The Review received consistent testimony that a lack of data collection and reporting is one of the major factors limiting efforts to improve diversity and tackling discrimination within football.
- 6.22** Across English football, the evidence suggests that representation data is sporadic, particularly outside of the professional field of play. The mandating of EDI Action Plans will help improve collection of this data in the first instance.
- 6.23** There is also an issue around reporting incidents of discrimination. There has been evidence that a new single repository for reports of discrimination, in a consistent format, would be beneficial and help provide a focused forum to address the current fragmented reporting landscape. This could also look to improve the publicising of the outcomes of these reports, demonstrating progress in addressing complaints and incidents.

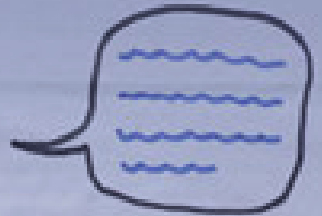
Recommendation 25

The Government should work with the football authorities to explore the possibility of a new, single repository for reports of discrimination.

Chapter 7. Improving Supporter Engagement

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TALKS!



FOOTBALL IS

NOTHING WITHOUT

FANS.

Introduction

- 7.1** As part of trying to drive better decision making by those running clubs, the Review considers that there should be a licence condition requiring better supporter engagement.
- 7.2** A lack of supporter engagement is an enormous missed opportunity by clubs. Fans are a vital part of the culture of the club and also generate a significant portion of the income that helps every club survive and grow. As well as the importance of supporters having a voice in these cultural institutions, it makes business sense for clubs to liaise closely with their most important stakeholder and develop plans with their views at the forefront. If IREF is to help stabilise clubs, it should therefore look to ensure that minimum standards of fan engagement are met.
- 7.3** It is not fair to state that there is universally bad fan engagement. The Review heard evidence that the introduction of structured dialogue following the recommendations made by the Government Expert Working Group on Football Supporter Ownership and Engagement (EWG)⁴⁸ has improved matters. In addition, at the time of writing, 12 clubs have entered into Memorandums of Understanding with their supporter groups on fan engagement. Both the Premier League (Section R) and the EFL (Regulation 127) also now have supporter engagement included within their respective rules.
- 7.4** However, evidence to the Review has been clear that the standards of fan engagement are highly variable, including:
- a.** consultation often being limited solely to match going issues with no consideration of fan views on any strategic or commercial matters;
 - b.** a lack of any mechanism to assess compliance and delivery of fan engagement, with both the Premier League and EFL criticised for not sufficiently enforcing existing rules;
 - c.** clubs neutering fan engagement mechanisms via methods such as control over selection of fan participants and the issues brought forward for consideration;
 - d.** clubs having discretion to withdraw or suspend fan engagement, which some clubs are reported to have done on receipt of any criticism;
 - e.** a 'tick box' approach to supporter engagement from many clubs, often leading to a significant gap between club and supporter perception of the provision of fan engagement; and
 - f.** mixed reports of the effectiveness of the position of Supporter Liaison Officers.
- 7.5** Fans and clubs are not enemies. A genuine two way consultation between fans and clubs can be mutually beneficial. It can be an asset to the club by opening club decisions to constructive input from a uniquely important stakeholder. Equally, fans who are kept

⁴⁸ <https://www.gov.uk/government/publications/government-expert-working-group-on-football-supporter-ownership-and-engagement>

informed by clubs may be more understanding and less unfairly critical of decisions made by club executives who are often seeking to act in what they consider to be the best interests of the club.

- 7.6** This chapter considers different approaches to fan engagement by clubs and the football authorities, and makes several recommendations to improve the standards of engagement in English football.

Club Supporter Engagement

- 7.7** There are a range of options for supporter engagement that offer different environments in which to discuss different matters. These are not mutually exclusive, and a good supporter engagement programme could involve some or all of these options.

Fans' Forum

- 7.8** This is a congregation of fans which is akin to a 'town hall meeting'. It can be attended by anyone, with the content of the meeting and its operation usually controlled by the club. It often consists of a club presentation followed by a question and answer session. Although the questioning is open, the format rarely allows for detailed discussion or follow up questions.

Structured Dialogue

- 7.9** The EWG recommended a new approach to dialogue whereby supporter representatives were given opportunities for regular formal, structured dialogue with relevant senior club personnel, including owners, directors and senior management. The EWG did not set out a specific form for structured dialogue in order to allow for flexibility reflecting local circumstances.
- 7.10** The EWG recommendations led to both the Premier League and EFL adopting new rules regarding club level engagement with supporters, as well as engagement with the football authorities themselves. Evidence to the Review found that this has had mixed success in improving fan engagement, with variance in relation to the quantity and quality.

Fan Elected Director

- 7.11** A fan elected director (FED) is a full club director who is appointed by supporters. The FED is a full legal participant in the club decision making process and has the same rights as any other director. However, the FED also shares the same responsibilities, including confidentiality and to act in the best interests of the company as any other director.
- 7.12** There have been examples presented to the Review where a FED on a club board has worked well. However, support for FEDs as a concept has been mixed amongst the supporter groups that gave evidence to the Review. Evidence has also been received from current or former FEDs that it can be an extremely stressful position, with the FED caught between fans and the club. A FED will also have fiduciary responsibilities and confidentiality clauses which mean a fan director rarely delivers on fan expectations.

Supporter Advisory/Shadow Board

7.13 This is a 'board' of a number of diverse supporter representatives which would discuss the business and strategy of the club in more detail than other forms of engagement. A shadow board is not a formal legal board, so members would not risk the liabilities of a full company director but would be expected to discuss a wide variety of matters in detail with the club.

Supporter Shareholders

7.14 In addition to these measures, a small number of Supporters' Trusts who gave evidence to the Review raised the issue of supporters acquiring shares in a club, with some going as far as forcing club owners to sell shares to supporters. It is difficult to generalise on this issue, and there are certainly clubs where having fan shareholders can and does offer benefits to those running clubs. This has been recognised by some clubs and the Review was made aware of efforts by Manchester United, for example, who have created a fan share scheme in cooperation with supporters. On the other hand, only a small number of supporter groups raised the issue in evidence to the Review. Further, the Review considered that there were other methods to achieve effective fan consultation which did not involve the logistical and legal difficulties of forced sales of shares.

7.15 In relation to supporter shareholders, one approach that was considered by the Review pursuant to its Terms of Reference was the so-called '50+1' model. This is a model adopted by most German clubs whereby supporters by law hold a minimum of 50% plus one shareholdings in clubs. The Review considered this model and took evidence from representatives from German supporter groups. Ultimately, it concluded that this model was not realistically achievable in English football. German clubs started from a position of 100% supporter ownership, whereas in many cases English clubs are starting from a position of 0% supporter ownership. The cost involved in creating the model in England would be in the billions. The Review also concluded that the ultimate objective of 50+1 advocates – better fan consultation and involvement in key decisions – could be better achieved by other means.

7.16 The Review also heard from supporter owned clubs. This may not be a viable option for some clubs, and some clubs who have been supporter owned are not any longer, but it is true that many clubs would not exist if not for supporter ownership. The hard work and commitment of supporters who have saved their clubs and continue to give up their time to keep them running deserves a great deal of credit. Although the Review was focused on solutions that could be applied to all clubs and therefore it was not within its remit to endorse or reject any particular ownership model, it is clear that supporter ownership is a legitimate model for many clubs.

7.17 Each of the possible mechanisms for fan engagement has strengths and weaknesses. Each method can serve a purpose in ensuring effective engagement by a club with its fans and a best practice programme would likely involve the utilisation of several of the mechanisms outlined. As noted, the Review believes that a best practice programme will benefit the decision making of clubs. It is firmly recommended that clubs adopt multiple methods of supporter engagement and consultation.

Improving Club Supporter Engagement Standards

- 7.18** The creation of IREF will present an opportunity to improve the consistency of fan engagement across the game. The operation of a licence system allows IREF to impose licence conditions related to a minimum level of supporter engagement.
- 7.19** Any such condition imposed by IREF needs to strike a balance between enforcing productive supporter engagement and mandating an undeliverable burden on smaller clubs who may lack the capability or capacity to deliver on the full range of supporter engagement options.
- 7.20** The objectives of any IREF mandated supporter engagement mechanism should be to ensure that fans are consulted on material issues in a manner that allows for open discussion and effective feedback to ensure a fan voice is heard by the club on key issues. It is not the objective of supporter engagement that the rights of owners should be undermined, but to ensure that in taking key decisions they have consulted with and heard the voice of supporter representatives. Clubs should employ an “engage and consult” ethos. It will also have an important role in providing transparency for the wider fanbase.
- 7.21** Of the various mechanisms outlined, a Shadow Board appears to offer the best approach to achieve these objectives. Provided that the mechanism for selecting the members is independent of the club, and that it results in members from a cross section of the supporter base, the limited size of the Shadow Board should allow for effective consultation. Further, if the members of the Shadow Board are subject to suitable confidentiality obligations then there is no barrier to open discussion on key matters.
- 7.22** Having considered various models and approaches, it is recommended that the mandated Shadow Board should:
- a.** Operate according to written terms of reference registered with IREF, which should be based on a standard IREF template (which may be varied to allow flexibility according to local circumstances if so requested by supporters and the club);
 - b.** Consist of 5 – 12 members appointed according to a democratic process;
 - c.** Have a Chair appointed from among its members on an seasonal basis;
 - d.** Have reserved seats for representatives from key supporter groups including: representatives of the body holding the Golden Share; Equality, Diversity and Inclusion representatives; youth supporters; and international supporters (if relevant);
 - e.** Members should be subject to retirement by rotation, ensuring both that there is a regular turnover of members but also that at any one time there will be a number of experienced members on the Shadow Board; and
 - f.** Hold at least quarterly meetings with club executives, with guaranteed attendance from the club CEO or equivalent twice per year.

Strategic Recommendation (F)

As a uniquely important stakeholder, supporters should be properly consulted by their clubs in taking key decisions by means of a Shadow Board.

What issues should the Shadow Board be consulted on?

- 7.23** The aim of the Shadow Board would be to improve transparency between the club and its supporters. It is also aimed to offer supporters an opportunity to be consulted on some of the major decisions being taken within the club and for the club to take advantage of consulting with some of its most important and committed stakeholders. Given the uniquely important status of fans and the potential benefit to clubs of better consultation, the default expectation should be that the supporters are consulted, via the Shadow Board, on all material 'non football/off pitch' business and financial matters.
- 7.24** In order to ensure productive, open, discussions the Shadow Board members will need to enter into a confidentiality agreement with the club to ensure certain commercially sensitive discussions remain private. This should allow for information on most matters to be shared with the wider fan base, whilst also allowing a space for the Shadow Board to help the club by consulting confidentially on certain key matters.
- 7.25** It is recommended that the Shadow Board be engaged and consulted on (without limitation):
- a.** The club's strategic vision and objectives;
 - b.** Short, medium and long-term business plans;
 - c.** Operational matchday issues of concern to supporters;
 - d.** Any proposals relating to club heritage items;
 - e.** Marketing, merchandising and sponsorship plans and performance. This would not involve consultation or approval on specific contracts or proposals but, for example, the club Commercial Director should meet the Shadow Board at least once per season to explain the club's commercial strategy and how the club is performing in relation to such strategy. Similarly, the club Marketing Director would be expected to present once per season on the club's marketing strategy and performance;
 - f.** Stadium issues and plans; and
 - g.** The club's plan for broader supporter engagement.
- 7.26** As part of the consultation process Shadow Board meetings should also receive suitably redacted club Board papers (including any parent company boards that make relevant decisions on club operations) in advance of any meetings. This would accord with common practice for Shadow Boards in other industries.

- 7.27** It is important to emphasise two aspects of the Shadow Boards. Firstly, they should be seen as a minimum level of consultation, and clubs are encouraged to adopt additional mechanisms as appropriate for their circumstances. Secondly, the Shadow Board will not be a forum for supporters to discuss football matters with the club (e.g. formations, player performance). Meetings will be solely focused on the business side of the club.

Recommendation 26

A Shadow Board should be a licensing condition of IREF. The club should engage and consult this Shadow Board on all material ‘non football/off pitch’ business and financial matters.

Premier League and EFL rules on Supporter Engagement

- 7.28** The Review received evidence that although both the Premier League and EFL have rules on supporter engagement these are not sufficiently enforced. This includes the consistency and emphasis placed on the role of the Supporter Liaison Officer. The evidence indicated a significant variance between the importance and effectiveness of this role at different clubs.
- 7.29** The existing football authorities should be encouraged to better enforce their existing rules, which could quickly improve the quality and consistency of supporter engagement.

Supporter Engagement with the Football Authorities

- 7.30** In addition to club supporter engagement, the Review also received evidence relating to supporter engagement with the football authorities. This evidence suggests that structured dialogue between supporter groups and the Premier League and EFL, which the Football Supporters’ Association (FSA) help coordinate, has been productive. Following the publication of the Review’s Interim Report, the FSA and FA have also engaged in welcome development of new proposals for engagement.
- 7.31** However, more could be done and the football authorities should continue to progress embedding supporter engagement within their own decision-making processes.

Independent Football Ombudsman

- 7.32** A final aspect of supporter engagement that was raised in evidence to the Review is the operation on the Independent Football Ombudsman (IFO). The IFO was established in 2008 by the football authorities (The FA, The Premier League, and EFL), alongside the Government, to investigate supporter complaints that have not been resolved. These focus on customer issues such as ticket disputes, merchandise issues and away match arrangements, rather than the regulation of clubs. However, there is strong feeling within some supporter groups that the IFO is not effective in its current constitution, because too few fans are even aware of the IFO’s existence and because its recommendations are not binding on clubs.

7.33 The Review does not propose that IREF deals with customer and consumer affairs, therefore IREF is not expected to replace the IFO nor establish an Ombudsman within its own structures. However, a number of reforms to the existing IFO structure were proposed to the Review by fan groups, including strengthening judgements to ensure they are binding on clubs and the football authorities. It is therefore strongly recommended that the football authorities work with the FSA to upgrade the current IFO so that it meets the criteria for full membership of the Ombudsman Association, with a sound governance structure, appointments based on Nolan principles, and realistic levels of funding to provide an effective service.

Recommendation 27

The football authorities should work with the FSA to upgrade the current Independent Football Ombudsman so that it meets the criteria for full membership of the Ombudsman Association.

Chapter 8. Protecting Club Heritage



Introduction

- 8.1** As noted throughout this report, football clubs are not simple economic assets, and are part of the heritage and culture of their local communities and the country more generally. Items such as club stadium, colours and badge are an important part of this, and the Review heard passionate evidence from many groups on the impact of threats they have faced to this heritage – often as a consequence of poor financial management of their clubs by owners.

Strategic Recommendation (G)

Football clubs are a vital part of their local communities, in recognition of this there should be additional protection for key items of club heritage.

- 8.2** In response to the problems and threats identified, this chapter recommends utilising a so-called ‘Golden Share’ which will require the consent of fans to certain heritage matters. It also sets out the headline details of this approach, though further development work will need to be undertaken by IREF and government in consultation with football stakeholders.
- 8.3** In addition, in recognition of the limitations of the Golden Share approach, this chapter also makes recommendations in relation to planning and development threats to club stadiums.

Golden Share

“I am from Brentford.... We pioneered the Golden Share idea and it was absolutely crucial in preventing the loss of our club because of an unscrupulous owner. Football clubs should not just be considered as ‘businesses’ but instead should be formally designated by Local and county authorities as a key part of the historical and cultural heritage of their areas and communities.”

Contributor to Fan Led Review Online Survey

- 8.4** The common thread in situations where club heritage items have been threatened has been a lack of legal powers held by those most emotionally invested in the heritage items – the fans and local communities. Accordingly, the Review has considered ways in which greater legal protection could be given to heritage items and in particular how the voice of those to whom the heritage of a club is most important – club supporters – can be prioritised.
- 8.5** Based on this work, and consideration of the operation of similar models both in sport and other industries, the Review has concluded that it should be an IREF licence condition that the articles of association of a club provide for a special share – the ‘Golden Share’. Under this approach, the holder of the Golden Share would be required to consent to any changes to heritage items.
- 8.6** Some progressive clubs already provide for a Golden Share, most notably Brentford whose successful model provided certain veto rights over a stadium move. This ultimately did not prevent the club from moving its stadium, but ensured that fans were supportive of the move. This is a good case study demonstrating that Golden Share rights can operate in a positive manner to the benefit of all concerned.
- 8.7** However, creating a Golden Share requires a club to adopt relevant provisions in the club articles of association, which requires approval of a sufficient number of shareholders. As Brentford’s example demonstrates and as several club owners confirmed in evidence to the Review, owners who are truly custodians of their club should have no objection to doing this. However, such custodians are, ironically, the ones whom a club least needs protection from. Other, less suitable owners may not be keen on adopting a Golden Share provision but are the ones whose clubs most need the Golden Share protections.
- 8.8** The creation of IREF and the licence system it operates gives an opportunity to address this problem. In short, it would be open to IREF to introduce a Golden Share licence provision requiring licence holders to include a relevant provision in their articles of association.

Recommendation 28

It should be a licence condition that all licenced clubs should include within their articles of association a Golden Share requiring democratic consent to proposed actions relating to identified heritage items. Each Golden Share right should have circumstances in which it will not apply.

- 8.9** In order to implement this approach, the following will need to be addressed and headline recommendations are below:
- a. characteristics of Golden Share;
 - b. who holds the Golden Share?;
 - c. how are Golden Share rights exercised?

Characteristics

- 8.10** The proposed key general characteristics of this Golden Share are:
- a.** it shall not have any financial value or be capable of being transferred or otherwise disposed of other than to an alternative supporters body that also meets the required criteria;
 - b.** as it is not intended to convey ownership rights, it shall carry no rights to receive notice of or attend at a general meeting of the club or any rights to vote on any ordinary or special company resolution;
 - c.** the rights attaching to the special share shall not be capable of variation other than with the consent in writing of the holder of the share and IREF.
- 8.11** The proposed items for which the consent of the shareholder will be required are:
- a.** sale of club stadium (including the grant of security over a club stadium);
 - b.** re-location of club outside of the local area (excluding temporary relocation as part of an actual (i.e. not just planned or hoped for) development of an existing stadium e.g. Tottenham's relocation to Wembley);
 - c.** the club joining a new competition that is not affiliated to FIFA, UEFA and the FA and/or leaving a competition in which it currently plays. This would mean that a future European Super League would not be possible without fan consent;
 - d.** club badge;
 - e.** first team home shirt club colours; and
 - f.** club name (i.e the team playing name rather than the name of the legal entity owning the club).
- 8.12** These items should be seen as a minimum requirement – it will remain open for clubs/ supporters to agree additional items be subject to the Golden Share veto rights.
- 8.13** The Golden Share will also not operate to give the holder the right to initiate actions such as leaving a competition. Instead, it will operate as a check on proposals made by club owners.

Recommendation 29

The consent of the holder of the Golden Share should be required for the sale of the club stadium, relocation outside of the local area which is not a temporary part of a redevelopment, joining a new competition that is not approved by FIFA, UEFA and the FA and/or leaving a competition in which it currently plays, club badge, first team home colours, and club playing name.

Who holds the share?

- 8.14** The objective of the Golden Share is to provide legal protection for heritage items and ensuring fans are considered in any action relating to these items. As a result, it is therefore proposed that the Golden Share be held by a fan representative body.
- 8.15** A Community Benefit Society ('CBS') formed under the Cooperative and Community Benefit Societies Act 2014 offers many of these features. These are a specific type of company which exist for the broader benefit of the community which could be applied to the supporters of a specific football club. A CBS:
- a. is incorporated and has legal personality;
 - b. has community benefit written into its governing documents and must conduct business for the benefit of their community;
 - c. must operate on a democratic one-member-one-vote basis;
 - d. cannot distribute profits among its members;
 - e. are subject to regulation by the Financial Conduct Authority; and
 - f. are an asset locked organisation meaning any rights or assets owned by it are protected and cannot easily be transferred.
- 8.16** A fan representative CBS will be in an important position, and it is therefore crucial that it is constituted and operates according to high standards. The key document in a CBS is the rules document. This sets out the rules that govern key items such as membership, voting, and office holders. The governing legislation gives a great deal of discretion to each CBS but these rules must be registered with the FCA. Any subsequent alteration to the rules must be registered with the FCA.
- 8.17** In order to ensure consistency, it is recommended that IREF will adopt a set of model rules agreed with the FCA. These requirements shall provide for, among others:
- a. minimum standards of corporate governance (including election of office holders and term limits for office holders);
 - b. membership open to any individual fan over the age of 16 who wishes to join (including international fans);
 - c. minimum standards for office holders (which should include a requirement for mandatory training to seek to ensure that the shareholder CBS operates according to the highest standards as well as rules barring unsuitable individuals);

- d. grounds for removal of office holders by the CBS members on the basis of poor conduct (such as discriminatory behaviour) and/or performance;
- e. Inform and consult requirements in relation to a vote, including non member fan groups;
- f. a requirement to hold a vote on whether or not to exercise any Golden Share powers. In order to avoid artificial manipulation of votes the members of the eligible constituency on a particular vote will require to have been eligible at a point several months before the date of the vote.

8.18 Seventy three League clubs currently have a CBS in the form of a Supporters' Trust. It should be open to existing Supporters' Trusts to be the Golden Shareholder, provided that they adopt and operate according to the standardised IREF rules.

Recommendation 30

The Golden Share should be held by a Community Benefit Society formed for the benefit of the club's supporters operating under standardised rules set by IREF in conjunction with the FCA.

How are Golden Share rights exercised?

8.19 In order to give effect to the Golden Share protections, it is proposed that the club's articles of association incorporate standard provisions (to be developed by IREF) which contain the following and seek to strike a balance between the heritage protections and not unduly hindering club operations:

- a. The club will not be able to enter into a contract or take other material steps which will alter any of the items covered by the Golden Share without serving written notice upon the holder of the special share.
- b. The holder of the special share will then have 45 days from the date of receipt of the notice to serve a formal notice specifying consent or veto of the proposal upon the club.
- c. If the club receives consent of the holder of the Golden Share, or does not receive a formal notice of rejection within 45 days, then it will be able to proceed with the matter.
- d. If the club receives a formal notice rejecting the proposed matter, then subject to any right of appeal or dispute resolution mechanism it is unable to enter into the agreement and/or take the proposed steps.

8.20 As noted at paragraph 8.14 it is proposed that any decision to consent (or not) to a proposal relating to Golden Share items should be subject to a democratic fan vote. The question of the 'correct' voting constituency for the exercise of a Golden Share is a difficult one, particularly in clubs with large global fan bases. There is a natural desire to involve as many fans as possible, but it is also recognised that defining a 'fan' in a way that provides enough legal certainty for the purposes of a vote is difficult. Further, the impact of items protected by the Golden Share are arguably much greater for some fans than others

– for example, the relocation of a club from its city will have very little impact on many international fans, but would have a significant impact on local match going fans (and the local economy).

- 8.21** It is therefore proposed that the IREF/FCA model rules for the CBS holding the Golden Share provide that the following will be able to vote on the exercise or not of a Golden Share:
- a. Members of the CBS holding the share (which will be required to be open to all so could potentially include international supporters);
 - b. Season ticket holders at the relevant club; and
 - c. Supporters who have attended at least one home match in the previous season.

Recommendation 31

Clubs should be required to provide formal notice of any intention to take any material steps or enter into a contract to alter any of the items covered by the Golden Share to which the holder of the Golden Share will have 45 days to notify rejection.

Disputes

- 8.22** The Golden Share needs to strike a balance between protecting club heritage and allowing commercial development which will benefit the club. Each Golden Share right should therefore have (1) a mechanism for independent dispute resolution if the club feels that the shareholder is exercising rights unreasonably in a manner that prejudices the development of the club and (2) certain criteria under which the rights will not apply. An obvious example of the latter would be the ‘move’ of Tottenham Hotspur to its new stadium from the old White Hart Lane in which there was only a very short physical move, with the stadium largely being on the same site.
- 8.23** Clearly in both cases the drafting and definition of the rights or appeal mechanism will be key. Having considered dispute resolution precedents, it is recommended that an arbitration mechanism be developed, which will form part of the club’s articles.
- 8.24** IREF will need to do detailed development work in order to ensure that the arbitration appeal rights strike the right balance without undermining the effectiveness of the protections afforded. IREF itself is arguably best placed to be the arbitrator (or at least to appoint the arbitrator). Further, in order to ensure ‘equality of arms’ and a fair process it is recommended the club should pay the reasonable costs of both parties to the arbitration regardless of outcome, excluding costs for any unreasonable or unfounded litigation behaviour.

- 8.25** In relation to criteria under which Golden Share veto rights will not apply, precedents include a new stadium located in certain specified postcodes (Portsmouth) or that meets certain criteria in the local area (Brentford). IREF can consider these precedents and provide guidelines on the criteria, but it will be difficult for IREF to be across all local issues.
- 8.26** Accordingly, it is suggested that IREF will not look to dictate the detailed exceptions for every licenced club. Instead, it is recommended IREF require that the club agree the detailed exceptions with the shareholder body. In order to protect the fans' interest such exceptions should be subject to approval by IREF and be embodied in the articles of association.

Recommendation 32

There should be an arbitration mechanism, at the club's expense, which allows for resolution by IREF or a party appointed by IREF of an appeal by the club of any decision to withhold consent by the holder of the Golden Share.

Planning

- 8.27** The Golden Share approach outlined in this chapter will be a significant step forward in protecting the heritage of clubs and the interests of fans. However, there are limitations to this approach and the Review has therefore given consideration to other ways that may protect heritage items.
- 8.28** In relation to existing stadiums, one area that was considered by the Review was planning law. The existing National Planning Policy Framework (NPPF) provides that existing provisions (including football club grounds) should not be built on unless they are replaced by equivalent or better provision in a 'suitable location'. However, evidence was presented to the Review that clarification of these provisions would significantly help clubs in dealings with developers, particularly in relation to the quality of alternative provision and when it must be provided by developers.
- 8.29** The Government is also actively considering planning reform and has published a planning white paper 'Planning for the future' for consultation. This proposes reforms of the planning system and one of the proposals is for clearer, more up to date and more certain local plans which will assign land into different area types 'up front'. Accordingly, football grounds not specifically marked for development would be better protected.
- 8.30** The reforms will also offer an opportunity for a new NPPF to be produced and published. It is understood that any new NPPF is likely to contain enhanced development management policies which will provide more consistency to decision making and provide a less discretionary based system.

- 8.31** In light of the on-going government review of planning and balancing the need to protect clubs whilst not unduly inhibiting necessary local development, it is recommended that the Government:
- a.** take account in the development of the new planning approach of the civic and historic importance of football clubs to their local communities; and
 - b.** clarify the NPPF (whether as part of the planning reforms or otherwise to provide that if an existing football stadium is permitted for development (other than development of the stadium itself where the club is not going to permanently relocate) then before any development can be commenced, the developer is required to provide the club with new ‘equivalent or better’ facilities (including replacement of items necessary for the conduct of the business of a club including stands/seating, office space and gym facilities on the site for development) in the same local area (which need not be the same site or postcode but must be sufficiently close to the current stadium unless the supporter base agrees).

Recommendation 33

The Government should take account of the importance of football clubs to their local communities in planning reform.

Recommendation 34

The Government should amend the National Planning Policy Framework to impose requirements on developers of an existing football stadium to provide new equivalent or better facilities in the same local area before any development work is started.

Alleviating Development Pressure

- 8.32** Additional protection for clubs’ stadiums via planning law will help, but issues with loss of stadiums arise before planning becomes relevant. This was made clear during the review by the cases of Whyteleafe and Abingdon Town, both of which were forced to withdraw from their respective leagues due to being unable to reach agreements with a Singapore based property developer, Irama Sport, which had acquired their respective grounds.

- 8.33** There is no logical reason for a foreign property development company to acquire the land on which lower league football clubs are based other than to seek to develop them. Certainly, it is unlikely they will obtain a financial return from the clubs alone. The Whyteleafe and Abingdon cases indicate that at least some developers are willing to acquire land and make it difficult for clubs to remain as a prelude to development.
- 8.34** It is therefore recommended that the Government should explore the viability of introducing new security of tenure rights for clubs when land on which their stadium is based is acquired.

Recommendation 35

The Government should explore the viability of introducing new security of tenure property rights for clubs where the club does not own the stadium in which it plays.

Existing Protections

- 8.35** It should be noted that the FA does have certain powers to protect some heritage items. However, these do not cover all the important items of heritage. The Review has also heard from fan groups that even where the FA procedures have worked to protect heritage items (as they did in the Hull City name change case) the process was difficult and unnecessarily stressful for supporters.
- 8.36** However, any additional protection for heritage items would be welcome, and it is noted that the FA would be able to reform its rules relatively quickly to provide additional protections before IREF is in operation. It is therefore recommended that the FA amend its rules and procedures for dealing with heritage items proposed to require the consent of the holder of the Golden Share.

Recommendation 36

The FA should amend its rules to provide for protection of the additional heritage items identified by this report, to prioritise the voice of supporters in any decision, and to provide clarity on the procedures that will be followed in regard to any heritage changes.

Chapter 9. Finances and Distributions in Football

BLYTH SPARTANS AFC

Introduction

- 9.1** As set out in the case for reform (chapter 1) and the section on financial regulation (chapter 3), football has moved a long way from its amateur roots and has become big business. Finances in football are crucial to on field success and long-term sustainability but club finances are fragile and without intervention football clubs at many levels risk serious failure and potential collapse.
- 9.2** There are, of course, two aspects to finances – money coming in and money going out. The issue of cost control was addressed earlier in this report as part of the proposals for a new licensing regime. This chapter considers financial flows and distributions to the football pyramid, the main issue raised in evidence in relation to ‘money in’. It also considers specific reforms that might assist the revenue and sustainability of clubs at the lower levels of the pyramid. Reforms to revenue and cost control should be assessed as one; delivered in isolation or partially will only shift the problem or delay inevitable club failures. The incremental and pragmatic reforms recommended in this report will help to ensure a long-term and sustainable future for football.

Strategic Recommendation (H)

Fair distributions are vital to the long term health of football. The Premier League should guarantee its support to the pyramid and make additional, proportionate contributions to further support football.

A. Distribution of FA revenues

- 9.3** The interim findings letter for this Review of 22 July 2021 set out that the FA should have more flexibility in the use of the money that it generates than it is permitted under the current funding formula. The current formula requires an equal split between the professional and amateur games. The Review has concluded that this formula should be abolished, and the FA allowed to redistribute its surplus towards the grassroots, amateur and women’s game as it sees fit.

Recommendation 37

The FA should scrap its current formula for distributing revenue it generates. The FA should have more flexibility to redistribute revenues as it sees fit, based on its assessment of where funding is most needed in the game.

B. Distribution of finances in football

- 9.4** In considering ways to improve club finances amongst lower league clubs, the issue of financial distributions was raised by a number of parties in evidence to the Review. In particular, the distribution of money from the Premier League to the rest of the pyramid was forcefully raised by the English Football League.
- 9.5** There are clearly huge disparities between the finances of the Premier League and the rest of the football pyramid. The value of promotion to the Premier League is now estimated to be worth at least £170 million.⁴⁹ Evidence submitted by the EFL stated that in the 2018/19 season, Huddersfield Town, the club that finished in last place in the Premier League, received £96.8 million in central distributions while Norwich City, the winners of the Championship, received £8.5 million – just 9% of the money paid to the club finishing one place higher in the pyramid.⁵⁰ This report sets out in chapter 1 how this incentivises risk taking behaviour contributing significantly to the precarious position of Championship clubs.
- 9.6** The Premier League's own data projects that it will pay £1.23 billion of funding to the EFL and football pyramid between 2019 and 2022.⁵¹ £647 million of this is paid in parachute payments (or 52% of total funding provided to the pyramid). The Premier League states it provides an aggregate 47% of the total turnover in the Championship. In addition to the EFL funding, the Premier League also provides funding to the National League, to women's and girl's football, and to the grassroots game.
- 9.7** There is a clear case for the Premier League to continue to support the wider pyramid. Clubs in lower leagues are of immense cultural and historical importance to local communities and the Premier League's support helps to preserve these assets. In addition, grassroots football and lower league football is an important feeder of talent into the Premier League. The value of the wider pyramid and the need for continuing support is recognised by the Premier League.
- 9.8** The EFL considers the current distributions from the Premier League to be insufficient. The EFL told the Review that its clubs get about 16% of Premier League broadcast revenues and most of this goes on parachute payments. The EFL argues that an increase of distribution of revenues to an aggregate 25% is needed. Before the Premier League was created, the second, third and fourth divisions earned 50% of broadcast revenues.

⁴⁹ Deloitte (2021) Annual Review of Football Finance

⁵⁰ EFL submission to the Review

⁵¹ Premier League submission to the Review

- 9.9** As shown in chapter 1, there are a range of problems in football finances. Greater financial support from the Premier League would clearly help improve the income of clubs in the EFL and wider pyramid. However, it should not be the only consideration. Improving the commercial performance of the EFL will also increase the income of their clubs and this must be part of the league's long-term strategy.
- 9.10** The Review also recognises that in isolation, simply raising revenues is no guarantee that clubs will become more viable. As noted, part of the solution has to be about financial regulation and cost control measures which was discussed extensively in chapter 3.
- 9.11** It is not for this Review to decide on the detailed future allocations of revenue between the respective leagues. However, based on the work undertaken by the Review there is a strong case for some additional distributions from the Premier League to the rest of football. In simple terms, even modest additional funding allied with sensible cost controls could secure the long-term financial future of League One and League Two clubs as well as make a substantial contribution to the grassroots game. Given the vast wealth at the top of football, the continued levels of investment, the growth of international broadcast deals, and the leadership of the game it provides (domestically and internationally) it is not unreasonable that the Premier League supports wider football to an even greater level. This will mean football can thrive across the country, which ultimately will benefit the Premier League.

Parachute payments

- 9.12** A key part of the issue of distribution of income in the game is parachute payments, something that was addressed by many who gave evidence to the Review. Parachute payments are payments to clubs that have been relegated from one league to another, including from the Premier League to the Championship. Under current arrangements a club that has been relegated from the Premier League can expect to receive a payment in the region of £40 million per year.⁵² These payments are intended as a means of financial support as clubs adapt to lower revenues outside the Premier League. They are also intended to give promoted clubs the confidence to invest as they are aware that if they are relegated, they will still receive substantial income to cover costs incurred to compete in the Premier League.
- 9.13** Before the introduction of parachute payments, relegated Premier League clubs often struggled to get costs under control and adjust to significantly reduced revenues. Administrations were common. This is not something that anyone wants to see return to the game.
- 9.14** While the intention of parachute payments is clearly laudable, their unintended consequences have been significant. In simple terms, parachute payments give relegated clubs significant financial clout compared to Championship rivals which have a number of consequences:

⁵² <https://www.premierleague.com/news/1939288>

- a. The Review heard evidence from senior members of Championship clubs that parachute payments inject wage inflation into the league thus compromising sustainability.
- b. Clubs in receipt of parachute payments are estimated to be twice as likely to be promoted to the Premier League and the risks of relegation to League One are also reduced significantly.⁵³
- c. The existence of parachute payments can encourage gambling with these payments as a means of returning to the Premier League. As an example, if Aston Villa had lost the play-off final to Derby County in 2019, they faced significant financial distress. The club appears to have risked its long-term future by spending its parachute payments to chase a return to the Premier League.⁵⁴

9.15 Parachute payments also absorb financial resources that could otherwise be used as solidarity payments to the wider pyramid. According to the Premier League, 52% of the total money it pays to EFL clubs is parachute payments. By definition, this means the majority of Premier League money goes to a handful of clubs. A more even distribution of these funds would support the sustainability of the pyramid, raise the level of competitiveness in the leagues and help create a more diverse and competitive set of entrants to the Premier League.

9.16 There is clearly no desire to return to the regular administrations of the pre parachute payment era. Parachute payments do perform an important economic function in helping clubs transition to a new economic reality and mitigating the risk of a financial collapse for a club that has been relegated. Accordingly, the Review has concluded some form of financial support for clubs following relegation to the Championship is necessary. However, the impact of the current system on the Championship in terms of both competition and the economics of the league means that reform is needed.

9.17 Detailed consideration has been given to what reform could look like. Any solution is likely to be challenging to design and implement and would need to manage competing objectives of:

- a. giving promoted clubs confidence to invest/compete.
- b. avoiding collapse for relegated clubs.
- c. stopping the distorting effects on competition and wages in the Championship from parachute payments.

Who should solve distributional issues?

9.18 Whilst additional support for the wider pyramid is desirable, it is more difficult to determine how this is achieved and who resolves this. When it comes to football finances, the existing authorities and leagues within the game have a poor track record of resolving issues. The perilous state of finances in football, even in the wealthy Premier League, indicates that the status quo would not be guaranteed to fix this issue. For example, the pandemic led to

⁵³ Harris et al. (2018) Parachute Payments in English Football; Softening the Landing or Distorting the Balance?

⁵⁴ Derby County lost that game and is now in deep financial stress, having employed an alternative, but equally risky strategy to chase promotion.

significant financial distress to clubs, with some clubs close to collapse. But despite this, it took over six months to agree a package of financial support for the wider pyramid (and only after significant pressure from the government).

- 9.19** The Review has considered whether IREF should intervene to redistribute Premier League broadcasting money. In intervening on distributions, IREF would be independent and required to operate in accordance with its statutory objective of promoting a sustainable future of the game. With no vested interest, it could theoretically make an objective assessment of the need for redistribution and level of any redistribution, as well as balancing competing views.
- 9.20** However, issues of redistribution are complex and it is usually left to the Government to intervene to redistribute income. Any judgments made by IREF on issues of distribution would likely be labour intensive, controversial and have the potential to distract it from core activities where it can most benefit the game.
- 9.21** However, given the poor history of the football authorities reaching agreement, IREF must have backstop powers to intervene if no solution is found. All sides are strongly encouraged to try to resolve these issues without the need for IREF to intervene, while stakeholders have the chance to shape the outcome, and to do this at pace. Football should be able to resolve this issue itself – however, if it is unable to, IREF should have backstop powers in legislation which allow it to intervene.

Conclusion on distributions

- 9.22** Distributions is an issue that football itself can resolve. The Review was made aware that the Leagues are in discussions on distributions including reform of parachute payments, and it is hoped that they will reach a mutually beneficial conclusion. However, it will need compromise, an evidence based solution and creative thinking to resolve the apparent impasse between the Premier League and EFL. A negotiated football led agreement would be the best solution. However, if no agreement is reached before the end of 2021, the Premier League and the EFL should jointly commission external advice to develop a solution to redistribution, including parachute payments.
- 9.23** However, if football cannot find a solution ahead of the introduction of legislation to implement the reforms set out in this report, then IREF must be given backstop powers to intervene and impose a solution. Such powers should not be needed – IREF intervention on parachute payments would be inferior to the Leagues developing a solution themselves. Any solution IREF develops may well be a worse outcome than one the parties could have negotiated themselves.
- 9.24** All sides are strongly encouraged to compromise, and resolve these issues at pace without the need for a regulator to intervene while they have the chance to shape the outcome. If they do not, a solution will be imposed. External involvement in this process would be another example of football's failure to put aside self interest and protect the long-term interests of the game.

Recommendation 38

Football should seek to resolve distribution issues itself. If no agreement can be reached by the end of 2021, the Premier League and EFL should commission research to find a solution, with backstop powers for IREF if a solution is still not found.

Salary costs

- 9.25** The main issue that parachute payments were designed to alleviate is the impact of salary costs when a club is relegated. Salary costs are the biggest source of expenditure for football clubs by far. Relegation leads to reduced income and can leave a relegated club with a squad of players beyond its means. This can mean that clubs are forced to sell a player below their market value, in order to lower the wage bill or to operate a wage bill that is too high contributing to financial losses. There is another side to this – when a club player is promoted, players may receive a bonus, but it would be equitable that the players' contract reflected the division a player is playing in. Some clubs have player contracts that automatically adjust to the division a player is playing in, while others do not.
- 9.26** Some of the difficulties faced by clubs on relegation could therefore be addressed if player contracts automatically adjusted the level of salary depending on the league they are playing in. Equally, players who are part of a team promoted to a new division would see their salaries increase. This would be a pragmatic way of aiding the sustainability of football clubs by reducing the impact of relegation and need for parachute payments but also fairly rewarding players in event of promotion.
- 9.27** Clauses that automatically adjust player salaries by a standard rate will need to be part of the standard playing contract in order to succeed. If not, then in a competitive recruitment scenario player agents may be able to negotiate the clause out of the contract. The Review encourages, the Professional Footballers' Association, leagues and clubs to work together to consider how this could be done as a standard term of player contracts for the good of football.

Recommendation 39

The Leagues, FA, and PFA should work together to include a new compulsory clause in the standard player contracts that provides for an automatic adjustment to player salaries at a standard rate upwards on promotion and downwards on relegation.

Solidarity transfer levy

- 9.28** In addition to consideration of increasing distributions and reforming parachute payments, the Review has also considered other possible approaches to provide greater support throughout the football pyramid. Of these, the most promising and progressive intervention is a new solidarity transfer levy paid by buying Premier League clubs. This would work in a similar way to stamp duty and revenues would be distributed among the pyramid.
- 9.29** The levy would be paid by Premier League clubs on any player transfer within the Premier League or any international transfer. IREF would ensure funds have been paid. Clearly, this will be a significant development and accordingly the rate of levy, whether player loans are captured, the scope of the levy and its distribution should be finalised after consultation.
- 9.30** This levy could raise significant sums for the pyramid. Transfer fees can be opaque, but based on estimated values in the last five years, Premier League clubs have spent in the region of £9.9bn on transfer fees.⁵⁵ If a 10% levy had been applied in that period, excluding transfers from EFL clubs, an estimated £160 million per year⁵⁶ could have been raised for distribution.
- 9.31** This level of support, annually, could be game changing to the pyramid. One year's payments illustratively could fund all of the items below, which would benefit men's, women's, boys' and girls' football for the long term:
- A grant to ensure that League One and League Two clubs broke even⁵⁷
 - 80 adult synthetic pitches
 - 100 adult grass pitches
 - 100 children's/small sided grass pitches
 - 30 two team changing rooms (including referee facilities).⁵⁸
- 9.32** The solidarity levy is progressive, transferring finances from wealthy and high-spending clubs to the rest of the football pyramid. It would allow wealthy clubs to invest, but in return for payments that ensure the long-term, sustainable health of the pyramid. About half of the revenue raised in the last five years would have been paid by the six richest clubs in English

⁵⁵ Transfermarkt

⁵⁶ Analysis assumes that fees previously paid were the maximum total fee affordable to buying clubs.

⁵⁷ Deloitte (2021) Annual Review of Football finance. This is illustrative and any funding would not directly be paid to offset losses per se as this could encourage further loss making

⁵⁸ Sport England (2021) 2nd quarter 2021 facility cost updates

football (Arsenal, Chelsea, Liverpool, Manchester City, Manchester United and Tottenham Hotspur). But if the levy was introduced then heavy spenders, backed by wealthy owners, would also have contributed significantly to the sustainability of the pyramid. Equally, Premier League clubs that are not heavy spenders would not pay very substantial solidarity levy payments.

- 9.33** By excluding EFL players from the levy, they become more attractive, shifting money back to the EFL. This would encourage domestic player development. In addition, EFL clubs are excluded from the levy on transfers they make, which is an indirect form of support. All considered, this proposal would be a substantial source of support to EFL clubs.
- 9.34** The levy would not be without consequences. Primarily, it would add costs to some parties in the industry. Premier League clubs are already required to provide a 4% levy on transfers to fund the Professional Footballers’ Pension Scheme. Clubs may soon have to pay a FIFA solidarity payments of 6% (up from 5%) on relevant transfers.
- 9.35** The levy would also mean that international transfers are relatively more expensive for Premier League teams, which might put them at a competitive disadvantage in recruiting players. However, English clubs are very wealthy in comparison to other European clubs – an advantage that will grow in the next broadcast cycle as other leagues have seen broadcast income fall but the Premier League has been able to preserve value due to government intervention in allowing the existing Premier League broadcast deal to ‘roll over’. The additional costs of such a levy would likely still be within the means of clubs.
- 9.36** To illustrate the impact, the table below sets out the impact on a £20 million transfer, with no levy, a levy of 5% or a levy of 10%, on an international purchase, by a Premier League club. The table includes reforms proposed by FIFA and would break down as follows:

| | No new levy | 5% solidarity levy | 10% solidarity levy |
|---------------------------|-------------|--------------------|---------------------|
| Base fee | £20,000,000 | £20,000,000 | £20,000,000 |
| Premier League levy | £800,000 | £800,000 | £800,000 |
| FIFA levies ⁵⁹ | £1,200,000 | £1,200,000 | £1,200,000 |
| New solidarity levy | £0 | £1,000,000 | £2,000,000 |
| Total cost | £22,000,000 | £23,000,000 | £24,000,000 |

- 9.37** On balance we consider the costs to be manageable and affordable by the Premier League clubs whose league will enjoy an even greater relative income in years to come, is progressive and has the potential to provide game changing funding to help save football.

⁵⁹ FIFA is currently consulting on proposals to reform its levies, which currently are poorly enforced

Recommendation 40

A solidarity transfer levy should be introduced for Premier League clubs, to support the football pyramid and overseen by IREF. Its level and whether loans should be included should be determined through consultation.

Reporting on financial flows and distributions

- 9.38** In considering the evidence presented to the Review, it was striking that there is no single source of objective evidence on financial flows and distributions in the game. In an easily digestible format, this would be an invaluable piece of evidence and aid objective discussion on flows and distributions.
- 9.39** This type of report is typical for an industry regulator and a useful means of market monitoring, identifying current problems and horizon scanning emerging issues. The report might show a different distribution is appropriate or be used to aid negotiations between parties on appropriate distributions. Such transparency can only be good for football.
- 9.40** An additional benefit of this report is that it could be used as a means of assessing the performance of IREF. The report would also allow it to fully understand how the football industry is working and to judge if its interventions are working.

Recommendation 41

IREF should produce or procure on a regular basis an assessment of financial flows, distributions and costs in football to aid policy debate on football finance.

A. Income Generation by EFL Clubs

- 9.41** Alongside consideration of the 'macro' finance issues, it is clearly crucial for the sustainability of clubs, especially those in the lower leagues, to be able to generate income from their assets to contribute to their sustainability.
- 9.42** In relation to lower league clubs three specific areas were identified in evidence to the report where they are being artificially prevented from doing so. These are the level of the broadcasting deal the EFL negotiates, the selling of alcohol during a match in the National League and League Two; and the current EFL rules to allow the use of synthetic pitches in the lower leagues.

EFL broadcast deal

- 9.43** Broadcasting revenue is a key part of football finances. The Review has heard evidence that the value of the EFL's broadcast deal could be higher than is currently being realised. In addition, the nature of the contracts mean that when games are shown, they can clash with important Premier League games or English teams competing in European competitions. The evidence on this was not unanimous and the review has not been able to conclude whether the EFL is achieving its full commercial potential.
- 9.44** The Review recommends that the EFL considers whether more could be done to raise the value of its broadcast deal, seeking advice and guidance from suitable parties to ensure it is achieving its full potential.

Sale of Alcohol

Commercial Benefit to Clubs

- 9.45** In evidence to the Review, Dulwich Hamlet, playing in the National League South, highlighted how the successful running of a bar contributed significant income to the club. However, if promoted to the National League, the club would be compelled to discontinue such commercial activity because of alcohol restrictions in The Sporting Events (Control of Alcohol etc.) Act 1985 prohibiting the sale of alcohol in sight of the pitch. Evidence from the club to the Review stated that this would cost the club around 40% of its income and that the club could therefore not afford to be promoted – a perverse outcome which undermines the merit based system of the English football pyramid.
- 9.46** Comparative figures provided by the EFL of average spend on food and drink per head at rugby matches played in the same stadiums at EFL matches (where the Act does not apply) with the proceeds achieved at football matches suggest that the legislation costs football clubs roughly £2 per head each match. If this is projected for a League Two average attendance of 4,000 across 23 home matches then approximately £184,000 is being lost per club, or £4,416,000 across the League. Clearly, this is a significant loss of revenue that might otherwise contribute to sustainability.

Safety concerns of current approach

- 9.47** Evidence from the Sports Grounds Safety Authority (SGSA) to the Review also highlighted that the current regulations on sale of alcohol caused some safety issues. In particular, the current legislative approach meant that stadium concourses are crowded with spectators using the short half time window to purchase alcoholic drinks. This crowding could be eased if alcohol was available throughout the game, as there would be a wider opportunity, and therefore less pressure for purchases to be made. Such an approach is also relevant in this time of pandemic to support social distancing measures.
- 9.48** In their evidence, the SGSA said they would be supportive of any piloting of alcohol sales at National League level, but recognised that there would be significant push back from the police on pilots, and any move to reform the existing legislation.

Challenges to existing approach

“Some of the draconian rules directed only at football supporters need to be revised – specifically not being allowed to consume alcohol in view. I am a middle aged senior professional with an honour and I still get treated like a criminal just for enjoying attending football matches – it’s not the 1980s anymore.”

Contributor to Fan Led Review Public Survey

- 9.49** The Football Supporters’ Association (FSA) maintains that the existing alcohol legislation is outdated and cites the change in football culture over the years. Few would dispute that this has altered radically for the better since the 1980s when the legislation was passed – not least by the formation of the Premier League. The FSA also highlight the incongruous nature of the existing legislation which enables supporters’ to drink on a five-hour train journey to a match, drink at a designated away pub for an hour before the game, even drink at the bar in the back of many grounds’ stands, but for the 45 minutes either side of half-time there is a blanket ban on intake.
- 9.50** The EFL also advocates an update to the legislation. The EFL stress the inconsistency with the current law that treats football differently in comparison to other sports – and sometimes in the same stadium where football and other sports are played – and every other form of public gathering, including music events.
- 9.51** The EFL stressed that the Sporting Events (Control of Alcohol etc.) Act 1985 does not prevent fans who want to drink alcohol from drinking on match days, often to excess. Instead it leads to fans ‘loading up’ ahead of matches and largely consuming alcohol away from stadiums in a way that has implications for individual policing operations and police budgets.
- 9.52** It is notable that this very concern was raised by the Association of Chief Police Officers during the passage of The Sporting Events (Control of Alcohol etc.) Act 1985. In the Bill’s Second Reading on 3 July 1983 then Home Secretary, the late Rt Hon Leon Brittan MP, raised the objections of the police at the time to the proposed new legislation as follows:

*“ the Association of Chief Police Officers, with its members’ extensive experience of policing the grounds of major league clubs, has told us clearly that it does not favour a total ban. In its view, strictly controlled drinking inside grounds is easier to police than increased and more dispersed drinking in pubs and in the streets away from the ground. ”*⁶⁰

- 9.53** The EFL makes the point that it is unfair on private businesses that wish to be able to sell alcohol to the many law-abiding citizens attending matches who wish to be able to drink and who pose no threat at all to public order. The EFL proposes that where there is clearly a low risk of disorder, as is the case for most EFL matches which have minimal policing requirements, that fans should have the ability to consume alcohol in some parts or all of the stadium during matches if they so wish.
- 9.54** The EFL also believes that whether or not clubs should be permitted to let fans consume alcohol in sight of the pitch at each game could be determined as part of the pre-match planning process, either through the safety certificate or licensing processes. This would give the relevant police force the opportunity to make suitable representations relating to potential disorder at matches. For the avoidance of doubt, the EFL have been clear that they would not support the consumption of alcohol in sight of the pitch at matches where there is a high risk of disorder.
- 9.55** As far back as 2008, UEFA announced changes to its own rules on alcohol⁶¹ – allowing its sale at Champions League and Europa League games, albeit subject to local laws such as the English prohibition on drinking in sight of the pitch. The Executive Director of Football Supporters Europe said of the UEFA change of policy, noting the lack of evidence that limiting alcohol sales had any impact on preventing football related disorder stated: *“Supporters felt that the alcohol banning policy was paternalistic, as there is absolutely no evidence or research to suggest that banning alcohol in a stadium has any bearing whatsoever on preventing or curtailing football-related disorder in and around it.”*
- 9.56** It is not only the football supporter groups and leagues that brand the current alcohol legislation as outdated. Writing in a personal capacity in the recent edition of Policing Insight,⁶² Owen West, former Chief Superintendent, crowd policing specialist, and Senior Lecturer in Policing, Law and Criminology at Edge Hill University, stated that the policing narrative on the sale of alcohol in sight of the pitch is *“unevidenced”* and lacks coherence.

⁶⁰ Hansard: Sporting Events (Control of Alcohol etc.) Bill, HC Deb 03 July 1985 vol 82 cc333-470, <https://api.parliament.uk/historic-hansard/commons/1985/jul/03/sporting-events-control-of-alcohol-etc>

⁶¹ ESPN 2018

⁶² Policing Insight, dated 5th October 2021

- 9.57** In the case of the alcohol ban, West points to evidence that the measure is actually counter-productive and self-defeating. His article also noted that as long as a decade ago football policing scholars concluded that “*alcohol bans did not appear to achieve their aims, either in terms of reducing the drunkenness of fans in stadia or in reducing the potential for violence and disorder*”.⁶³
- 9.58** West further argues that alcohol bans, be it on so called ‘dry trains’ or stadium bans, tends to lead to ‘pre-loading’ or excessive consumption before the game by supporters. He also noted that the rules can lead to excessive and arguably dangerous congestion in the concourses at half time where hundreds, sometimes thousands, of fans rush into enclosed spaces to get a drink before the shutters come down. This echoes the SGSA’s evidence to the Review.

Football related offences evidence

- 9.59** The arguments presented by the FSA, EFL and experts highlighted above appear compelling but it is important to consider the available evidence. The UK Football Policing Unit (UKFPU) produces annual statistics on football banning orders issued and football related arrests for each season. Figures for the 2019/20 season (the latest available), indicate that there were 1,089 football related arrests under Schedule 1 of the Football Spectators Act 1989 (as amended), a 21% decrease on the previous season.
- 9.60** The commentary to accompany the UKFPU’s figures acknowledges that ‘football-related arrests continue to decrease’. It goes on to note that for the 2019/20 season, there were 1,089 football-related arrests (excluding British Transport Police arrests) ‘...in connection with regulated international and domestic football matches involving English and Welsh clubs and the national teams. This is a 21% decrease (-292) compared with the previous season and, although in part affected by the COVID-19 pandemic, continues the overall downward trend over the last 9 seasons, with the number of football-related arrests falling by 65% since the 2010/11 season (from 3,089 to 1,089).’ However, it should be noted that there were significant arrests in response to the disorder at this summer’s Euro 2020 final between England and Italy at Wembley Stadium. The FA has commissioned an independent review into the trouble both before and after the game, chaired by Baroness Casey of Blackstock, to report on the facts and circumstances involved.
- 9.61** In the face of compelling arguments regarding the change in football culture, expert views such as that of Owen West and a long-term trend for reduction in football related arrests, there is a strong argument that The Sporting Events (Control of Alcohol etc.) Act 1985 should at least be reviewed to consider if it remains fit for purpose. The legislation is nearly 40 years old, has never been reviewed and the commercial benefits to lower league clubs could go some way to helping ensure their sustainability for their communities.
- 9.62** However, no one wants to see a return to the football culture of the 1980s, and any such review will need to form evidence based conclusions. It is for that purpose that it is recommended that a small scale and limited pilot scheme be designed and operated in League Two and the National League. The design, implementation and assessment of the pilot should closely involve the DCMS, Home Office and the UKFPU.

⁶³ ‘On the Lash’ – revisiting the effectiveness of alcohol controls at football matches, Geoff Pearson & Arianna Sale, published online: 06 Feb 2011

Recommendation 42

The Department for Digital, Culture, Media and Sport works closely with the Home Office, the UK Football Policing Unit and other stakeholders to design, agree, manage, and review a series of small scale, limited, pilots of the sale of alcohol in sight of the pitch, at matches between clubs in the National League and League Two.

- 9.63** In addition to the proposed pilot, it would be good practice to review any legislation that is nearly 40 years old. This is particularly true given the huge change in football culture since 1985. It is therefore recommended that alongside any pilot, a review of The Sporting Events (Control of Alcohol etc.) Act 1985 should be carried out.

Recommendation 43

The Home Office should review the Sporting Events (Control of Alcohol etc.) Act 1985 to establish whether its measures are still fit for purpose in 2022 and beyond, and that it reflects the football culture of the present day; and to provide robust evidence in its conclusion of such a review.

B. Synthetic Pitches

“It’s crazy and wasteful for clubs to be given grants for artificial pitches only to have to rip them up if promoted to the EFL. They become essential community assets and a source of finance to the clubs concerned and therefore contribute to the club’s success.”

Contributor to Fan Led Review Online Survey

- 9.64** In 2016, the National League changed its rules to allow synthetic pitches to be used for league matches.⁶⁴ The FA has also allowed artificial surfaces to be used in all rounds of the FA Cup⁶⁵ since 2014. Article 31 of the Regulations of the UEFA Champions League⁶⁶ state that artificial turf pitches are permitted to host matches (not the final) of that competition, provided that the surface is certified by UEFA and maintained to a proper standard.
- 9.65** Given the widespread acceptance of the use of artificial playing surfaces, including at the UEFA level, it is odd that such playing surfaces are not permitted by the EFL. This has a material impact on the finances of clubs promoted from the National League, who face a double financial hit of having to replace an artificial pitch alongside losing the 7 day per week revenue it can generate utilising this pitch.
- 9.66** Sutton United provides an illustration. The club was promoted to the EFL for this season, and the club's chairman estimated it will lose over £200,000 a year from the loss of community use of their synthetic pitch. Alongside this, it had to incur a further £500,000 to convert to a grass pitch.⁶⁷ This is a material sum of money for a National League/League Two club – and at a time it most needs resources to compete in a higher division. In light of the accepted need to promote financial sustainability of clubs and the widespread acceptance of the use of synthetic pitches this is not logical.
- 9.67** The Review did consider if there might be a player injury issue in relation to use of synthetic pitches but could not find conclusive proof of an increased risk of injury. It also noted that the pitches under discussions have been utilised in the National League for many years without apparent difficulty.
- 9.68** It is therefore recommended that the EFL relax its rules to allow use of artificial pitches. At the very least, clubs promoted to League Two from the National League should be allowed a grace period on promotion to change their pitch rather than being forced to incur the expense straight away as well as giving time to replace any income lost from converting an artificial pitch to grass.

Recommendation 44

The EFL should review its rules on artificial pitches, and at the very least relax its current rules on artificial pitches to offer flexibility to newly promoted clubs, giving them a 3 year grace period to convert to grass pitches.

⁶⁴ The Non-League Paper, January 2016

⁶⁵ <https://www.thefa.com/news/2014/mar/24/3g-pitches-given-green-light>

⁶⁶ <https://documents.uefa.com/r/Regulations-of-the-UEFA-Champions-League-2021/22-Online>

⁶⁷ Sutton United's push for promotion to League Two hits a plastic pitch snag, The Guardian, 5 May 2018

Chapter 10. Growing Women's Football



Introduction

- 10.1** The Review benefited from evidence contributed by supporters and clubs involved in women's football, and the passion for the game of all involved was clear. It was also clear that there is a strong desire to further develop women's football and address the difficulties that it faces – but in the right way.
- 10.2** From its earliest origins in the 1890s, to record breaking crowds during the First World War, and being banned in the 1920s until as late as 1971, women's football has gradually re-emerged to become the top participation sport for women and girls in England today, with almost 3 million registered players.⁶⁸
- 10.3** Even after the ban on women's football the FA only took direct control of women's football in 1993. Whilst this offered some direction to the sport, the game's development centred on participation growth, rather than commercialisation, spectator support, and media interest.⁶⁹
- 10.4** This initial approach has legacy consequences which are affecting the growth of the game to this day. However, the advent of the Women's Super League (WSL) in 2011 was a hugely positive development and has catapulted women's football into the modern era. The WSL has clearly shown the popularity and hunger for the sport in this country. One survey suggested that one-third of adults now consider themselves interested in the women's game and 69 percent of those believe that women's football deserves the same profile as the men's game.⁷⁰
- 10.5** The potential for women's football was also seen in the multi million-pound agreement between the FA and Sky Sports announced in March 2021. Sky will show the top tier of women's football for the first time and has the right to show up to 44 matches. A minimum of 35 will be screened across Sky Sports Main Event, Sky Sports Premier League and Sky Sports Football with some matches also shown simultaneously on Sky Sports Mix and Sky One.⁷¹ Increased coverage and profile is clearly a welcome development.
- 10.6** However, the Review heard that women's football continues to face multiple, interconnected challenges. It is clear that there are many difficult decisions to be taken in coming years that will dictate the shape of women's football for many years to come.

⁶⁸ <https://www.thefa.com/womens-girls-football>

⁶⁹ Williams, J. (2003). The fastest growing sport? Women's football in England. *Soccer & Society*, 4(2–3), 112–127. <https://doi.org/10.1080/14660970512331390865> [Taylor & Francis Online], [Google Scholar]

⁷⁰ <https://home.barclays/news/press-releases/2019/09/third-of-brits-now-fans-of-women-s-football/>

⁷¹ https://womenscompetitions.thefa.com/Article/Broadcast-announcement-20210322_21_March_2021

Strategic Recommendation (I)

Women’s football should be treated with parity and given its own dedicated review.

Valuing Women’s and Girls’ Football

- 10.7** In evidence to the Review concern was frequently expressed that there was a culture of ‘dispensibility’ and short-termism prevalent around women’s and girl’s football. Women’s teams had been wound up or significantly scaled back as early cost cutting measures at clubs. Supporters felt there was a need for women’s and girl’s football to be championed for their own sake and value, and for the FA and clubs to make the case for women’s football more strongly.

“Women’s football should be treated equally in this day and age. Players have fought long and hard to be recognised over many years, and it’s about time they were given the same kudos as in the men’s game.”

Contributor to Fan Led Review Online Survey

- 10.8** The Review heard frequently expressed desire for the women’s game to learn from the mistakes made by the men’s game and to be a better model for the future of football. There was also widespread acceptance that much work needed to be done before this could become a reality. In evidence to the Review, the FA stated that it was one of their priorities to actively advance women’s and girls football.

Independent Teams or Affiliation to Men’s Teams?

- 10.9** One of the key issues that came from evidence to the Review was the difficult question of whether women’s football teams should be affiliated to men’s teams or be an entirely independent entity.
- 10.10** Evidence to the Review presented benefits of both models. On one hand, there were a number of cases presented where poor performance by men’s teams had resulted in cuts to the women’s team which were seen as an ‘easy financial cut’. On the other hand, there were recognised advantages to partnering with the men’s team. Examples given included opportunities for brand recognition, access to a fan base and access to facilities. However, all linked teams are not equal (Bristol City are clearly not the same as Manchester United).

10.11 It was also heard that some linked women's clubs struggle to access the facilities of the men's club. There is no reason why this continues to persist. As one former manager of Manchester City Women's Team was reported as stating *'It was really simple for us – all it took was that the staff didn't have a negative perception of the girls in the women's game. When I look at maybe teams not training at their facility or playing on different grounds, I just think it's crazy. Not crazy, but I see how simple it was for us that I don't see why that doesn't happen at other clubs. We have found it so easy. It comes from the top.'*⁷²

10.12 Strong views were also expressed that the structure of women's football should be flexible enough to accommodate both independent and linked teams. As part of this, evidence was received that the structure of the women's game should ensure that if men's teams do support women's teams the independent women's teams should not be unduly disadvantaged.

Finance

10.13 The issue of finance for women's football touches on all of the issues it currently faces. The sport must be properly funded to enable women's football to grow and flourish and the Review often heard that there was a significant need for greater investment across women's and girl's football both at grassroots and elite levels.

10.14 There was clear evidence given to the Review of positive commercial developments. However, concerns remain around the long-standing disparity in sponsorship spending between men's and women's sport, which has seen women's football clubs restricted to a small pool of potential sponsors.⁷³

10.15 Concern was also raised that a damaging wage race was developing in the women's game. This in turn resulted in a concern that if the women's game became uncompetitive, with success concentrated in a few wealthy clubs linked to men's teams, this could hurt the commercial development of women's football.

10.16 Further, there was a related concern that as spending increases on wages, opportunities for homegrown talent were being restricted by the influx of foreign stars. In the Women's League Cup final, for example, out of 22 players only seven qualified to play for England – though of course, many have argued that a similar influx in men's football was good for the game and raised standards.

10.17 The professionalisation of women's football is also having an impact on the finances of the game. The beginning of the 2018/2019 season saw the advent of the professionalisation of the WSL. This was seen as a major milestone in the development of the elite women's game. The FA approved proposed changes to Super League licences and clubs were encouraged to meet new criteria in order to secure professional status.⁷⁴

⁷² Why won't clubs invest properly in their Women's Super League teams?, Suzanne Wrack, The Guardian, 12 February, 2020

⁷³ Image and Investment: Sponsorship and Women's Sport, Sally Shaw and John Amis, Journal of Sport Management

⁷⁴ Covid-19: Reflections on threat and uncertainty for the future of elite women's football in England Beth G. Clarkson, Alex Culvin, Stacey Pope & Keith D. Parry. Published online: 14 May 2020

- 10.18** Amongst these new licence criteria was included a minimum of 16 hour contact per week for players; a minimum level of investment per club; the addition of an academy as part of club; and, financial fair play and salary cap. In the Women’s Championship, the second tier of the game is now made up of 11 teams who meet part-time criteria.
- 10.19** These developments are positive, but some media commentators have argued that this overall growth in the women’s game has stretched the existing infrastructure and commitment of men’s clubs to the women’s game. They also believe that wealthy parent clubs could do much more to ensure better quality pitches, and noted continued poor wages, short term contracts and inadequate conditions.⁷⁵
- 10.20** Prize money is also a key issue for women’s football at every level. This issue is of course linked to the perceived value and esteem of women’s football. There was strong evidence for the need for competition at every level to offer sufficient prize money.
- 10.21** Evidence presented to the Review cited the FA Cup prize money for the 2020/21 season as being around £16 million for men and only £300k for women. The total prize pot in the qualifying rounds of the men’s competition is almost £2 million, which is approximately 6 times the total prize money available across the whole of the Women’s FA Cup. This substantial gap reportedly undermined attempts to improve the esteem given to the women’s game.
- 10.22** It also had practical consequences, with many clubs losing money from playing in the FA Cup. Witnesses to the Review gave an example of a women’s team making a 260 mile round trip to play a match for which the club received £150. The money was not sufficient to even cover petrol costs, and by comparison a match in the same round of the men’s FA Cup would have given the winning team £1800, and in the FA Vase £650.
- 10.23** Some who gave evidence to the Review felt that this was an area where meaningful change could be quickly achieved. It was also suggested that prize money for the women’s FA Cup should be weighted to earlier rounds in order to better support a wider number of clubs in the pyramid.
- 10.24** It was also felt by many that the Premier League should have a key role to play in levelling up the investment in the women’s game by providing direct funding. This should be for the whole game and not just for Premier League clubs with women’s teams. A meaningful and significant mandated percentage of revenue for distribution into the women’s pyramid would give women’s football the cash injection it needs to reach its true potential.
- 10.25** Some have also suggested that women’s football might look to alternative sources of short-term funding via crowdfunding⁷⁶ and/or to consider how it can exploit one of the key advantages that it has over the men’s game – the greater access it offers to fans to players – as a unique marketing feature for sponsors.⁷⁷

⁷⁵ Why won’t clubs invest properly in their Women’s Super League teams?, Suzanne Wrack, The Guardian, 12 February, 2020

⁷⁶ Abdourazakou, Y., & Leroux-Sostenes, M. (2016). Crowd funding: The new frontier of sports sponsorship? *International Journal of Kinesiology & Sports Science*, 4(2), 18–26. <https://doi.org/10.7575/aiac.ijkss.v4n.2p.18>

⁷⁷ Covid-19: Reflections on threat and uncertainty for the future of elite women’s football in England Beth G. Clarkson, Alex Culvin, Stacey Pope & Keith D. Parry. Published online: 14 May 2020

Structure of the Game

- 10.26** A number of those giving evidence to the Review also raised concerns that there was a damaging gap developing between the top of the game and the FA National Women's League. There was recognition that the FA had done well growing the game at WSL and Championship level. However, it was reported that one consequence was that it had become very hard for any club not linked to a men's Premier League club to rise up the pyramid from the National Women's League.
- 10.27** There was also criticism that the FA has failed to keep up with providing adequate infrastructure for women's football, and cannot keep pace with the popularity of the game. For example there are reports of inadequate refereeing and Baroness Sue Campbell, the Head of Women's Football at the FA has admitted that the sport lacks the coaches to deal with the explosion in interest in the game, '*...because we hadn't expected the amount of influx we've had*'.⁷⁸

Helping women's football to grow

- 10.28** When all the issues raised are considered, it is clear that women's football in this country is at a crossroads. There is great enthusiasm for the game in this country, with current players inspiring the next generation, and with a fanbase encompassing both genders. The FA announced an ambitious four year strategy for women's and girl's football in October 2020 and launched a new four year grassroots strategy in March 2021. There is huge potential for the game to grow further, but to make this a reality there needs to be serious investment in women's football, in its finances, in its infrastructure, and in the administration of the game.
- 10.29** However, there are a number of fundamental issues that require resolution in women's football to allow it to move forward on a sustainable footing in the future. Crucial issues, such as establishing the value of women's football, its financial structure, support from the Premier League, and league structure cannot be resolved in isolation. They require a holistic examination, research and evidence based resolution to enable the sport to move forward strongly.
- 10.30** The potential exists for women's football to have a powerful future, and it is only right that exactly 100 years after the FA banned women's football, that the future of women's football is the subject to its own separate review to fully consider the issues. It is therefore recommended that women's football should have a dedicated review to consider the issues in detail and provide tailored solutions.

Recommendation 45

Given the many, but interconnected, issues affecting a meaningful future for women's football needing to be addressed and resolved successfully, the future of women's football should receive its own dedicated review.

⁷⁸ Why won't clubs invest properly in their Women's Super League teams?, Suzanne Wrack, The Guardian, 12 February, 2020

Chapter 11. Player Welfare



Introduction

11.1 Although player welfare was not a direct focus of the Review, the Review was presented with some concerning evidence regarding the impact of involvement with professional football on young and retired players. It therefore felt that it would be irresponsible not to address this evidence in some way. At the top level, football players can seem to have an incredibly glamorous and rewarding life. However, and perhaps surprisingly for some, the Review saw evidence of a significant problem with player welfare for those who leave the game at youth levels and on retirement.

Strategic Recommendation (J)

As an urgent matter, the welfare of players exiting the game needs to be better protected – particularly at a young age.

“ [There should be] Proper care and support for young players let go from Academies. ”

Contributor to Fan Led Review Online Survey

11.2 The Elite Player Performance Plan (EPPP) is a youth development scheme initiated by the Premier League, and adopted by the member clubs of the EFL in 2011. The aim of the EPPP is to improve the quality and quantity of home-grown players produced by top English clubs. Whilst this has apparently been achieved, and was a major contributor to the recent success of the England team, significant concerns about the side effects of the system were raised in evidence to the Review.

11.3 The main area of concern was the potential impact that involvement with this system has on the large number of young players involved who do not go on to gain a professional contract. At any one time, there are between 10,000 and 12,000 boys in football's youth development system.⁷⁹ 99% of these are being released before their scholarship and of the small number that become scholars 85% are ultimately released.⁸⁰

⁷⁹ Sky News, 24 February 2021, accessed 11/10/21

⁸⁰ A literature review exploring the mental health issues in academy football players following career termination due to deselection or injury and how counselling could support future players. Richard James Wilkinson, 14 May 2021 <https://onlinelibrary.wiley.com/doi/full/10.1002/capr.12417>

- 11.4** The Review heard evidence that these children, and their families, often spend most of their formative years focused on the dream of a successful career in football to the exclusion of other aspects of their lives. Many of those young people who are released will have lived and breathed the academy way of life from very young ages. The Review heard concerns that this may negatively impact their development, and ultimately their mental health, wellbeing, and future course in life.
- 11.5** Worryingly, there are numerous media accounts of released academy players suffering from severe mental health issues as a result of losing their dream to play professional football, with some ending in suicide; or others turning to drug dealing and other offences as a way of maintaining a lifestyle that they had expectations of living as a successful professional footballer.⁸¹
- 11.6** Earlier this year, ITV News carried out a survey⁸² on over 100 players who had been released from the 92 league clubs. This found that 72% of players felt they were not given enough support by the club that released them. 90% of respondents also reported depression or high levels of anxiety after being released from their club’.
- 11.7** This accords with academic research reporting psychological distress in players released by academies carried out by Dr David Blakelock, an Health and Care Professions Council and British Psychological Society Registered Clinical Psychologist, and academic from Teesside University which indicate mental health distress in many players released by academies.⁸³
- 11.8** The football authorities have taken some steps to address this. Whilst it is surprising that the FA appears to play a limited role, the regulations for the EPPP provide for a mandatory “transition strategy” for players leaving a club. However, there has been criticism that whilst the model supports players through education it does not provide sufficient emotional and psychological support for players before, during and after deselection.⁸⁴
- 11.9** The Professional Footballers’ Association does offer a range of help and advice to those academy players who become club scholars at age 16. However, as noted earlier, most players who come into contact with the academy system do not reach this stage.

Retired Players

- 11.10** While active in football, players are told what to do and where to go. Everything is planned for them and their identity is shaped around their profession. Unfortunately, the Review heard evidence that when this stops - often suddenly and invariably at a young age, the transition to ‘normal life’ can be difficult to deal with.

⁸¹ Sky News, 24 February 2021 <https://news.sky.com/story/youth-football-what-happens-to-those-who-dont-make-it-12226577>

⁸² ITV News website accessed 06/10/21 <https://www.itv.com/news/2021-02-04/exclusive-disturbing-findings-of-itv-news-survey-of-released-young-footballers>

⁸³ ‘Football’s biggest issue’: the struggle facing boys rejected by academies, The Guardian, 6 October 2017 and Blakelock, D.J., Chen, M., & Prescott, T. (2016). Psychological distress in elite adolescent soccer players following deselection. *Journal of Clinical Sport Psychology*, 10, 59-77

⁸⁴ A literature review exploring the mental health issues in academy football players following career termination due to deselection or injury and how counselling could support future players. Richard James Wilkinson, 14 May 2021 <https://onlinelibrary.wiley.com/doi/full/10.1002/capr.12417>

11.11 After retirement players may experience a loss of identity, of grief and of mourning, for which they are unprepared for. A 2018 State of Sport survey from the Professional Players' Federation found half of former professional athletes have mental wellbeing concerns, with retirement bringing a sense of "loss" and "regret". Other notable results from this research found that:

- Only 40% of those who felt they had an issue with their mental and emotional wellbeing had sought help.
- Fewer than 10% of former players had sought help for drug, alcohol or gambling problems.
- Only 30% of former players were able to choose when they stopped playing professional sport.
- Over half of respondents reported financial difficulties in the five years after stopping playing.

11.12 Turning to crime is another symptom of fallout for those exiting the game, which largely seems to affect younger players. The *i* newspaper cited figures as of October 2015 which indicated that 141 former players were in the British prison system at the time. Around 90% of these offenders were reported as being under the age of 25, with a similar percentage incarcerated for drug-related offences. The article noted that '*...many more are believed to be in the young offenders system.*'⁸⁵

Addressing Player Welfare

11.13 The common theme linking those exiting the game at academy stage and after professional careers is an apparent gap in provision of aftercare. There is an apparent assumption among several groups that it is for 'someone else to address' – be that the PFA, or clubs, or leagues. Football needs to do better and be more joined up in its approach – including better sharing of best practice on player welfare. The Review was made aware that work is underway in this sphere, and it is recommended that the authorities give this a high priority.

Recommendation 46

As a matter of high priority, the football stakeholders, including the FA, men's leagues, PFA, clubs and women's leagues work together to devise a holistic and comprehensive player welfare system to fully support players exiting the game, particularly at Academy level but including retiring players, including proactive mental health care and support.

⁸⁵ They think it's all over... why former footballers struggle with retirement, *i*, dated 2 February 2017

Private Academies

- 11.14** The comments above relate to academies and clubs within the football club system. However, concerns were raised to the Review regarding the proliferation of private football academies. These private academies are not subject to the oversight of any of any club, or the football authorities.
- 11.15** The FA's jurisdiction over such private academies is limited and extends only to precluding them from using registered referees and playing against affiliated clubs in sanctioned competitions. However, it is understood that such academies can and do play clubs in '*behind closed doors*' friendly matches at club academies. The opportunity to play in such games is then utilised by the private academies to 'sell the dream', and charge fees, to children and parents. This dream, unlikely enough in club academies, is of course even more remote in private academies.
- 11.16** The FA, Premier League and EFL should consider whether this is appropriate, and explore if it is open to them as part of the EPPP regulations or otherwise to prohibit clubs from playing '*behind closed doors*' matches against private academies.
- 11.17** There is no easy solution to bringing these independent academies into the wider oversight of the FA, or to ensure that standards of safeguarding and education are maintained. FIFA is aware that private academies are able to circumvent existing rules on player movement and are currently exploring an accreditation scheme for private academies to eliminate this loophole.
- 11.18** The FA have suggested that one approach would be to encourage private academies to affiliate to their County FAs, and so raise standards in this way. Of course there is no incentive to guarantee that private academies will want to do this. However, any steps in this direction are to be welcomed. The FA should incentivise such affiliation by the introduction of a 'kite mark' scheme or similar, achievement of which might permit the continued playing of behind closed door friendly matches or similar.

Recommendation 47

The FA proactively encourages private football academies to affiliate to the local County Football Associations to ensure appropriate standards of safeguarding and education for young players. The FA should explore ways to incentivise this affiliation, perhaps through operation of a 'kite mark' scheme or similar and prohibiting registered academies from playing friendly matches against unregistered private academies.

11.19 The need has also been highlighted to the Review for better education of parents of young players about the calibre of football academies available, including private academies. As the governing body of the game, the FA should be tasked with making a range of resources and education available to parents of young players, involving other stakeholders as required.

Annexes



Annex A – Summary of Recommendations

| No | Recommendation |
|------------|---|
| (A) | To ensure the long-term sustainability of football, the Government should create a new independent regulator for English football (IREF) |
| 1. | IREF should have a statutory objective of ensuring English football is sustainable and competitive for the benefit of existing and future fans and the local communities football clubs serve. It should have further duties to promote other aspects of the game. |
| 2. | In achieving its objectives, IREF should utilise a licensing system under which each club operating in professional men’s football, i.e Step 5 level (National League) or above would be required to hold a licence to operate, and be subject to various licence conditions. Licence fees should be based on a sliding scale of broadcast revenue. |
| 3. | IREF to operate a system of advocacy to help clubs comply with rules, but also have strong investigatory and enforcement powers. |
| 4. | IREF should have a chair and board with expertise from a range of industries, appointed by a panel of experts separate from the Government. The FA should have observer status on the IREF board. |
| 5. | IREF should publish an annual report setting out its operational and financial performance for the previous year and be accountable to Parliament, meeting with the Digital, Culture, Media and Sport Select Committee at least once a year to review its operational performance and value for money. |
| 6. | IREF should be set up in a shadow form, working with the industry to ensure it is operationally functional as soon as legislation comes into force. |
| (B) | To ensure financial sustainability of the professional game, IREF should oversee financial regulation in football. |
| 7. | The Government should introduce a financial regulation regime operated by IREF based on prudential regulation. |
| 8. | IREF should have a proportionality mechanism managing the level of owner subsidies based on the size of a club’s existing finances or if owner injections at one or a few clubs is destabilising the long-term sustainability of the wider league. |
| 9. | The Government should explore ways to support the regulation of football agents operating in English football by working with the relevant authorities including FIFA. |

| No | Recommendation |
|-----|---|
| (C) | New owners' and directors' tests for clubs should be established by IREF replacing the three existing tests and ensuring that only good custodians and qualified directors can run these vital assets. |
| 10. | Through licence conditions, the new Owners' and Directors' Test should be split into two parts, one test for owners' (i.e. those who own a minimum of 25% shares in the club alone or acting in concert with others) and one test for directors as well as shadow directors, executive management and any individuals holding those roles regardless of job title. |
| 11. | <p>In addition to not being subject to any disqualification criteria based on existing rules, prospective new owners should also be required to:</p> <ul style="list-style-type: none"> a. submit a business plan for assessment by IREF (to include financial forecasts). b. evidence sufficient financial resources to meet the requirements of the business plan. c. be subject to enhanced due diligence checks on source of funds to be developed with the Home Office and National Crime Agency. d. pass an integrity test. |
| 12. | <p>In addition to not being subject to the disqualification criteria, a prospective director should also be required to:</p> <ul style="list-style-type: none"> a. demonstrate that they have the necessary professional qualifications, and/or transferable skills, and/or relevant experience to run the club. b. pass an integrity test in the same manner as prospective owners. c. declare any conflicts of interest. d. declare any personal, professional or business links with the owner of the club in question, or any other club owner (past or present). |
| 13. | <p>IREF should conduct, and where possible, publish the results of the Owners' Test and the Directors' Test:</p> <ul style="list-style-type: none"> a. on entry – for any new owner or director. b. annually – any appointed owner or director should be required to declare to IREF, as an annual compliance statement, any changes in circumstance within one month of said change, or at the stage of annual licence renewal, if no changes have occurred. c. every three years – for owners only. Any existing owner should re-pass the test on a three year review. |
| 14. | IREF should have a range of sanctions to enforce breaches of Owners' and Directors' tests. |
| 15. | It should be a licence condition that the identity of the Ultimate Beneficial Owner (UBO) of a club be declared to IREF. |

| No | Recommendation |
|------------|---|
| (D) | Football needs a new approach to corporate governance to support a long-term sustainable future of the game. |
| 16. | A new Code for Football Club Governance based on the Sports Governance Code should be introduced for licenced clubs, with compliance being a licensing condition. |
| 17. | As a condition of the licence, clubs should be required to publicly present evidence of compliance with the Code for Football Governance on an annual basis. |
| 18. | The Code for Football Governance should adopt a model which includes a proportionate approach to the governance requirements. Tier A should involve the highest level of requirements and should apply to Premier League and Championship clubs, with Tier B applicable to Leagues One and Two, with minimum standards applying to Tier C to the National League. |
| 19. | The Code for Football Governance should also operate with a ‘ratchet’ system in that a club cannot drop a Tier in its governance. The Code for Football Governance should allow a period of settlement for clubs who are promoted and therefore required to adhere to new requirements. |
| 20. | The Code for Football Governance should adopt basic minimum requirements which will apply to all clubs including those in the Sports Governance Code, and additional minimum requirements relating to directors, equality and diversity, fan engagement, welfare and stewardship. |
| 21. | The Code for Football Governance should adopt an ‘apply and explain’ model for implementation of its requirements. |
| 22. | The English football authorities should continue to reform their own corporate governance to create independence in decision making from the vested interests in the game, including boards of at least 50% independent directors and the removal of historic oddities such as the need for the FA Chair to be approved by the FA Council. |
| (E) | Football needs to improve equality, diversity and inclusion in clubs with committed EDI Action Plans regularly assessed by IREF. |
| 23. | IREF should mandate that each club have an Equality, Diversity and Inclusion Action Plan, focusing on the organisation’s EDI objectives and how it is going to achieve them, as part of the annual licensing process. |
| 24. | The football authorities should work more closely to ensure consistent campaigns across the various organisations, and where possible, pooling resources to increase the impact of these important initiatives. |
| 25. | The Government should work with the football authorities to explore the possibility of a new, single repository for reports of discrimination. |
| (F) | As a uniquely important stakeholder, supporters should be properly consulted by their clubs in taking key decisions by means of a Shadow Board. |

| No | Recommendation |
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| 26. | A Shadow Board should be a licensing condition of IREF. The club should engage and consult this Shadow Board on all material ‘non football/off pitch’ business and financial matters. |
| 27. | The football authorities should work with the FSA to upgrade the current Independent Football Ombudsman so that it meets the criteria for full membership of the Ombudsman Association. |
| (G) | Football clubs are a vital part of their local communities, in recognition of this there should be additional protection for key items of club heritage. |
| 28. | It should be a licence condition that all licenced clubs should include within their articles of association a Golden Share requiring democratic consent to proposed actions relating to identified heritage items. Each Golden Share right should have circumstances in which it will not apply. |
| 29. | The consent of the holder of the Golden Share should be required for the sale of the club stadium, relocation outside of the local area which is not a temporary part of a redevelopment, joining a new competition that is not approved by FIFA, UEFA and the FA and/or leaving a competition in which it currently plays, club badge, first team home colours, and club playing name. |
| 30. | The Golden Share should be held by a Community Benefit Society formed for the benefit of the club’s supporters operating under standardised rules set by IREF in conjunction with the FCA. |
| 31. | Clubs should be required to provide formal notice of any intention to take any material steps or enter into a contract to alter any of the items covered by the Golden Share to which the holder of the Golden Share will have 45 days to notify rejection. |
| 32. | There should be an arbitration mechanism, at the club’s expense, which allows for resolution by IREF or a party appointed by IREF of an appeal by the club of any decision to withhold consent by the holder of the Golden Share. |
| 33. | The Government should take account of the importance of football clubs to their local communities in planning reform. |
| 34. | The Government should amend the National Planning Policy Framework to impose requirements on developers of an existing football stadium to provide new equivalent or better facilities in the same local area before any development work is started. |
| 35. | The Government should explore the viability of introducing new security of tenure property rights for clubs where the club does not own the stadium in which it plays. |
| 36. | The FA should amend its rules to provide for protection of the additional heritage items identified by this report, to prioritise the voice of supporters in any decision, and to provide clarity on the procedures that will be followed in regard to any heritage changes. |

| No | Recommendation |
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| (H) | Fair distributions are vital to the long term health of football. The Premier League should guarantee its support to the pyramid and make additional, proportionate contributions to further support football. |
| 37. | The FA should scrap its current formula for distributing revenue it generates. The FA should have more flexibility to redistribute revenues as it sees fit, based on its assessment of where funding is most needed in the game. |
| 38. | Football should seek to resolve distribution issues itself. If no agreement can be reached by the end of 2021, the Premier League and EFL should commission research to find a solution, with backstop powers for IREF if a solution is still not found. |
| 39. | The Leagues, FA, and PFA should work together to include a new compulsory clause in the standard player contracts that provides for an automatic adjustment to player salaries at a standard rate upwards on promotion and downwards on relegation. |
| 40. | A solidarity transfer levy should be introduced for Premier League clubs, to support the football pyramid and overseen by IREF. Its level and whether loans should be included should be determined through consultation. |
| 41. | IREF should produce or procure on a regular basis an assessment of financial flows, distributions and costs in football to aid policy debate on football finance. |
| 42. | The Department for Digital, Culture, Media and Sport works closely with the Home Office, the UK Football Policing Unit and other stakeholders to design, agree, manage, and review a series of small scale, limited, pilots of the sale of alcohol in sight of the pitch, during matches between clubs in the National League and League Two. |
| 43. | The Home Office should review the Sporting Events (Control of Alcohol etc.) Act 1985 to establish whether its measures are still fit for purpose in 2022 and beyond, and that it reflects the football culture of the present day; and to provide robust evidence in its conclusion of such a review. |
| 44. | The EFL should review its rules on artificial pitches, and at the very least relax its current rules on artificial pitches to offer flexibility to newly promoted clubs, giving them a 3 year grace period to convert to grass pitches. |
| (I) | Women's football should be treated with parity and given its own dedicated review. |
| 45. | Given the many, but interconnected, issues affecting a meaningful future for women's football needing to be addressed and resolved successfully, the future of women's football should receive its own dedicated review. |
| (J) | As an urgent matter, the welfare of players exiting the game needs to be better protected - particularly at a young age. |

| No | Recommendation |
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| 46. | As a matter of high priority, the football stakeholders, including the FA, men's leagues, the PFA, clubs and women's leagues should work together to devise a holistic and comprehensive player welfare system to fully support players exiting the game, particularly at Academy level but including retiring players, including proactive mental health care and support. |
| 47. | The FA should proactively encourage private football academies to affiliate to the local County Football Associations to ensure appropriate standards of safeguarding and education for young players. The FA should explore ways to incentivise this affiliation, perhaps through operation of a 'kite mark' scheme or similar and prohibiting registered academies from playing friendly matches against unregistered private academies. |

Annex B – Terms of Reference

The independent review's aim will be to explore ways of improving the governance, ownership and financial sustainability of clubs in English football, building on the strengths of the football pyramid.

The review will add to the recommendations of the English Football League's Governance Review and the government's 2016 Expert Working Group on Football Supporter Ownership and Engagement. The review will be expected to engage extensively with fans to ensure any recommendations are led by fans' experience and interests.

The Chair will meet regularly with the Minister for Sport to keep him informed of progress. The final report will be presented to the Minister for Sport, Secretary of State for Digital, Culture, Media and Sport, and The Football Association (FA) on what steps can and should be taken, and how to implement them through legislative and non-legislative means. The final report will be laid before Parliament and published.

The Review will:

- Consider the multiple Owners' and Directors' Tests and whether they are fit for purpose, including the addition of further criteria;
- Assess calls for the creation of a single, independent football regulator to oversee the sport's regulations and compliance, and its relationship with the regulatory powers of The FA and other football bodies;
- Examine the effectiveness of measures to improve club engagement with supporters, such as structured dialogue, that were introduced on the back of the Expert Working Group;
- Investigate ways league administrators could better scrutinise clubs' finances on a regular basis;
- Examine the flow of money through the football pyramid, including solidarity and parachute payments, and broadcasting revenue;
- Explore governance structures in other countries, including ownership models, and whether any aspects could be beneficially translated to the English league system;
- Look at interventions to protect club identity, including geographical location and historical features (e.g. club badges);
- Examine the relationship between club interests, league systems and their place within the overall football pyramid.

Annex C – Contributors to the Review

Below is the list of all those who gave evidence, or submitted evidence to the Fan Led Review of Football Governance.

The Chair also had a significant number of meetings with representatives across football, and with wider stakeholders.

The Chair and Advisory Panel thank all those who gave evidence in person or who submitted evidence to the Review, and to the 60 individuals who submitted evidence through the Fan Led Review's mail box.

| | |
|-------------------------------------|--|
| #tell your story | Andy Roberts |
| Accrington Stanley owner, Andy Holt | Andy Walsh |
| Adam Wilerton | Angus Kinnear, Managing Director, Leeds United |
| AFC Bury | Anielka Pieniazek |
| AFC Wimbledon | Anna-Maria Hass |
| (AFC Wimbledon) Dons Trust | Anwar Uddin |
| Alan Bush | Arsenal Supporters' Trust |
| Alan Dawkins | Ashley Brown |
| Alan Hanson | Barry Frenchman |
| Alasdair Bell | Ben Clasper |
| Alistair Mackintosh, Fulham, CEO | Ben McFadyean |
| Amirah Rahman | Bik Singh |
| Andrew Godden | Blues Supporters' Trust (Birmingham City) |
| Andrew Madaras | Blackburn Rovers Supporters' Trust |
| Andy Higgins | Blackpool Supporters' Trust |

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| Bolton Wanderers Supporters' Trust | Dave Beesley |
| Bees United (Brentford Supporters' Trust) | Dave Kelly |
| Bruce Buck, Chairman, Chelsea | Dave Netherstreet |
| Campbell Tickell | Dave Pennington |
| Carl Barratt | David Bedford |
| Caroline Barker | David Bernstein and Gary Neville, on behalf of 'Our Beautiful Game' |
| Charlton Athletic Supporters' Trust | David Blackmore |
| Chelsea Pitch Owners | David Johnston |
| Cheltenham Town Supporters' Trust | David Michael |
| Chester | David Minchley |
| Chris Paouros | Deborah Dilworth |
| Chris Stockdale | Deborah Henry |
| Chris Tymkow | Derby County |
| Christian Purslow, Chief Executive, Aston Villa | Dulwich Hamlet Supporters' Trust |
| Ciaran Barker | Ed Woodward, CEO, Manchester United |
| Clapton Community | Eric Salama |
| Cliff Brown, Brentford, Chairman | Everton Fans' Forum |
| Cognisant Research | Exeter City |
| CoOperatives UK | Exeter City Supporters' Trust |
| Crewe Alexandra | FAEqualityNow |
| D M Withers | Fair Game |
| Dafydd Hughes | Ferran Soriano, CEO, Manchester City |
| Daniel Harrison | Fifa Ethics and Regulations Watch |
| Daniel Levy, Chairman, Tottenham Hotspur | Fiona Lynch |

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| Football Beyond Borders | Jim Wheeler |
| Football Supporters' Association | Jo Bailey |
| Forever Bury | Joe Blott |
| Gareth Cummins | John Anderson |
| Gateshead Soul Supporters' Trust | John Hobson |
| Gemma Teale | John Morgan |
| Geoff Biebly | Jonathan Kaye |
| Glyn Jarvis | Jordan Tyms |
| Grace Mckenna | Jordan Wimpenny, Team manager, Huddersfield Town Women |
| Graham Kelly | Jude Morris-King |
| Harpeet Robertson | Karen Dobres |
| Heather McKinlay | Karen Pond |
| Hull City Supporters' Trust | Katrina Law |
| Humayun Islam | Kerrie Evans |
| Ian Bason | Kevin Blowe |
| Ian Bridge | Kick It Out |
| Ian Kyle | Kieran Maguire |
| Ian Todd | Kristine Green |
| James Young | Leeds United Supporters' Trust |
| Jamie Dapaah | Level Playing Field |
| Jane Hughes | Lewes |
| Jazz Bal | Liam Bushnell-Wye |
| Jenny Hancock | Liam Tinkler |
| Jill Neville | Liga Nacional de Futbol Sala |

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| Lincoln City | Matthew Kempson |
| Linda Magner | Merthyr Town |
| Luke Cox | Michael Brunskill |
| Luton Town Supporters' Trust | Michael Cunnah |
| (Macclesfield Town) Silkmen Supporters' Trust | Micky Singh |
| Maik Strothmüller | Neil Le Milliere |
| Malcolm Clarke | Neil Pinkerton |
| Manchester United Supporters' Trust | Newcastle United Supporters' Trust |
| Manuel Gruber | Nick De Marco QC, Blackstone Chambers |
| Maria Ryder | Nick Duckett |
| Mark Gregory, Ernst & Young | Nick Hawker |
| Mark Harris, Chairman, Northern Premier League | Nicola Cave |
| Mark Inskipp | Nigel Davidson |
| Mark Palios, Tranmere Rovers, Owner | Nigel Kleinfeld |
| Mark White | Nilesh Chauhan |
| Markus Sotirianos | Oliver Ash |
| Martin Ball | Onward |
| Martin Cloake | Our Beautiful Game |
| Martin Endemann | Paul Kirton |
| Martin French | Paul Larter |
| Martin O'Hara | Paul Marks |
| Martin Parker | Paul Millington |
| Matt Johnson | Pavinder Samra |
| Matthew Benham, Brentford, Owner | Peter Leatham |

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| Peter Thomson | Sheffield Wednesday Supporters' Trust |
| Peter Walton | Sheffield Working Group |
| Phillipa Whittaker | Sian Wallis |
| Portsmouth Pompey Supporters' Trust (Portsmouth) | Spirit of Shankly |
| Portsmouth Women | Sports Broadcasters Group |
| Power to Change | Sports Ground Safety Authority |
| Pride In Football | Steve Gibson, Middlesbrough Owner |
| Push The Boundary (Oldham independent fans group) | Stacey Hawkins |
| Rebecca Caplehorn, Director, Tottenham Hotspur | Steve Moulds |
| Richard Irving | Steve Richardson |
| Richard Stanley | Steve Walmsley |
| Richard Tomkins | Stuart Barker |
| Rob Dickinson | Stuart Fuller |
| Rob Street | Sue Watson |
| Robbie Whittaker | Sunderland Supporters' Trust, women's game |
| Roger Ellis | Surinder Aujila |
| Roger Titford | Suzanne Wrack, The Guardian |
| Sachin Patel | Ted Morris |
| Sally Harris | The English Football League |
| Sandra Schwedler | The Football Association |
| Sarah Stelling | The League Managers' Association |
| (Scunthorpe United) The Iron Trust | The National League |
| Shahan Miah | The Premier League |
| | The Professional Footballers Association |

Thomas Concannon

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Vysble

Walsall

Watford Supporters' Trust, women's game

Women in Football

York City Supporters' Trust

Zoe Webber, Business and Project
Director, Norwich City

Annex D – Fan Led Review Online Survey

Fan Led Review Online Survey

Football fans played a key role in the Review of Football Governance. As part of the Review an online survey ran between the 19th and 30th July, and sought the views of fans on the issues that were of most concern to the Fan Led Review, including the establishment of an independent regulator for football.

The survey consisted of 47 questions and free text boxes for questions 10, 15, and 39 where respondents could expand on answers given to those specific questions. The questions are provided in the text below.

Summary

The survey received 20,841 responses in total. These responses were a mixture of full and partial survey responses. The majority of respondents were not a member of a Supporters' Trust and were primarily supporters of clubs in the Premier League.

Respondents showed strong support for the key proposals which were set out in the Review's interim findings. These were to:

- Establish an Independent Regulator: 93% (16,658 out of 17,938))
- Greater regulation of club finances: 89% (14,328 out of 16,085))
- Fans to have a Golden Share: 81% (14,035 out of 17,329))
- Improve Corporate Governance: 84% (14,461 out of 17,259))
- Establish a Supporter Shadow Board: 74% (12,400 out of 16,772)

There was also strong support for changing the system of financial distributions to clubs with 92% (14,890 out of 16,228) saying more revenue should be shared across the pyramid, and 95% (15,000 out of 15,771) asking for a greater sharing of Premier League revenue.

There was strong support, 82% (13,270 out of 16,232), for the Premier League to provide a guaranteed, ring fenced, sum to women's football as well as to organisations such as Kick it Out and the Football Supporters Association.

There was more support for ending parachute payments than retaining them but this was supported by less than half of respondents, 49% (7,984 out of 16,237), with 40% (6,481) respondents in favour of retaining them. 11% (1,772) were unsure.

There was also strong support, 87% (15,458 out of 17,878), for a supporters' right to buy shares in their club. 48% (8,595 out of 17,873) of respondents stated that they were 'very likely' to buy shares if they were available and 53% (7,857 out of 14,641) stated that they would only be willing to invest £500 or under (with 7%, (970) respondents to this question, willing to invest over £5,000).

Data Presentation

The survey is a snapshot of the views of a proportion of football fans on the issues that were the concern of the Fan Led Review of Football Governance. The survey was only available for 14 days, and so was only able to capture the views of those fans who were able to complete the survey over that period. The survey results can therefore be used for illustrative purposes only, and to provide an impression of football fans' views on the subjects of concern to the Fan Led Review.

Not all respondents answered all the questions.

Question by Question Analysis

Football clubs and matches

Questions 2 - 6 asked respondents a number of different questions about the football club that they supported; the number of matches watched live at a stadium during a year not affected by a pandemic and the number of matches watched live on television during a year not affected by a pandemic.

Question 2: In what league does the main club that you support play?

Of the 19,684 respondents to this question, the majority, 64% (12,688), supported clubs in the Premier League, but also include supporters of teams in the Championship, 14% (2,857), League 1, 8% (1,651), League 2, 4% (827), National League, 2% (481), National League North or South, 2% (463), Women's Super League, less than 1% (36), Women's Championship, less than 1% (5), and other teams, 3% (294).

The large response from supporters of Premier League clubs may be due to the large supporter bases for these clubs, which in turn may have generated greater awareness of the survey through their promotion of it.

Question 3: Do you have a season ticket for your main club?

Of the 19,666 respondents to this question, the majority, 59% (11,579), said they were not season ticket holders at their main club, while 41% (8,087) of respondents said that they did hold a season ticket with their main club.

Attending and Watching Matches

Questions 4 and 5 asked respondents about match attendance in person during a normal season, and watching live matches on television in a season not affected by a pandemic.

Question 4: In a season not impacted by a pandemic, how many matches would you usually attend in person?

33% (6,460) of those who responded said that they usually attended 21 or more matches in person in a season not affected by the pandemic. 10% (2,000) said that they would attend 16-20 matches in person, with 25% (4,830) attending 1-5 matches per season. 12% (2,450) said that they did not attend any live matches in a normal season.

Question 5: In a season not impacted by a pandemic, how many matches would you usually watch live on television?

23% (4,453) of those who responded watched over 80 live games on television, with a further 33% (6,552) stating they watched between 31 and 80 live matches on television in a season not affected by a pandemic.

Supporters' Trusts

Question 6 asked respondents if they were a member of a Supporters' Trust. A Supporters' Trust in this instance is defined as a formal, democratic and not-for-profit organisation of football fans who attempt to strengthen the influence of supporters over the running of the club they support.

Question 6: Are you a member of a Supporters' Trust?

The majority of respondents to the question 62% (12,110) were not members of a Supporters' Trust, with 38% (7,510) identifying as members of a club's Supporters' Trust. The survey drew responses not only from supporters' trusts but a large number of fans who were unaffiliated to a trust. This indicates there is a wide interest across football fans in how football is governed.

Regulation

Question 7: Do you consider the current English football regulatory structure fit for purpose?

The response was strong, with the great majority of those who responded showing dissatisfaction with the current regulatory structure and its fitness for purpose. 84% (15,120) of these respondents felt that the current regulatory regime in English football was fit for purpose. Only 6% (1,100) of respondents considered the current regulatory arrangements fit for purpose.

This marked response shows that respondents are concerned about the current regulatory regime that governs football in this country today.

Regulation

Questions 8 to 10 asked respondents questions about the regulation of football, including how they rated the performance of each of the current regulatory bodies as regulators in English football; whether they would support the introduction of a new regulator for football that is independent of the existing authorities; and if so, which of the areas should it regulate.

Question 8: How do you rate the performance of each of the following regulatory bodies as regulators in English football?

15% (2,755) of those who responded rated the performance of the Football Association as a regulatory body as Very Good or Good. 15% (2,677) of those who responded rated the performance of the Premier League as a regulatory body as Very Good or Good. 14% (2,499) of those who responded rated the performance of the EFL as a regulatory body as Very Good or Good. 16% (2,812) of those who responded rated the performance of the National League as a regulatory body that was Very Good or Good.

44% (7,924) of those who responded rated the performance of the Football Association as a regulatory body that was Poor or Very Poor. 56% (9,976) of those who responded rated the performance of the Premier League as a regulatory body as Poor or Very Poor. 49% (8,840) of those who responded rated the performance of the EFL as a regulatory body as Poor or Very Poor. 26% (4,680) of those who responded rated the performance of the National League as a regulatory body as Poor or Very Poor.

Question 9: Would you support the introduction of a new regulator for football that is independent of the existing authorities?

93% of those who responded (16,658) supported the introduction of a new regulator for football that is independent of the existing authorities. Only 3% (456) objected to the proposal for a new regulator for football.

Question 10: If there was an independent regulator, which of the following areas should it regulate .

17,839 responded to question 10. Respondents could tick as many measures as they wanted. In order, the most options were supported as follows:

- 13.** owners' test - 94% (16,734) of those who responded thought it should regulate the owners' test
- 14.** club financial regulation - 87% (15,458)
- 15.** directors' test - 83% (14,794) thought it should regulate the directors' test
- 16.** distribution of finance in English football - 81% (14,456) said it should regulate the distribution of finance in English football
- 17.** sale or disposal of club assets (e.g. stadium or training ground) - 77% (13,787) thought it should regulate the sale or disposal of club assets
- 18.** player agents - 75% (13,465) thought it should regulate player agents
- 19.** Premier League / EFL / National League governance - 66% (11,779) thought it should regulate authority governance
- 20.** structure of English football pyramid - 62% (11,007) said it should regulate the structure of the football pyramid.
- 21.** club corporate governance - 55% (9,856) thought it should regulate club corporate governance

22. youth development - 46% (8,232) said it should regulate youth development

23. Other - 6% (1,070) said it should regulate other matters

Share Ownership

Questions 11, 12 and 13 concentrated on various aspects of share ownership in football clubs, including the appetite for fans buying shares and the preferred rates for share ownership.

Question 11: Do you support the call for fans to be given a right to buy shares in their club?

The right for fans to buy shares in their club was strongly supported by respondents, with 87% (15,480) of those who responded in favour of this proposal, and only 6% (1,150) against the proposal.

Questions 12 and 13 drilled down further into the matter of football club share ownership amongst respondents.

Question 12: If shares were available in your club, how likely would you be to buy them?

Nearly half of those who responded to this question 48% (8,600) felt that they were 'very likely' to purchase shares in their club, with 34% (6,100) 'somewhat likely' to buy shares.

Question 13: How much would you be willing to invest?

The survey found 42% (6,157) of those who responded willing to invest between £100 - £499; 21% (3,012) were willing to invest between £500 - £999; and 19% (2,803) of respondents willing to invest between £1000 - £4999. Only 7% (969) agreed to investing £5000 or greater.

Questions 14 to 18 concentrated on the proposal of a Golden Share in a football club to be held by a fan group or other entity which had veto rights over certain items linked to the club.

Question 14: There has been discussion of introducing a Golden Share. This would be a special share held by a fan group which had veto rights over certain items. Would you support the introduction of an arrangement in English football, whereby a fan-held special share would hold veto rights over certain specified items?

A large majority of those who responded to this question 81% (14,035) supported the introduction of a Golden Share, with 8% (1,307) disagreeing.

Question 15: If fans were to have a Golden Share who should it be held by?

The vast majority of respondents - 94% (16,060) - agreed that a recognised legally constituted democratic supporters' trust or other independent supporter association should hold the Golden Share.

Question 16: If fans were to have a Golden Share, which of the following items should be subject to a veto by the holder of the fan Golden Share?

90% (17,179) of respondents supported the Golden Share rights covering a change of club name; 83% (17,019) supported covering any change of club badge; 87% (17,020) supported covering a change of club colours; 84% (17,076) supported covering any sale of stadium or other key assets (excluding players); 86% (16,989) supported covering any relocation of club home games; and 81% (16,829) supported covering entering into new competitions. A minority 38% (16,629) supported a fan veto on a club's annual budget being covered by the Golden Share.

Question 17: Would you support legislation providing additional requirements to allow a club to sell its stadium, for example a local referendum?

64% (11,150) of those who responded agreed to the proposal, with 19% (3,330) against and 17% (2,880) did not know.

Question 18: Should this be in addition to the Golden Share?

77% (8,540) of those who responded agreed, with 9% (960) disagreeing and 15% (1,620) unsure.

Corporate Governance

Questions 19, 20, 21 and 22 covered issues around corporate governance of football clubs.

Question 19: Do you consider that the current board of directors at your club is fit for purpose and doing a good job running your club?

39% (6,790) of those who responded agreed, with over half of respondents 55% (9,570) disagreeing. 5% (910) of respondents did not know.

Question 20: Do you support measures to improve corporate governance at your club?

Of those who responded the vast majority 84% (14,460) agreed 6% (1,090) disagreed and 10% (1,710) of respondents did not know.

Question 21: Which of the following measures applicable in other businesses would you support?

Question 21 provided a list of measures common in other businesses and asked respondents which measures they supported. Respondents could select as many of the available options as they wanted. The list of measures were: appointment of at least two independent directors; appointment of a board with majority of independent non executive directors; fan appointed director; independent chair; published board and sub committee terms of reference; and other.

89% (12,185 out of 13,754) supported the appointment of at least two independent directors; 53% (7,030 out of 13,287) supported a fan appointed director; and 89% (11,853 out of 13,386) supported published board and sub committee terms of reference.

The least popular measure was the appointment of a board with majority of independent non-executive directors with 47% (6,257 out of 13,287) followed by the suggestion of an independent chair 28% (3,794 out of 13,379).

Question 22: Do you think a supporter advisory board consisting of representatives from all recognised fan groups which then advises the club board would be an effective measure to improve the operation of your club?

The vast majority of those who answered the question 74% (12,400) were in favour of this proposal for an advisory board. A further 14% (2,310) were unclear on the proposal and 12% (2,060) opposed the proposal.

Transparency of club information

Questions 23 to 25 dealt with issues of transparency of information from football clubs.

Question 23: Excluding regular operational matters such as transfers is your club sufficiently transparent on: financial matters; strategic matters.

The majority of those who responded felt that their club was not sufficiently transparent on both financial and strategic matters. 61% (9,937) of respondents felt that they were less sighted on strategic club matters, with 54% (8,938) feeling unsighted on financial matters.

Of those respondents who felt that their club was sufficiently transparent on these two matters; 37% (6,701) felt more informed on financial matters, with only 31% (4,995) feeling more informed on strategic matters.

Question 24: Does your club regularly disclose the following items?

Question 24 asked respondents whether their club regularly disclosed a list of items: Annual Report and Accounts; Management Accounts; Multi year strategy and business plan; and Annual Financial Budget for the forthcoming season. As the graph below shows 61% (10,103) of those who answered the question were aware of the publication of their club's annual report and accounts, with 26% (4,198) aware of the publication of management accounts; 17% (2,709) aware of the publication of multi year strategy and business plans; with only 11% (1,747) aware of the club's annual financial budget for the forthcoming season.

Question 25: How would you rate the quality of information shared with supporters by your club?

54% (8,915) of respondents to the question thought the quality of such information was either 'average' or 'very poor'. 9% (1,404) found the quality of information supplied by their club 'very good'.

Financial Revenue and the Football Pyramid

Questions 26 to 33 considered the sharing of financial revenues in football across a number of different scenarios, including whether so-called parachute payments to clubs relegated from the Premier League should continue. Respondents were also asked if they would like to see a greater sharing of revenues to women's football, and if the funding provided by the football authorities for groups such as Kick it Out or the Football Supporters' Association should be guaranteed.

Question 26: Do you think there needs to be more sharing of financial revenue across the English football league system (commonly known as the football pyramid)?

A vast majority of those who responded agreed with this question - 92% (14,890 respondents), with only 5% (790) disagreeing, and 3% (550) unsure.

Question 27: Would you support greater sharing of Premier League revenue across the pyramid?

95% (15,000) respondents to the question agreed with this proposal, with 5% (770) disagreeing.

Question 28: Should payments to teams relegated from a league to a lower league (e.g. teams relegated from the Premier League receiving payments from the Premier League for a number of seasons after relegation) - commonly known as "parachute payments" continue?

There were mixed views on this question, with 40% (6,480) of those who answered agreeing that parachute payments to clubs relegated from the Premier League should continue, whilst 49% (7,980) disagreed. A further 11% of those responding did not know whether parachute payments should continue to be made.

Question 29: Would you support greater sharing of UEFA competition revenue with clubs in English football that have not qualified for UEFA competition?

59% (9,580) of respondents who answered said yes to this proposal, with 31% (5,024) disagreeing, and 10% (1,620) undecided.

Question 30: Would you support women's football being given a guaranteed amount annually from the Premier League for distribution by the FA into the women's game?

There was strong support for this proposal with 73% (11,860) of those who responded to the question agreeing to the proposal; with 19% (3,014) against, and 8% (1,350) did not know.

Question 31: Would you support the funding provided by the football authorities for groups such as Kick it Out or the Football Supporters' Association being guaranteed - commonly known as being 'ring fenced'?

Kick It Out is English football's equality and inclusion organisation, and works throughout the football, educational and community sectors to challenge discrimination, encourage inclusive practices and campaign for positive change. The Football Supporters' Association (FSA) is the national, democratic, representative body for football supporters in England and Wales.

82% (13,270) of respondents who answered the question agreed with the proposal, with 10% (1,610) against. 8% (1,350) of respondents did not know.

Question 32 : Would you support increased regulation of club finances in English football?

Over four in five respondents to this question answered yes for this proposal 89% (14,330). Only 5% (860) answered no to the proposal with a further 6% (893) of respondents responding that they “don’t know”.

Question 33: Which of the following measures would you support?

Respondents could tick as many measures as they wanted. In order, the most options were supported as follows:

- a. limiting club debt levels (82% (12,776)).
- b. limiting owner subsidies coming in as the second most popular choice amongst those who responded with 54% (8,494).
- c. compulsory relegation clauses in player contracts was the third most popular option chosen by 50% (7,761) of respondents.
- d. A salary cap based on a percentage of club revenue chosen by 48% (7,590) of those who responded.
- e. abolishing rules requiring clubs and players to be paid first in any club insolvency - commonly known as the football creditors rule, chosen by 44% (6,921).
- f. a requirement to break even on a cash basis, chosen by 43% (6,776).
- g. requiring owners to lodge a cash bond for all committed expenditure, chosen by 43% (6,730).
- h. salary cap set to a fixed amount, chosen by 41% (6,386).

Women’s Football

Questions 34 to 38 explored questions concerning women’s football and covered topics ranging from financial support for the women’s game to affiliation of women’s teams to men’s teams.

This section received a lower number of responses than the rest of the survey. Question 34 received 12,923 responses; Question 35 received 3,785 responses; Question 36 received 3,735 responses; Question 37 received 2,601 responses; and Question 38 received 14,288 responses.

Question 34: If your main club is a women’s team, is it linked to a ‘parent club’ in the men’s game?

30% (3,870) of respondents who answered the question answered that their women’s club was linked to a ‘parent’ club in the men’s game. A further 29% (3,740) answered that it was not, with 41% (5,320) of those who responded did not know.

Question 35: Would you prefer your club to be independent of the men's club?

The majority of respondents to the question, 75% (2,840), did not want to see their women's club independent of the men's club. Only 8% (310) wanted their women's club to be independent from the men's club, with 17% (640) undecided.

Question 36: How would you rate the support received from the men's club?

Respondents could choose a rating of either 'Very Poor', 'Poor', 'Average', 'Good' or 'Very Good' in reply to this question.

32% (1,188) of respondents to the question rated the support received from the men's club as 'Good', with 24% (888) rating the support 'Very Good'. 26% (966) felt that the support given was 'Average', while 12% (438) rated the support 'Poor', and 7% (255) rated the support as 'Very Poor'.

Question 37: Would you support the 'parent club' board having a dedicated women's football representative?

There was strong support for this proposal from those who responded, with 92% (2,400) agreeing, in contrast to the 8% (200) who disagreed.

Question 38: Should it be a condition of membership of the men's English football league system (Premier League and English Football League) that clubs provide support for a women's team?

There was strong support for this proposal from respondents to the question with 57% (8,150) agreeing, in contrast to 43% (6,140) who disagreed.

Comments on the Review's Terms of Reference

Question 39 : Please use the following box to convey any other views or thoughts you have on the review relating to the terms of reference

Question 39 asked respondents for any comments they wished to make about the areas of interest covered by the Fan Led Review, some of which have been reproduced throughout the body of the Review's Final Report.

Demographics of the Respondents

Questions 40 to 45 asked respondents about themselves.

Overall, the majority of survey respondents were in the 25-44 or 45-54 age groups and were male and white.

Age

Question 40: Age range

Of 15,878 respondents, 42% (6,699) came from the 25-44 age group, with 34% (5,370) in the 45-54 age group. 12% (1,966) were in the 16-24 age group, with 10% (1,586) in the 65-74 age group. 2% (257) were in the +75 age group.

Sex

Question 41: Sex (M/F/Prefer not to say)

Of those who responded, 92% (14,550) described themselves as male. This contrasted strongly with only 7% (1,080) of those who responded and described themselves as female.

Gender

Question 42: Is the gender you identify with the same as your sex registered at birth?

98% (15,455) of respondents answered yes, with less than 1% (60) saying no. 2% (310) of respondents indicated that they preferred not to say.

Ethnicity

Question 43: Which of the following best describes your ethnic group?

The vast majority of respondents, 88% (13,951) identified themselves as white English/Welsh/Scottish/Northern Irish/British, with the next highest group of respondents 4% (560) identifying themselves as Any Other White Background. 2% (380) of respondents identified themselves as Irish, with 1% (210) identifying themselves as Indian.

Physical and Mental Health

Question 44: Do you have any physical or mental health conditions or illnesses lasting or expected to last for 12 months or more?

Of those who responded to this question, the vast majority, 84% (13,212) answered no, 11% (1,789) answered yes and 5% (763) of respondents preferred not to say.

Sexuality

Question 45: Which of the following options best describes how you think of yourself?

Question 45 gave respondents a number of options. Respondents could choose from: Heterosexual or Straight/Gay or Lesbian/Bisexual/Other/Prefer Not To Say.

91% (14,450) of those who responded described themselves as heterosexual or straight; 5% (780) preferred not to say. All other options had a proportion of 1% or less.

Respondents and their relationship with football

Questions 46 and 47 asked respondents about their relationship with their club, and with the football governing bodies and leagues.

Question 46: To what extent do you agree that your club supports and stands for your beliefs and identity?

Respondents were given a choice of responses. These were: 'Strongly Agree' , 'Agree' , 'Neither Agree or Disagree' , 'Disagree' or 'Strongly Disagree'.

55% (8,724) of those who responded either 'Strongly Agreed' or 'Agreed' with this statement. 17% (2,690) of either 'Disagreed' or 'Strongly Disagreed' with this statement.

Question 47: To what extent do you agree that the football governing bodies and leagues support and stand for your beliefs and identity?

Respondents were given a choice of responses - 'Strongly Agree' , 'Agree' , 'Neither Agree or Disagree' , 'Disagree' or 'Strongly Disagree'.

26% (4,051) of respondents to the question either 'Strongly Agreed' or 'Agreed' with this statement. 40% (6,318) either 'Disagreed' or 'Strongly Disagreed' with this statement.

Annex E – Glossary

| | |
|--|---|
| CEO - Chief Executive Officer | IREF - Independent Regulator for English Football |
| DCMS - Department for Digital, Culture, Media and Sport | LGBTQ+ - Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Plus |
| EDI - Equality, Diversity and Inclusion | NPPF - National Planning Policy Framework |
| EFL - English Football League | ODT - Owners' and Directors' Test |
| EPPP - Elite Player Performance Plan | Ofcom - The Office of Communications |
| ESL - European Super League | PFA - Professional Footballers' Association |
| EWG - Government Expert Working Group on Football Supporter Ownership and Engagement | PLEDIS - Premier League Equality, Diversity and Inclusion Standard |
| FA - Football Association | SGSA - Sports Grounds Safety Authority |
| FCA - Financial Conduct Authority | UEFA - Union of European Football Associations |
| FED - Fan Elected Director | WSL - Womens' Super League |
| FIFA - Fédération Internationale de Football Association | UBO - Ultimate Beneficial Owner |
| FLDC - Football Leadership Diversity Code | UKFPU - UK Football Policing Unit |
| FSA - Football Supporters' Association | |



Government Response to the Fan Led Review of Football Governance

April 2022

CP 658



Government Response to the Fan Led Review of Football Governance

Presented to Parliament
by the Secretary of State for Digital, Culture, Media and Sport
by Command of Her Majesty

April 2022



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Ministerial foreword



Although I am a Liverpool fan, my great-grandfather was one of the founding members of Everton Football Club, and was in fact their goalkeeper for the club's first ever competitive game in 1880. I know just how important football is to millions of people across the country. I met fans and representatives from across football in my first week as the Secretary of State for Digital, Culture, Media and Sport to hear first hand what their views were on initiating lasting reform to football, and I have made this a priority.

This government has taken comprehensive action to secure the future of the national game. As well as launching the Fan Led Review of Football Governance, we have introduced safe standing at football, made a competition law exclusion order for the latest Premier League broadcast deal to provide financial stability to English and Welsh football clubs and community and charitable organisations, prioritised physical activity throughout the pandemic, provided an unprecedented £1 billion of financial support to sport and leisure organisations during the pandemic, and we are supporting grassroots football through the commitment of £230 million for the multi-sports facilities programme. The government also provided decisive support of £1 million through the Community Ownership Fund in December 2021 to renovate the Gigg Lane stadium and support the future of the game in Bury.

Ever since we committed to a fan led review in the 2019 manifesto, the government has been meeting with fans and key football stakeholders to hear directly from them. Together with the Review, our discussions with clubs, fan groups, football authorities and football leagues have helped inform our views on what reform is needed to preserve our national sport. Many of the conclusions and recommendations in the Review were consistent with what we had been considering and hearing directly.

I would like to place on record my sincere thanks to the Chair of the Review and the Panel who assisted her. I would also like to thank the thousands of fans who contributed to the Review through surveys and supporter trusts. The final report is an incredibly thorough review of the country's favourite game - celebrating the aspects which make it great, but also shining a light on the serious issues which afflict the game and offering genuine solutions to those problems.

I agreed in principle to the primary recommendation of the Review the day after it was published. I am pleased to report that my Department is making good progress in laying the groundwork for the introduction of an independent regulator as soon as possible.

Alongside that work, my Department has been considering the wider proposals outlined in the Review. The European Super League debacle precipitated an unprecedented backlash from fans and stakeholders across the game, offering final proof to many that football had lost its way. Indeed, it was the catalyst for my predecessor initiating the Review in the first place. Even before that though, the government recognised there were too many cases of clubs that were put in grave danger due to the mismanagement by their owners. Sadly there were also instances where historic clubs could not be saved. This is why we had a manifesto commitment to set up the Fan Led Review of Football Governance.

Even since I became Secretary of State on 15 September 2021, events have continued to show the case for change in football. Derby County Football Club continues to be in administration, and more recently, the government has sanctioned individuals who are linked to the Russian Government and also active in English football. This includes the owner of Chelsea Football Club, Roman Abramovich.

It is now clear we need to go further and that reforming the regulatory environment is crucial to achieving a long-term future for football, ensuring clubs are more sustainable and better run. We will introduce an independent regulator. Once in place, this government's vision is one of a virtuous circle where getting club finances, processes and corporate governance structures right will create more suitable custodians and enable better decision making and greater diversity of thinking which in time will lead to better run clubs and greater financial stability. In addition to this, giving fans a greater voice will future proof the system, and rule out scenarios where the stadiums are being sold and the identity of clubs are being altered.

I recognise these changes will have a considerable impact on clubs and represent a significant change. It is therefore crucial that we get it right to give confidence to fans going forward, and also to future investors to ensure a sustainable long-term future for football. We will set out final details on how reforms will be implemented in a White Paper in the summer.

I am confident that the outcome of our reform will be an independent regulator of football that makes football more sustainable and means fewer fans face an existential threat to their club. As we have seen throughout the pandemic and the events of recent years, this government is on the side of the fans and the reforms they deserve. The Review helps set out the framework for this; we will now legislate to make reform a reality.



Rt Hon Nadine Dorries MP

Secretary of State for Digital, Culture, Media and Sport

Executive summary

The government launched the Fan Led Review of Football Governance (“the Review”) to support and explore our analysis of the issues in the game, and to provide views on what might be done about them. The formal part of the Review was announced on 19 April 2021 and the final report published on 24 November 2021.

The trigger for launching the Review was the short-lived proposal for a breakaway league (the ‘European Super League’) which was set to include six English clubs, and the significant effect that the COVID-19 pandemic had on football. However, the origins of the Review go back further to the collapse of historic clubs such as Bury, on the back of which this government included a commitment to action in the 2019 manifesto. The aim was to ‘explore ways of improving the governance, ownership and financial sustainability of clubs in English football, building on the strengths of the football pyramid’. Throughout this, the government has acted to take action for the benefit of fans. Quite simply, without fans there is no football.

Following publication of the Review, on 25 November 2021 the government endorsed the principle of the primary recommendation of the Review - to establish an independent regulator for English football. We are now confirming that we accept or support all ten of the strategic recommendations contained within the Review.

The government is fully committed to reforming football governance to enable a long-term, sustainable future for the game. Accepting or supporting all of the strategic recommendations within the Review is the next step to do exactly this, and will represent a wholesale change in the way football is governed in England. We recognise the scale of change that is required, and the impact that our proposals will have within football and more broadly. That is why we are setting a strategic direction in reforming football for the better, but taking some time to consider the details of exactly how we will enact these changes. We will set out even more information on the precise implementation of our reforms in a White Paper which we will publish this summer.

This document confirms that the government will take forward significant reform of football through legislation. Formally, this means that the government is making the below commitments against each strategic recommendation. ‘Accept’ means that the government agrees with and will implement the strategic recommendation. ‘Support’ means either that the government agrees in principle with the recommendation (and not necessarily the specifics of the recommendation), or that it is a recommendation for another organisation so we don’t have control over the action.

| Recommendation | Government response |
|--|---|
| (A) To ensure the long-term sustainability of football, the government should create a new independent regulator for English football (IREF). | Accept the recommendation to introduce an independent regulator. |
| (B) To ensure financial sustainability of the professional game, IREF should oversee financial regulation in football. | Accept , with further detail on the precise model to follow in the White Paper. |
| (C) New owners' and directors' tests for clubs should be established by IREF replacing the three existing tests and ensuring that only good custodians and qualified directors can run these vital assets. | Accept , with further detail to follow on a strengthened Owners' and Directors' Test. |
| (D) Football needs a new approach to corporate governance to support a long-term sustainable future of the game. | Accept |
| (E) Football needs to improve equality, diversity and inclusion in clubs with committed EDI Action Plans regularly assessed by IREF. | Accept the need for action, and support clubs' commitment to improving equality, diversity and inclusion focusing on improving outcomes while remaining flexible on plans for action. |
| (F) As a uniquely important stakeholder, supporters should be properly consulted by their clubs in taking key decisions by means of a Shadow Board. | Support , with further consideration of the mechanism. |
| (G) Football clubs are a vital part of their local communities, in recognition of this there should be additional protection for key items of club heritage. | Support , with further detail on options to follow. |
| (H) Fair distributions are vital to the long term health of football. The Premier League should guarantee its support to the pyramid and make additional, proportionate contributions to further support football. | Support , with an expectation of further action from the football authorities ahead of the White Paper. |
| (I) Women's football should be treated with parity and given its own dedicated review. | Accept |
| (J) As an urgent matter, the welfare of players exiting the game needs to be better protected — particularly at a young age. | Support as a matter for the football authorities. |

Introduction

Football clubs are at the heart of our local communities. They have an unrivalled social value and many possess great history and legacy. Fans are at the centre of our national game, which is why the government committed to a 'Fan Led Review of Football Governance' and has continued to take action to support them. Since the manifesto commitment in 2019 of a fan led review, the government has engaged with fans directly to hear their views.

The Review was commissioned in April 2021 by the then Secretary of State for Digital, Culture, Media and Sport. The terms of reference of the Review were published on 22 April 2021 by the government. The purpose of the Review was to explore ways of improving the governance, ownership and financial sustainability of clubs in English football, building on the strengths of the football pyramid. This was a manifesto commitment in response to the collapse of Bury, a club founded in 1885. Further crises have followed with COVID-19 laying bare the fragile nature of many clubs' finances and the failed attempt to set up a European Super League in April 2021.

Tracey Crouch MP, the Chair, was supported throughout the course of the Review by a Panel of Experts (Dawn Airey, Denise Barrett-Baxendale, Clarke Carlisle, Daniel Finkelstein, Roy Hodgson, Dan Jones, David Mahoney, Kevin Miles, Godric Smith, and James Tedford). The Review also received over 20,000 responses to an online survey, and 60 individuals submitted evidence into the Review via email. The Chair published her Report in November 2021. The Report set out 10 strategic recommendations, underpinned by 47 detailed recommendations.

The Review was a comprehensive examination of the English football system with the aim of exploring ways to improve the governance, ownership and financial sustainability of clubs in the football pyramid, building on the strengths and benefits of the game. The government is extremely grateful to the Chair for her very comprehensive Review which has identified a range of issues. Undoubtedly its findings and recommendations have started the move towards the fundamental reform of the football industry for the better.

Fundamentally, the government agrees with, and builds on, the case for reform set out in the Review. We endorsed the principle of the primary recommendation of the Review - to establish an independent regulator for English football - on 25 November 2021. Prior to the formal launch of the Review, the government had begun to explore and consider the role of a regulator of English football. This is why the terms of reference committed the Review to 'Assess calls for the creation of a single, independent football regulator to oversee the sport's regulations and compliance, and its relationship with the regulatory powers of The FA and other football bodies'. The government is supportive of the strategic recommendations and accepts or supports all of them. This response sets out the plan for reform of football that the government is taking forward in the coming months.

All of this is to ensure that the proposed reform can be delivered in a way that secures two objectives for the game. Firstly, that the long-term sustainability of football in England is secured, and secondly that English football remains world-leading. This reform will also help to protect the heritage of English football and its clubs, in support of the Levelling Up White

Paper mission to increase pride in place. As demonstrated since the manifesto commitment in 2019, the government will ensure that fans remain at the heart of reform.

The precise design of the reforms called for by the Review is critical. To put the industry on a sustainable footing which ensures the long-term future of the game will be complex. Although the Review collected a wide range of views and evidence, the detailed implementation of those reforms - including the legislative form they take - requires careful consideration and further input. This is to ensure that the reforms work in practice, that they continue to stimulate investment in English football and that we do not see a repeat of events at Derby County, Bury or Macclesfield Town.

The government will bring forward further details through a White Paper in summer 2022. This will set out the proposed model for financial regulation in extensive detail, and will outline the intended approach on the Owners' and Directors' Test among other issues. This is to make sure that the final reforms can change football for a generation and beyond. To do this, the government is committing to legislate to put an independent regulator on a statutory footing as soon as policy is established and when parliamentary time allows.

The Review and recommendations were not aimed solely at the government. The Review contains actions specifically for the Football Association (FA), the Premier League, the English Football League (EFL) and Professional Footballers' Association (PFA) on which we expect to see action. Recommendations on financial distributions, equality, diversity and inclusion (EDI) and player welfare are discussed in more detail later in this response. The authorities will shortly be updating the government and we will outline their progress in the White Paper. Everyone involved in football must be clear that change is needed. The status quo is not acceptable, and fans deserve better. The government will bring this about by legislating, and we expect the football authorities to take action as well.

The case for reform

1. The Review notes that there is much to celebrate about English football. The government agrees that the popularity of English football globally, the success of its clubs on the world stage, and the contribution of clubs to their local communities are all sources of national pride and worth protecting. However, the Review also presents compelling evidence of the challenges faced by English football and the resulting need for significant reform.
2. The fundamental question facing the government is whether it needs to intervene in an industry that has existed without direct government intervention to date, and if so *how* it should intervene. We set up the Review to test this, and following further analysis by the Department for Digital, Culture, Media and Sport (DCMS), we have judged that there are two key problems in professional English football:
3. **Firstly, there is significant risk of financial failure among clubs**
 - i. The prevailing business model exhibits an unsustainable reliance on external funding, mostly from owners, to sustain consistent loss-making. For example, even accounting for net transfer activity, the vast majority of Championship clubs (18 of the 21 clubs for which data is consistently available) made losses in the period 2015/16 to 2019/20.¹
 - ii. This is typically fuelled by high spending on transfers and wages. In the 2019/20 season, 14 out of 20 Premier League clubs, and 22 out of 23 Championship clubs (for which data was available), reported wage-to-revenue ratios in excess of UEFA's recommended threshold of 70%.² Seven Championship clubs reported ratios exceeding 150%.
 - iii. The result has been a steady rise in borrowing mostly from owners, and sometimes through bank loans. Net debt across the Premier League and Championship combined rose from around £3.5 billion in 2016 to over £5 billion in 2020.³
 - iv. Hence, many clubs lack resilience against financial 'shocks', the most likely of which would be that i) owners are no longer willing or able to subsidise losses, or ii) the club suffers relegation. The current situations at Chelsea and Derby County have highlighted how, under the prevailing business model in English football, many clubs are just one 'shock' (such as a geopolitical shift or disinterested benefactor) away from a crisis.
4. **Secondly, the cultural heritage of English football is at risk of harm.** Owners sometimes make decisions that are not in the interests of fans or local communities, which threaten the heritage of English football and its clubs. One example of this has been the sale of critical club assets such as the stadium, leading to temporary or

¹ DCMS analysis of Deloitte UK (2021) 'Annual Review of Football Finance 2021 - Databook'. Considers operating result and net transfer activity for Championship clubs, for which data is available, over the last five seasons.

² UEFA (2019), 'The European Club Footballing Landscape: Club Licensing Benchmarking Report, Financial Year 2018'.

³ Deloitte (2021)

permanent relocation against fans' wishes, or financial instability due to a lack of assets. This can harm the pride in place of local communities.

5. The government agrees with the Review's conclusion that these two problems share three root causes:

i. **The structure and dynamics of the market create incentives for financial overreach**

- Since the primary aim of clubs is to achieve sporting success, and there is a well-established correlation between spending and on-pitch success⁴, clubs have strong incentives to outspend their rivals.
- There are large disparities in income within leagues, and vast 'revenue tiers' between leagues. For example, in 2019/20 the average revenue of a Premier League club (£225 million) was nearly eight times that of a Championship club (£28 million), which in turn was over three times the average for a League 1 club (£8 million).⁵ These disparities drive incentives for clubs to spend beyond their means chasing the tier above or avoiding the tier below.
- Subsidies from particularly wealthy owners can inject wage and transfer inflation, and further distort relative spending power and incentives. For example in 2019/20, Manchester City and Everton both reported pre-tax losses of over £100 million as a result of their transfer activity.

ii. **Inadequate corporate governance often affords unchecked decision-making power**

- Poor and opaque internal governance structures at clubs, which would not be tolerated in most other industries, allow owners/directors to make decisions without transparency or independent scrutiny.
- There is a lack of consistent fan engagement to understand and take into account the interests of fans. This was most clearly illustrated by a subset of Premier League clubs attempting to join a 'closed-shop' European Super League in 2021.
- These poor governance structures exacerbate financial mismanagement issues as decision makers can act in their own short-term interests rather than the long-term interests of fans, with little or no challenge or accountability. This is particularly problematic when the decisions are being made by under-qualified custodians.

⁴ Empirical evidence over time and across a range of leagues shows a strong positive correlation between wage expenditure and league position. See for example: Deloitte (2021) Annual Review of Football Finance; Szymanski, S. (2021) 'On the business of football'.

⁵ Deloitte (2021). Deloitte also estimate promotion to the Premier League is worth c. £170m spread across three seasons, rising to c.£280m over five seasons if the club survives its first season in the league.

iii. Existing regulation is ineffective at addressing the problems

- The industry's existing authorities lack independence, have conflicting interests, and responsibilities are fragmented. As an example, the Premier League is a private company responsible for oversight of its 20 member clubs, and yet is owned by its 20 member clubs. Clubs are able to vote to overturn rules at any time, as was done with the league's 'Short Term Cost Control' in 2019.
- As a result, the industry has failed to introduce or maintain adequate regulations, and rules that are in place are often poorly designed and insufficiently enforced. For example, Bury's collapse highlighted the deficiencies of both the EFL's Owners' and Directors' test and its salary cost management protocol rules.

6. **Without reform, the government believes that there is a high risk of continuing financial failures.** The underlying financial health of clubs shows a systemic fragility. Analysis of a variety of financial metrics by expert academics on behalf of DCMS concluded that there are serious concerns around the financial sustainability and fragility of football finances.⁶ This unsustainable trajectory, coupled with the enduring root causes outlined above, suggest the failure rate of clubs (including administrations and even liquidations) could soon increase, absent intervention.

7. **The government believes that the economic and social costs of such failures would be substantial.** Some of these costs are common to administrations and liquidations in any sector, but many of the more significant social costs are not. This is because:

- i. **Football clubs, unlike most typical businesses, are community and cultural heritage assets that generate social spillover benefits.** In addition to the direct⁷ and indirect⁸ economic benefits football clubs deliver to the local communities they serve, they also engage in community initiatives⁹, and contribute to civic pride, identity, and cultural heritage¹⁰. The loss of football clubs, or the pain and uncertainty caused by administrations, would negatively impact each of these aspects and harm local communities.

⁶ Analysis by Christina Philippou (University of Portsmouth) and Kieran Maguire (University of Liverpool), on behalf of DCMS (2022). The analysis shows there is a widespread issue of clubs being run in unsustainable ways from a viewpoint of traditional financial analysis. The consequent reliance on owner funding increases insolvency risk if the personal circumstances of these owners change. The interconnectivity of clubs, such as through outstanding transfer fees owed, means there is a risk of systemic problems if more clubs become distressed.

⁷ Recent analysis by EY found that Premier League clubs alone support 12,000 jobs. EY (2022), 'Premier League: Economic and social impact', January. p. 6.

⁸ Lincoln City found that local businesses in the hospitality and retail sectors benefit from positive spillovers as fans (both home and away) contribute to the visitor economy. Lincoln City (2020), 'Economic Impact Report'.

⁹ Club Community Organisations in the EFL contribute £63m to community and social projects each year, with over 40 million hours of individual participation. EFL (2020), 'Measuring the impact of EFL clubs in the community: insight and impact report 2020', p. 11.

¹⁰ A football club can be important to members of the community who would not count themselves as fans of the club per se, but who may derive 'non-use value' from its existence and importance to the community. For example, Castellanos & Sanchez (2007) empirically find that the non-use value of Spanish football club R. C. Deportivo La Coruña to citizens of Coruña represents a significant proportion of its total economic value.

ii. **Football fans, unlike typical consumers, have deep emotional and social connections to their club such that they can/will not easily substitute their demand to an alternative 'supplier'.**

- In addition to the loss of sunk costs (e.g. pre-paid season tickets), club bankruptcies can have wider impacts on the welfare of fans, including through unfulfilled demand, psychological distress, or a loss of identity.
- These less tangible values can be difficult to quantify, but have been indirectly revealed in the market on occasion. For example, during the COVID-19 pandemic in 2021, the fans of several clubs declined offers of refunds on their season tickets. Fans of Plymouth Argyle, Doncaster Rovers, Brentford, and Leyton Orient were among those who chose to leave their money in the clubs despite there being no live football in return, in an effort to help their clubs survive the pandemic. Similarly, fans have joined together in Supporters' Trusts in the past to save clubs from liquidation, with the only return on their investment being the continued existence of the club.¹¹

8. It is therefore our assessment that government intervention is needed to effect reform and avoid these costs because:

i. **The free market will not rectify the problems**

- Much of the value of clubs to their fans and communities is not properly captured in the market. These non-market externalities mean actors within the market, such as club owners, do not fully account for the potential social and cultural costs and benefits of their actions. Quite simply, they do not have the incentives to behave in a way that delivers socially optimal outcomes.
- As outlined above, fans are not typical consumers. They will not switch their consumption if they are unhappy with the 'service'. As a result, football clubs are not subject to the demand-side pressure from consumers that businesses in most other markets are.

ii. **Current oversight from industry authorities remains ineffective, and the industry has not responded to calls for reform.** Many of the market's problems are not new. Yet, neither clubs nor authorities have taken the necessary transformative actions despite repeated calls for reform from government, Parliament and the public.¹² As outlined in paragraph 5 (iii) above, due to their incentives and governance structures, the industry is unlikely to make the transformative behavioural and structural changes needed.

¹¹ For example, in 2003 Exeter City Supporters' Trust provided the club with an interest free loan of over £800,000; and York City Supporters' Trust acquired their club's assets from administrators for £600,000.

¹² See for example:

House of Commons Culture, Media and Sport Select Committee (2011), 'Football governance', July.

DCMS (2016), 'Government Expert Working Group on Football Supporter Ownership and Engagement', January.

House of Commons Digital, Culture, Media and Sport Committee (2020), 'Impact of COVID-19 on DCMS sectors: First Report', 20 July.

9. The government recognises that other sports may be suffering from similar problems and that there may be calls for the government to step in in those markets too. However, at this stage, we are of the view that football alone warrants government intervention, because:
- i. **Football is unique in financial scale and attracts unrivalled public interest.**¹³ Football is the most popular and largest sport in the country. In addition to its importance to a large proportion of the population and the pivotal role its clubs play in many communities, the economic size of the football sector is greater than any other sport, across more parts of the country.
 - ii. **The problems faced by football are unique in their type and scale.** The unique business models and financialisation of football mean both the risk, and the potential magnitude, of harm are greater than in other sports.
10. In conclusion, there is a significant risk of harm to a range of stakeholders resulting from the financial failure of football clubs, including irreversible damage to cultural heritage. There is a market failure in that the social cost of club failures is greater than the obvious, private cost in the market. This, along with the various deep-rooted causes of the industry's problems and the governance structures of existing authorities, mean the market is unlikely to reduce the risk of club failures itself. Therefore, government intervention is needed to pre-empt further financial failures in the future and protect the country's national and most popular sport.

¹³ As per page 24 of the Fan Led Review, aggregate attendances across the top four leagues stand at 35 million fans per season. While the Premier League reported that 40% of the UK population (26.8 million people) watched live Premier League coverage in 2020/21.

Government plan for reform on strategic recommendations

The government believes that there is a need to intervene in football to secure the future of the game. This response sets out our planned reforms for a new regime of football governance which will put the game on a sustainable path, in response to the Review's strategic recommendations. In doing so, the government accepts or supports all of the recommendations of the Review. Further details on how reforms will be implemented will follow in the forthcoming White Paper, which will be published in the summer.

A: To ensure the long-term sustainability of football, the government should create a new independent regulator for English football (IREF)

1. **The government will introduce an independent regulator for football.** In order to effectively address the market failures outlined in the above case for reform, the government believes that regulation should be:
 - Independent - the conflicting vested interests in football have persistently stood in the way of effective regulation. Equally, the regulator should maintain operational and decision-making independence from the government.
 - Statutory - football is a market with various, deep-rooted problems and powerful, well-resourced incumbents. In order to drive transformative change, a regulator would need a range of functions and powers that can only be delivered through statute.
2. To adhere to good regulatory design, the government is first considering the functions of the regulator prior to considering the most appropriate form. To establish its functions, the government has considered what the regulator is there to do, and how it should do it. Broadly, this involves determining its objective, scope and powers. Paragraphs 4 - 24 cover the government's proposals for the objective, scope and powers of the regulator.
3. Once the functions of the regulators have been established, the government will consider the most appropriate form. This will include the location for the regulator, including whether it would be best placed within an existing body or established as a new body. A bespoke new body could be tailored specifically to focus solely on football. However, there may be cost and delivery advantages to making use of pre-existing powers, structures, and experience. The government will continue to consider the complexities of the form and functions of the regulator. We will share further details through a White Paper, and legislate to put the regulator on a statutory footing when parliamentary time allows.

The regulator's objective

4. An independent regulator will need an overarching statutory objective to define its fundamental purpose and provide the legal basis for its actions. The Review recommended that the regulator should have a primary objective of '*ensuring English football is sustainable and competitive for the benefit of existing and future fans and*

the local communities football clubs serve'. It also recommended the regulator should have further duties to promote other aspects of the game.

5. The government agrees that the regulator's objective should focus on sustainability for the benefit of fans and local communities. As outlined in the Review and in the government's analysis on the case for reform, the unsustainable operations of many clubs are putting their futures at risk, with severe potential implications on their fans and the local communities they serve.
6. While the Review recommended a dual focus on sustainability and competitiveness, the government considers it may be preferable to maintain the primacy of sustainability. We recognise that there may be unavoidable trade-offs between sustainability and other important objectives such as competitiveness (both within English football, and of English football internationally), and that a focus on sustainability in isolation may lead to poor outcomes. However, the key problem identified in the market is one of sustainability, and so it is on the basis of sustainability that the regulator should primarily act. The regulator should still be cognisant of potential anti-competitive action by regulated parties, or the potential anti-competitive impacts of its own actions (see paragraph 7 below).
7. The government agrees that additional supplementary duties will be crucial to help further define the regulator's purpose and scope, and guide its approach to regulation. For example, duties to give regard to competitiveness, investment, and the burden on regulated parties would ensure impacts on these important outcomes are taken into consideration when the regulator is exercising its functions, but still maintain sustainability as the regulator's predominant objective. This would ensure the regulator does not singularly strive for sustainability even at the disproportionate risk of unintended consequences. We will provide further detail on the regulator's specific duties in the White Paper once we have fully established its final design. We will ensure this is consistent with the work that follows the government's recent Economic Regulation Policy Paper.¹⁴
8. The government recognises that an objective of guaranteeing zero club failures would not be realistic and, as outlined above, striving for this at all costs may lead to bad outcomes. Instead, the aim of the regulator should be to reduce the likelihood of financial distress (including administrations and liquidations), by ensuring clubs are financially and corporately better run. In the unavoidable event financial distress does occur, the regulator's priority would be to ensure a more orderly and managed process so as to minimise harm to fans and local communities without the loss of their club.

The regulator's licensing regime and scope

9. The Review recommended that the regulator should operate a licensing system. This approach would require each club operating in professional men's football (National

¹⁴ [Economic Regulation Policy Paper](#)

League and above) to hold a licence to legally operate. In order to obtain a licence, clubs would have to satisfy conditions related to:

- a. Financial regulation
- b. Owners' and Directors' tests (ODT)
- c. Corporate governance
- d. Fan engagement
- e. Protection of club heritage

10. The government will take forward a licensing system as an appropriate mechanism through which to give regulation effect. A club would need a licence to operate. A licence would only permit clubs to compete in merit-based competitions approved by FIFA, UEFA and the FA and consented to by fans. This would prevent any future risk of clubs breaking away to join anti-competitive leagues against the interests of fans.
11. The use of licence conditions would enable the regulator to ensure proportionality. This means regulation should be tailored to reflect the differing business models of clubs, and ensure the burden of obligations is proportionate to the scale of the club and the circumstances. For example, clubs in the National League might not be held to the same level of governance standards as clubs in the Premier League. As part of this, the government believes clubs should have a degree of flexibility to meet obligations providing the desired outcome is achieved. Licence conditions could be designed with this proportionality and flexibility built in, by giving the regulator some discretion in how conditions are satisfied.
12. Licensing would also provide a mechanism for enforcement as all clubs would be required to hold a licence. We are considering the details of how licensing might work in practice. We will examine other models, such as the Financial Conduct Authority's authorisation system, when designing a model for football, and will share details in the White Paper.
13. The government is of the view that the licence conditions listed in paragraph 9 should broadly constitute the scope of the regulator's activities. We recognise that there are issues in football aside from the sustainability of clubs (e.g. ticket prices, fan behaviour, racism etc.) and that there may be calls for the regulator to have a role in tackling these issues. However, a broad scope that includes functions not directly related to the regulator's primary objective would spread the regulator too thin and increase the risk of the regulator not delivering its objective (regulatory failure). Both the Review, and the government's own subsequent analysis, have identified financial sustainability as the core problem that justifies government intervention in the market. Therefore, the scope of the regulator's activities should be tightly focussed on this problem and its root causes. Other football governance issues, like the rules of the game, must continue to be for existing authorities such as the FA.
14. To prevent the risk of scope creep, there would need to be clear outer limits placed on the regulator's remit. The government is considering where and how to define this boundary such that it is practical and legally robust, and does not hamstring the regulator in the future. We will provide more detail on the outer limits of the regulator's scope and how it would be amended in the White Paper.

15. The roles and responsibilities of other regulators and authorities within football, such as the FA, will need to be clearly defined to ensure the overlaps and gaps highlighted by the Review do not arise again. We will ensure that arrangements are in place to ensure coherence and clarity across the regulatory landscape, both within and outside of football.

Powers, sanctions and the approach to regulation

16. The Review recommended that a regulator would need strong powers to impose and enforce regulation, as well as a range of possible sanctions including sporting sanctions. It also recommended a staged approach to regulation, initially favouring advocacy to steer clubs towards compliance before falling back on its investigatory and enforcement powers.
17. The government's assessment is that, in addition to powers to give the licensing regime effect, the regulator would need powers such as supervision, information gathering, investigation and enforcement. It will need to be able to compel clubs to meet their obligations.
18. The government recognises that it will be important for the regulator to have a clearly defined approach to regulation, including how it operates and uses its powers, to ensure that all regulated parties know what to expect. We agree with the Review that the regulator should initially work with clubs to ensure compliance. When enforcement is required, it should be swift and bold to minimise harm and deter future non-compliance.
19. Hence, the government wants the regulator to have a broad suite of sanctions at its disposal to deter and/or punish non-compliance with licence conditions. In such instances, we broadly agree with the list of possible sanctions in the Review, which includes reputational sanctions, financial penalties and suspensions. These could be applied to both individuals and clubs.
20. However, we are not convinced by the Review's recommendation that the regulator should have sanction powers directly related to sporting competition, such as points deductions and relegations. We consider it could be inappropriate if financial mismanagement or poor corporate governance resulted in points deductions from the regulator (this should not preclude the leagues themselves sanctioning in this way if appropriate). The regulator should not directly regulate on-pitch outcomes, and as a principle should avoid unduly punishing fans for the misdemeanours of a club and its owners/directors.
21. Sanctions should minimise impacts on fans where possible, and should not directly influence sporting outcomes. Sporting sanctions that directly impact on the competition should be reserved for the respective leagues to apply. We recognise that the regulator may indirectly influence on-pitch outcomes through its sanctions, for example it could enforce a ban on transfers, but this should not be the direct aim of or justification for the sanction.

22. The regulator should deploy sanctions in a tailored and proportionate manner. For example, financial penalties may not always be an appropriate sanction to apply to a club already in financial distress, and similarly may have little effect on extremely wealthy clubs or individuals. As above, sanctions that punish the culprits in isolation, with minimal undue impact on innocent parties such as fans, should be deployed preferentially.
23. The government will need to give careful consideration to these powers and sanctions to minimise the risk of unintended consequences, such as deterring investment or imposing an excessive burden on clubs. It will be key to build the appropriate checks and balances, like thresholds for intervention and appeals mechanisms, into regulatory design. This will help to ensure the regulator uses its powers proportionately and is accountable for its decisions. The government will continue to consider this, taking into account industry views. Further detail on specific powers and sanctions, thresholds for intervention, and appeals will therefore be set out in the White Paper.
24. In summary, the government is committing to an independent regulator with new statutory powers and an objective of ensuring the sustainability of English football for the benefit of its fans and local communities. It should strive to reduce the likelihood of financial failure at clubs, and minimise harm on the exceptional occasion that failure does occur. It will operate a licensing regime centred around financial sustainability, ensuring good custodians and improving corporate governance, as well as greater fan engagement, and the protection of club heritage.

B: To ensure financial sustainability of the professional game, IREF should oversee financial regulation in football.

25. Financial sustainability will be at the heart of the government's reform for football. The key concern which challenges the sustainability of football is the financial situations at many clubs. Indeed, the collapse of Bury due to poor financial management and decision making, and the onset of COVID-19, which demonstrated the precarious financial positions of a greater number of clubs, were among the reasons that sparked the work of the government.
26. Despite football's ability to generate vast revenues and attract significant investment, the finances of many individual clubs are a cause for concern. Our analysis confirms that the cause of financial issues throughout the football pyramid is spending that spirals out-of-control. This is concerning given the current financial health of many football clubs, with wages, losses and debt at unsustainable and rising levels; a situation that COVID-19 has only exacerbated. The Review also identified a lack of resilience to shocks and changes of circumstances at clubs at all levels of the pyramid. To address this, the Review proposed that an independent regulator should oversee financial regulation in football, focused on ensuring long-term financial sustainability.

27. As outlined in the above case for reform, the government's own analysis confirms that the state of finances in English football is precarious. Hence, **the government considers that financial regulation should be the core function of the regulator.** This will be necessary in order to secure the sustainable future of the game - the primary objective of the regulator.

Model of regulation

28. The government is aware that, while financial regulation has the ability to improve sustainability, any financial regime will need to be designed carefully to avoid unintended consequences which could inadvertently threaten the sustainability of the game. This is why choosing the right model, and ensuring the requirements of that model are suitable for football, will be important.
29. One issue identified is that a regulator would need to be able to act on live information and make interventions quickly. To do this "real time financial monitoring" was proposed. This would mean the regulator receives up to date data from clubs at all times. The government believes that real time financial monitoring must be a requirement for the regulator, so it can understand the health of clubs' finances, based on the latest information. This will enable the regulator to engage with clubs if problems do arise. At a minimum this can be used as part of monitoring functions, but could also form a part of any regulatory solution.
30. The Review looked at existing financial regulation models used within football and concluded that they are inadequate, confirming our long-held instincts. It set out that the current Premier League and EFL rules are ineffective given the state of club finances, and that the introduction of other regulations like wage caps are either impractical, would remain prone to creative circumnavigation, or would entrench the dominance of the richest clubs. Instead it proposed a system of regulation typically seen in financial services as the best way to ensure sustainability. This would require clubs to ensure they have enough liquidity in the business throughout the year, have control of costs, and have capital buffers in place for shocks and unforeseen circumstances. There would also be a wind down plan for worst-case scenarios and some clubs could still end in a distressed situation including administration, although the regime should manage this in a more orderly way. Financial regulation would be a licence condition that clubs would need to comply with or face sanctions.
31. Some form of regulation of this kind may be appropriate, as it would ensure that clubs plan better, have more secure finances, and are more resilient. It would allow clubs flexibility in the way they operate, with freedom to make commercial and strategic decisions, but with contingencies in place if things do not go to plan. Crucially, such an approach would still allow clubs to compete and challenge for success, but would mean there is more resilience built into the business. However, we recognise that introducing this type of regulation would be a big change for clubs - it could impact on club operations, cash and capital, financing and investment.
32. The government agrees with the Review that there is merit in the regulator focusing on financial *resilience*, since it is the financial fragility of some clubs that carries the greatest risk of harm. To achieve this, the government's view is that it is sensible for

clubs to exercise prudent financial planning and preparation. This should include the demonstration of sustainable business plans based on a range of potential scenarios, as well as appropriate finances to underpin these plans. For example, a club might be required to plan for the prospect of relegation and the financial difficulties this would entail, for failure to achieve promotion, or for a sudden loss of owner funding. This will allow clubs to be better equipped to deal with external shocks or changes in circumstances.

33. In addition, we recognise that clubs in different leagues - and even within the same league - have very different financial starting points. The regulator will need to take a tailored and proportionate approach based on the financial circumstances, business models, and risks faced by individual clubs. It would not be appropriate to impose a 'one size fits all' model for financial regulation, such as for liquidity requirements.
34. The precise design of financial resilience regulation will be critical, but is complex and requires careful consideration and input. We must ensure it will not unintentionally exacerbate financial problems. The government will continue to develop an appropriate model which delivers on the overall objective of achieving sustainability and building resilience, whilst considering additional factors such as impacts on investment, competition and burdens on clubs. The details on precisely how the regime will function will be set out in the forthcoming White Paper and we will also set out plans to manage the transition to the new system. The government welcomes engagement in refining the regime.

C: New owners' and directors' tests for clubs should be established by IREF, replacing the three existing tests and ensuring that only good custodians and qualified directors can run these vital assets.

35. The government believes that new owners' and directors' tests will help to ensure the future sustainability of our football clubs and the stability of the game.
36. The Review found that the financial distress we have seen at some of English football's most historic clubs was partly down to i) acquisition by owners unsuited to the custodianship of these important cultural assets; and ii) the appointment of unsuitable directors without a proper, transparent appointment process or assessment of skills or qualifications. The Review concluded that if clubs had better suited owners and directors, and better oversight of the risks, the long-term future of the game could be more secure. There is plenty of evidence of unsuitable owners who acquired football clubs without adequate finances or who were involved in criminality, and directors making crucial financial decisions without holding suitable professional qualifications.
37. To address this, the Review confirmed the suspicions of the terms of reference which pointed to the need for additional criteria, and made detailed recommendations to strengthen the tests currently applied by the football authorities. Firstly, by enhancing due diligence to check the source of funds and the strength of the business and financial plans, working closely with the relevant authorities (for example, the National Crime Agency). Secondly, it suggested introducing a new "integrity test",

mirroring a similar system used by the Financial Conduct Authority. In practice, this would ask a regulator to make an overall, evidence-based judgement using expert opinion to assess whether an owner or director would be a suitable custodian of a club.

38. The Review also made recommendations to improve the efficiency and consistency of the current tests by proposing one new test for owners and directors, which would be overseen by the regulator. It also proposed to increase current oversight by re-running the tests and assessments periodically (indicatively every three years). This was based on evidence found during the Review, which showed that existing tests are only run at point of acquisition without any consistent ongoing oversight from authorities. The Review found that, in some cases, the incentives for the authorities are to find any owner to quickly fix a problem, rather than rule out owners who are keen to invest but might not be suitable. Ownership tests are conducted, and deals can be made, behind closed doors without any clarity or transparency.
39. Since owners and directors can be crucial to how sustainably or not a club is run, the government believes a regulator should assess the suitability of these custodians. This has been demonstrated in recent weeks following the action taken against Roman Abramovich, which has left the future of Chelsea uncertain. The government also agrees with the evidence presented in the Review that existing tests do not go far enough and need to be enhanced and periodically reviewed.
40. The government recognises that it is important to ensure the right balance is considered when looking to accept these recommendations. The precise design of an integrity test requires careful further consideration and input, to ensure it is the right one for football and does not unduly deter investment in football.
41. One of the main potential consequences of strengthening an Owners' and Directors' Test is the subsequent impact it might have on inward investment. Although enhancing the tests to root out unsuitable owners and directors is the main objective for ensuring long-term sustainability, it must be done in a way to not disproportionately deter investors. This may occur if obligations and requirements are too onerous or potentially subject to change after investment has been made.
42. The White Paper will consider potential consequences and the impacts on the club and its fans if an established owner failed the test or, as with Chelsea, is no longer able to own the club. The White Paper will also consider limiting the scope of any integrity test, recognising that, while it is important for the regulator to undertake enhanced due diligence, there is a danger that the regulator could be drawn into issues that are geopolitical. We do not believe the regulator should get involved in issues of the government's foreign policy.
43. Ahead of publishing the White Paper, the government will engage with industry and regulatory experts to ensure the design of the integrity test is i) cognisant to these potential impacts, ii) evidence-based, iii) objective, and iv) ultimately right for football. The White Paper will set out the proposed design of such a test in more detail.

D: Football needs a new approach to corporate governance to support a long-term sustainable future of the game.

44. The government has long supported the need for strong corporate governance in sport, and believes this must be transferred to football. The Review set out that poor corporate governance was a root cause for the game's problems, particularly through exacerbating financial mismanagement. The Review presented evidence that poor practices in clubs allowed owners to act unilaterally, with short term-interests that can conflict with the long-term interests of fans. Clubs can lack transparency and accountability on key decisions, and there can be insufficient independent voices and scrutiny to challenge decision making.
45. The Review recommended the regulator introduce, as a licence condition, a new compulsory corporate governance code for football, based on the Sport England and UK Sport Code for Sports Governance. This recommendation was proposed as a way to address some of the problems heard by the Review. These included non-existent non-executive directors, a lack of Annual General Meetings and insufficient processes such as appropriate financial controls or risk planning. This meant that when crucial financial decisions were being made, the lack of basic corporate governance enabled reckless decisions to be made without scrutiny or challenge, therefore compounding the issues and compromising clubs' futures.
46. The UK Sport and Sport England Code for Sports Governance, coming out of the government's *Sporting Future* strategy, has proven successful in setting clear expectations around good governance and diversity, and ensuring decision makers reflect the community they serve. The government agrees that getting the processes and structures right in clubs will create a virtuous circle of more suitable owners and directors, better decision making and greater diversity of thinking which will lead to better run clubs and, therefore, greater financial stability.
47. A new model for corporate governance in football will be introduced, and will be designed and overseen by the regulator. Further consideration will be given to an appropriate model for football taking learnings from the Code for Sports Governance, and consulting on other governance models used across industry. When designing a model for corporate governance, the regulator will need to consider proportionality of the obligations across the different levels of the football pyramid. For example, the obligations on a Premier League club will not necessarily be the same as the obligations on a club in the National League. Further consultation with governance experts will be undertaken to assess these considerations and conclusions will be set out in more detail in the White Paper.

E: Football needs to improve equality, diversity and inclusion in clubs with committed EDI Action Plans regularly assessed by IREF.

48. The government strongly believes that football needs to improve Equality, Diversity and Inclusion (EDI) in clubs. The government supports a flexible approach to improving EDI across football – with a focus on outcomes rather than process – and on how we assess clubs' progress in this area. We should encourage clubs to be

diverse in their composition and connection to their local communities. We remain committed to stamping out racist abuse, investing in greater opportunities in women's football, improving access for those with disabilities and widening participation in the training pipeline to broaden future representation and ensure a meritocracy. Diversity of thought and a range of perspectives are vital to successful decision making.

49. The Review recommended that an EDI Action Plan be part of the regulator's licence conditions, requiring a club to show how it will ensure EDI is part of the organisation and the way it operates. The government believes in empowering clubs and their local communities to promote equality, diversity and inclusion and they should set clear plans to do so. These should aspire to tangible outcomes that include clubs:
 - ensuring they reflect the demographics of their local communities in their workforce and governance structures
 - taking specific action to tackle racist and other abuse both on and off the pitch
 - promoting and increasing participation in women's football
 - improving access and participation in football for those with disabilities

50. However, the role of the regulator in assessing clubs' progress against their own plans needs further consideration. Reporting to football authorities, organisations and particularly fan bases would mean decisions on whether a club is meeting its own plans to address diversity and inclusion are taken by those in whose interest the club is meant to act. The role of the regulator as serving a supervisory and educational function, consulting with clubs on best practice and initiatives, should be explored. We will need to review the appropriate scope of a regulator's powers as well as how EDI is assessed relative to a club's size and geographical location.

51. Further consideration will be developed in the White Paper, but we agree with the broad principles centring on promoting fairness to lead to better outcomes by examining existing approaches and alternative ways to promote inclusivity. We will consider how we can support football's consideration of action plans to draw on the recommendations from The Commission on Race and Ethnic Disparities (CRED) Report through consideration of local demographics and the implementation of effective measures to engage underrepresented groups. More broadly, clubs could consider social mobility programmes to improve accessibility and representation through a range of activities which are inclusive and provide real and tangible developmental benefits.

52. At an early stage, it is envisaged that all clubs in the English professional football pyramid would be required to have a plan to address diversity and inclusion to ensure that they are representative of their local communities and are considering how they consider a range of perspectives in decision making. We want to see more progress on underrepresented groups in leadership and coaching, but believe clubs should be working organically on how to achieve this, and should be accountable to their fans on success.

53. The Review recommended that the football authorities work more closely to ensure consistent campaigns across the various organisations. The government notes the

progress already made and is pleased to see that the PL, FA and EFL have agreed to collaborate on an overarching campaign for EDI across football with Kick It Out. The government will continue to work closely with all football authorities on this issue.

F: As a uniquely important stakeholder, supporters should be properly consulted by their clubs in taking key decisions by means of a Shadow Board.

54. The government wants supporters to be properly consulted by their clubs in taking key decisions, as shown by our actions in coming out strongly against the European Super League. That said, the government is not currently convinced that a Shadow Board is the most appropriate means of doing that for every club, or in every situation. A more flexible approach, whereby the regulator oversees a minimum standard of engagement, is our preferred option at this stage.
55. The Review was clear that engagement between supporters and clubs is highly variable and often falls far short of what fans rightfully expect. Genuine fan engagement can be a huge benefit to the decision making process of clubs in a number of areas. Equally, if fans feel consulted they are less likely to be unfairly critical of decisions made by club executives who are often seeking to act in what they consider to be the best interests of the club.
56. For these reasons, it is the government's opinion that fans' views must be better heard and due regard paid to them. To achieve this, we will include details in the White Paper on setting a minimum standard of fan engagement as a condition of the licence from the regulator. If the regulator is not satisfied that this is being achieved, or that the plan to get there is insufficient, they may not grant a licence.
57. For many clubs, a Shadow Board will be a suitable option to better understand the views of their fans and involve them in their decision making processes as a uniquely important stakeholder. As outlined in detail within the Review, when set up appropriately, Shadow Boards allow supporters better sight into the club's strategies and to provide more considered feedback. We would expect that a club with a Shadow Board already in operation is likely to meet any licence condition which may be introduced with regards to fan engagement.
58. However, where possible, the government would like to implement proportionate and flexible proposals which work for clubs across the football pyramid. The comparative burden of introducing and operating a Shadow Board is likely to be relatively higher for smaller clubs, and the benefits accrued from fan engagement may be more reasonably gained from a more flexible approach.
59. Football authorities and several clubs have recognised the benefits that come from genuine fan engagement in improving their decision making processes and we recognise that some steps are already being taken to improve this engagement. These include ongoing improvements to the existing Structured Dialogue process between supporter groups such as the Football Supporters' Association and the leagues. More recently, the FA has started to establish a Fan Consultation Group which is due to start meeting in April 2022. We have also noted improvements being

made to the processes at clubs such as Liverpool, Manchester United and Oxford United, amongst others.

60. We will set out the details that will be used to define the acceptable minimum standard of fan engagement in the forthcoming White Paper, alongside further detail on the licence conditions of the regulator.

G: Football clubs are a vital part of their local communities, in recognition of this there should be additional protection for key items of club heritage.

61. The government agrees that there should be additional protection for key items of club heritage.
62. The Review set out what many fans instinctively understand - the heritage of a club is a crucial aspect to their support of their club and helps shape local identity. Many have been supporters for decades and view certain key aspects (for example the badge, home team colours, and stadium) as intrinsic representations of their club's history. There have been examples of clubs trying to change these key items without consulting their fans, leaving the fans alienated and angry.
63. The Government will support measures to give fans the tools to protect all the key items of club heritage which were identified in the Review. These are:
- the sale of the club stadium
 - the re-location of club outside of the local area
 - the club joining a new competition that is not affiliated to FIFA, UEFA and the FA and/or leaving a competition in which it currently plays
 - the club badge
 - the first team home shirt club colours
 - the club name
64. The Review suggests that a 'Golden Share', held by a Community Benefit Society (CBS), is the best way to ensure fans can protect key items of club heritage. This approach can be successful - Brentford is an example of a club that has introduced a form of 'Golden Share' (the 'BU Special Share') whereby the owner voluntarily offered up a veto right over the sale of the stadium to the supporters' group.
65. However, a 'Golden Share' may not be the most suitable way for every club to allow their fans a right to protect the items listed above. Beyond the complex legal issues which arise from mandating every English football club to change their articles of association, a functional 'Golden Share' system may pose a significant administrative burden for some clubs. The CBS which holds the share would likely need to engage an independent polling company if it were to hold a valid vote and would need to carefully assess which supporters would be eligible for such a vote. Furthermore, supporters may not be able to exercise their veto rights effectively — for example, because they have late access or often incomplete information, insufficient time to cast a vote or due to administrative constraints.

66. Therefore, a one size fits all approach may not be appropriate. We believe that a regulatory system that would apply to every professional club should, where appropriate, implement proportional and flexible proposals which work for clubs across the football pyramid.
67. We will share further details in the White Paper on the regulator implementing a licence condition which requires clubs to have a mechanism in place for fans to have appropriate protection over changes with regards to the key items of club heritage listed in the Review (or have a firm plan to introduce such a mechanism). Football clubs are key components of a local community. Protecting their heritage should help deliver on the mission in the Levelling Up White Paper on pride in place, to increase engagement in local culture and community.
68. We will bring forward details on the minimum requirements for this mechanism in the White Paper, and we will consider whether this will include a veto right for supporters. We will also set out more detail on the enforcement powers that the regulator could have to ensure that those procedures are followed. Issues such as security of tenure will also need analysis on their interaction with property rights which we will consider in the White Paper.
69. There was a specific recommendation for the FA which sits under this overarching strategic recommendation. We are pleased to note that the FA is consulting on a new set of rules to govern heritage assets and we would like to see these introduced in time for the new season. These proposals would require FA approval for changes to a number of the heritage items set out in the Review, with consent granted on the basis of extensive and meaningful consultation with fans.
70. The Review also made recommendations with regards to changes to the planning system. The government recognises the importance of taking account of the civic and historic importance of football clubs to their local communities. We will continue to assess how we can reflect this in changes to the planning system and better protect football grounds.
71. The Review makes two further recommendations. The first is in relation to the National Planning Policy Framework (NPPF). The NPPF has had very strong protections for existing grounds since 2012. The NPPF (paragraph 99) explains that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
- a. An assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
 - b. The loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
 - c. The development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

72. This policy applies to football stadiums. This current strong policy position will be retained as part of a revised NPPF, and the government will consider how to tighten the timing around the provision of the replacement facilities within this policy as part of the revision.
73. Secondly, the Review recommended exploring the viability of new security of tenure property rights for clubs. The government has already committed to launching a review of the landlord and tenant relationship and the legislation surrounding it, which includes Part 2 of the Landlord and Tenant Act 1954. This will cover, but will not be limited to, football grounds. We hope this review will be welcomed by landlords and tenants from across a wide range of sectors, looking beyond the high street to support businesses such as football clubs who do so much to champion sports-led regeneration efforts.

H: Fair distributions are vital to the long term health of football. The Premier League should guarantee its support to the pyramid and make additional, proportionate contributions to further support football.

74. The government supports the principle of this recommendation. Increasing the level of financial redistribution between the leagues will help improve the financial health of football clubs. The Review highlighted that disparities between the finances at different levels create the wrong incentives and are a key driver of the financial gambling of clubs. Therefore, we believe that the sustainability of the football pyramid would be improved by ensuring there is a sufficient level of funding at all levels of the game. A significant part of that will involve transferring more money from the top of the football pyramid downwards, in a proportionate manner for specific purposes. However, it will also be important to ensure that there is enough money going to grassroots and women's football. We also recognise that increased redistribution must come with appropriate cost controls.
75. The Review highlights the overspending which has been a feature of many clubs - some in the Premier League but particularly in the leagues below. This systemic overspending has been cited as a barrier to new agreements on distributions. The football leagues and authorities accept that any changes in distributions must come with new systems of cost control and regulation. The government agrees with this, and it is part of the reason we believe that a strong, independent regulator is needed to help overcome this barrier and facilitate a football-led agreement on redistribution. With a regulator tasked with increasing sustainability, there will no longer be a viable argument against the greater flow of funding down the pyramid.
76. The government believes that the ideal outcome is for football to arrive at an answer which is mutually agreeable to the bodies which comprise it. We have been pressing for a solution in this regard and although some progress has been made, it is disappointing that this appears to remain some way off. We will continue to push for a football-led solution and we remain in close contact with all relevant parties in seeking this.

77. We should be clear though. The government is open to granting the regulator a 'backstop' power to implement redistribution across the football pyramid, if a football-led solution is not found. We will make an assessment on the likelihood of agreement for a football-led solution and will confirm whether there will be a role for the regulator in redistributing income when we publish the White Paper. We welcome any further updates by way of agreed positions or proposals from football around redistributions in advance of that.

Alcohol and football

78. The Review recommended that the government should assess whether the legislation governing the sale of alcohol at football matches is still fit for purpose, pointing out that the laws underpinning the rules for drinking alcohol at football games are nearly 40 years old. Football has modernised since then and the culture has changed. As such, the government accepts the recommendation to review the Sporting Events (Control of Alcohol etc.) Act 1985. Working with stakeholders from across football, including surveying fans, this review will allow the government to assess the interaction between alcohol and football in light of all the evidence.
79. As that review takes place, we will consider the case for pilots of the sale of alcohol in sight of the pitch, and whether they might be appropriate in the lower leagues. For example, if the review shows legislative reform is possible, that the economic case is made for change, and that this is supported by research data, then the case will be strengthened for pilots. The government recognises the potential commercial benefits that a change in this regard could bring for clubs, particularly lower down the football pyramid, but this must be balanced against wider fan safety considerations.
80. The government has been concerned by the increase in incidents of fan disorder at football matches recently. The Review references the appalling conduct of some fans at the EURO 2020 final between England and Italy at Wembley Stadium. The Casey Review was commissioned in response and it identified alcohol consumption, among other reasons, as a driver of that behaviour. The limited data that we have for the 2021/22 season has shown a rise in fan disorder compared with the same period of the 2019/20 season (the last season with fans in stadiums).
81. We have discussed this with the relevant bodies. These include the Sports Grounds Safety Authority, the UK Football Policing Unit, and the FA. We will continue to liaise closely with all the football authorities about their work to tackle disorder.

! Women's football should be treated with parity and given its own dedicated review.

82. The government has long supported women's football, as seen only recently in listing the Women's EUROs and World Cup. A separate review is the next step to drive it forward. Women's and girls' football has re-emerged from years of neglect to become the top participation sport for women and girls in England today, with almost 3 million registered players. However, evidence submitted to the Review highlighted issues that are preventing the women's game from professionalising more widely, and recommended a separate review of the game.

83. The challenges in women's football are distinct to those affecting the men's game. Therefore, the government agrees that a separate review is timely and sensible. The Review challenged an industry that was not prepared to change in men's football, whereas the review into women's football will be set up to work with a sport and improve their future outcomes.
84. The government is assessing the terms of reference for such a review, as well as a suitable Chair and Panel. We will announce these ahead of the White Paper. We expect the terms of reference to cover issues such as the value and visibility of the game, financial sustainability, structures and learning from other countries.

J: As an urgent matter, the welfare of players exiting the game needs to be better protected — particularly at a young age.

85. The government supports this recommendation. It is vitally important that the welfare and mental health of the thousands of young boys and girls who join football academies is protected, regardless of whether they progress to a professional career.
86. The government believes that all footballers should be helped to identify alternative avenues for their skills and talents as and when they leave the sport. As identified in the Review, there is work being undertaken by stakeholders across football, including the FA, men's leagues, the Professional Footballers' Association, clubs and women's leagues. However, significant gaps remain and the government agrees with the Review that the holistic welfare of players - particularly young players - must be urgently improved. The government will push for further progress in this area and monitor this as football authorities seek to improve.
87. The Elite Player Performance Plan (EPPP) is a youth development scheme initiated by the Premier League, and adopted by the member clubs of the EFL in 2011. By many measures, the EPPP is a success. The number of home grown players who are participating at the top level (which is the main aim of the EPPP) is increasing, the Premier League Academies were rated 'Excellent' by Ofsted in 2017, and progress is being made in improving player care across club academies in recent seasons. However, clubs have a substantial duty of care towards their players who sacrifice a great deal to pursue their dreams, and more must be done to support them.
88. The Duty of Care report from Baroness Tanni Grey-Thompson (2017)¹⁵ suggests that athlete welfare, education and transition should be the cornerstones of elite sport development pathways, and that more consideration should be given to such areas from the governing bodies responsible for creating such pathways. Duty of care - which covers emotional and psychological support - was identified as an area where football authorities can go further in the Review. The mandatory 'Life Skills and Personal Development Programme' and 'Transition Strategy' for academy players go some way to helping equip young athletes for a life after football, but there is some

¹⁵ [Duty of Care in Sport Review](#)

evidence to suggest that the uptake of the full range of support which is available could be improved.

89. The Review identified worrying evidence of mental health and wellbeing issues for footballers. There is a prevailing narrative that the life of a player is one of glamour, but for many that belies a culture of uncertainty, fragility and transition. They are incentivised to mask negative emotions and may avoid seeking help for problems they face. Support provided by the Premier League through the Player Care Unit is welcome but independent support is preferable given perceived conflicts of interest for players.
90. As identified by the recommendation in the Review, there are gaps in providing football players with a holistic and comprehensive welfare system. The government encourages football stakeholders to come together to fill those gaps where they exist. Particular focus should be given to providing the resources and funding necessary for independent mental health support to all players and further assistance for young players who transition out of academies.
91. The Review recommended that the FA should proactively encourage private football academies to affiliate to the local County Football Associations. The government supports this recommendation, and understands that the FA are considering how to approach this, noting that they cannot oblige unaffiliated academies in this regard. Teams from unaffiliated academies are not allowed to play affiliated teams, but only in their interaction with the affiliated game can the FA oblige a particular way of working.

Conclusion and next steps

92. The Fan Led Review of Football Governance is an important and critical step in the history of our national game. The government is committed to working at pace to make positive change happen for the fans, the clubs, local communities, and the country.
93. The main recommendation of the Review was to establish an independent regulator for English football. Since the publication of the Report, the government has committed to explore the most effective way of doing exactly that - establishing a strong, independent regulator which ensures the sustainability of the game. The government will legislate to put the regulator on a statutory footing when parliamentary time allows. Given the reforms set out need careful and detailed consideration, we will set out further details of how we propose to deliver and implement our plans in a White Paper in the summer. The White Paper will ensure that fans' voices continue to be heard as specific elements and details are worked through.
94. As set out at the beginning of this response, some of the Review's recommendations are for the football authorities. The government welcomes the engagement thus far with the football authorities, and is committed to continuing regular dialogue on the areas of reform that the football authorities are leading on, such as player welfare, financial redistribution and EDI. We will update on the football authorities' progress in the White Paper.
95. Ahead of the White Paper in the summer, the government will announce the Chair and Panel of the women's football review. Terms of reference for the review will also be announced. The government will also begin the review of the Sporting Events (Control of Alcohol etc.) Act 1985, and will work closely with relevant bodies on this.
96. To ensure that we keep momentum until further details are set out in a White Paper in the Summer, we have a comprehensive programme of work planned to consider how best to approach the complex and important issues raised by the fans of our nation's game. While preparation of legislation continues, we will continue to engage closely with both the football sector and its fans as we finalise the remaining policy.
97. The introduction of an independent regulator represents an important step in creating a consistent and sustainable framework for the governance of English football clubs. It is the government's intention to provide regulatory certainty and transparency through the establishment of an independent regulator following legislation. This will ultimately mean a more financially sustainable game where shocks can be absorbed, and risk of financial crises lessened. The government is committed to ensuring English football will be around for generations to come for fans, clubs and local communities to enjoy.



Department
for Culture,
Media & Sport

A Sustainable Future – Reforming Club Football Governance

February 2023



A Sustainable Future - Reforming Club Football Governance

Presented to Parliament by the Secretary of State for Culture, Media and Sport
by Command of His Majesty

February 2023

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Ministerial Forewords



Football is not just a sport. It is part of our history, our heritage, and our national way of life - bringing communities across the country together week in, and week out.

We invented the beautiful game. The English Football League is the world's original football league, while for over three decades the Premier League has been the template for all other leagues to follow - simultaneously generating both the most excitement and the most wealth of any league on the planet. The Premier League and EFL are true global success stories, exported and watched by millions of people around the world each week. But despite this global success, in recent years it has become clear that there are systemic issues at the heart of our national game.

Football is nothing without its fans - and yet in the last two decades, too many of those fans have been let down, ignored or shut out by their own teams. Historic clubs like Bury have gone to the wall, while others have been governed poorly or put at risk of financial collapse - threatening the stability of the wider pyramid. Too often, some owners have forgotten that they are only the custodians of their club, responsible for just one chapter in its history.

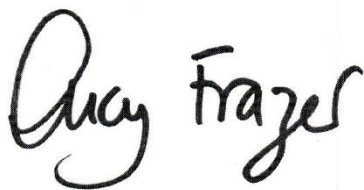
So now we are stepping in to protect our national game and put fans right back at the heart of football. This White Paper represents the most radical overhaul of football governance since the rules were first invented over a century ago.

It commits to an independent regulator backed by legislation, and sets out the technical details of how that will work in practice - including the licensing regime the regulator will operate, and the non-regulatory reforms also needed within football. It will give fans a greater voice in their own clubs, make sure those clubs are financially resilient - and ultimately, protect a beloved part of our national fabric.

This is not about changing the fundamentals of the game. It is about protecting the Premier League's position as the strongest league in the world, and, in turn, safeguarding clubs across the entire football pyramid. The issues highlighted above have been known for many years, and yet the industry has failed to take action, despite repeated calls for reform.

This is only the latest example of the government listening to fans and acting to protect the values of our national game. In the last few years we have introduced safe standing at grounds across the UK; secured the long-term future of Chelsea after its owner was sanctioned; invested in grassroots football through the £230 million multi-sports facilities programme; provided an unprecedented £1 billion of financial support to support the sport and leisure industry through a global pandemic; and launched the independent review of the Future of Women's Football.

I know how much football means to this country. Today marks a huge step in securing its long-term future, and restoring fans' rightful place at the heart of our national game.

A handwritten signature in black ink that reads "Lucy Frazer". The signature is written in a cursive, flowing style.

Rt Hon Lucy Frazer MP

Secretary of State for Culture, Media and Sport



Football touches all our communities in so many ways. The game is part of the DNA that makes up the identities of our regions, towns, and cities. Our clubs bring people together as part of something bigger, evoking a sense of pride and community. That is why, for so many people up and down the country, football is part of the fabric of our way of life and integral to our society and culture.

Football is also intrinsically linked to our national identity. We are a nation that believes in fair competition, in integrity, and in taking pride in place. For many years, our national game embodied these values.

Many clubs exemplify these values and are well run. However, in recent years we have increasingly seen some clubs spending well beyond their means and being driven to the brink. These clubs have been characterised by poor management behind closed doors, or by owners treating them like chips at a poker table.

Some of our most historic clubs - like Bury, Macclesfield Town, and Derby County - have been lost to bankruptcy, or languished in the uncertainty of administration teetering on the edge of liquidation, leaving their communities devastated. During my time on the Leeds City Council, I witnessed first-hand the impacts that Leeds United's struggles had on the city and its people. No community should have to endure that.

Like many others, I was left bitterly disappointed by the attempts of several of our biggest clubs to join the breakaway European Super League in 2021. These clubs

were ready to turn their backs on the values on which their success had been built. But their fans were not. That it took mass protests and the threat of government action to halt this breakaway was, for me, the clearest indication of just how out of touch many football clubs and their owners have become from their fanbases.

Without fans, football clubs are nothing. We would all do well to remember that as we work towards reform to secure a brighter future for football.

One of my first meetings as Minister for Sport was with football fans, to understand their concerns. I heard how clubs had suffered at the hands of owners who used and abused their stewardship. Some of the stories I heard of the sacrifices that fans had to make, just to make their voices heard, were truly shocking. I heard how Blackpool supporters boycotted their own club for several years, demonstrating an astounding passion for their club and commitment to opposing wrongdoing. But this simply should not have been necessary.

It is clear that football must be reformed. Under the guidance of the new independent Regulator, football will be set on a more sustainable course for the future, from today and for generations to come. It will ensure a stronger foundation for the continued growth and success of English football, so that the whole pyramid all the way down to the grassroots game can thrive alongside those at the very top. Our comprehensive reforms will ensure that fans have a greater voice; that owners are fit to become temporary stewards of these long-lasting community institutions; and that clubs operate in a financially sustainable way.

With this White Paper, we are taking the next step on the journey towards reform that started with Tracey Crouch CBE MP's groundbreaking Fan-Led Review of Football Governance. It is a journey that has shone a light on the serious issues threatening the very future of English football as we know it. However, it has also shown the path to a more enduring future for our national game. The measures set out in this White Paper detail that path, and we are fully committed to working with fans and football to make them a reality.



Rt Hon Stuart Andrew MP

Minister for Sport and Minister for Equalities

Executive Summary

The commercial growth of English football's top division is an achievement to be celebrated. The Premier League is a global success, attracting more viewers and higher revenues than any of its international rivals. It is a force for good in promoting the UK abroad, and a product that should be protected.

However, English football is currently endangered by the high and growing risk of financial failure among clubs across its top five tiers. There exist fundamental problems of perverse incentives, poor governance, and defective industry self-regulation. These, along with the risk of breakaway competitions, threaten the stability of the football pyramid as a whole and risk leaving fans alienated and powerless.

The Fan-Led Review of Football Governance highlighted the need for reform to address these issues. The Review referenced the botched plan for a breakaway European Super League, the catastrophic losses of historic clubs like Bury, and countless more clubs that have come close to liquidation due to mismanagement, as just some examples of why significant change is needed in how football is governed.

The government agrees that reform is needed and that government intervention is needed to effect this reform. The free market does not properly account for the importance of clubs to their fans and communities, and industry self-regulation has remained inadequate - seeing clubs collapse and fans harmed. Therefore, football needs a strong centre to independently apply reformed rules.

The government will introduce a new independent Regulator for English football clubs. The Regulator's primary strategic purpose will be to ensure that English football is sustainable and resilient, for the benefit of fans and the local communities football clubs serve.

To support this purpose, it will have three specific primary duties:

1. Club sustainability - the financial sustainability of individual clubs.
2. Systemic stability - the overall stability of the football pyramid.
3. Cultural heritage - protecting the heritage of football clubs that matter most to fans.

The final institutional location of the Regulator will ensure independence and proper accountability. For this reason, the government is not convinced that an industry body would be an appropriate home for the Regulator.

However, the government is clear that this should not stop football getting its own house in order. The government will undertake a targeted intervention in

football to set up an independent Regulator, but reform is also the responsibility of the industry. Football can act now to address the issues of sustainability, and the government would encourage the industry's existing bodies to continue to bring in change in the interim, before the Regulator is operational.

The Regulator will operate a licensing system, where clubs will need a licence to operate as professional football clubs. Legislation will establish four Threshold Conditions of the licence and the Regulator will set the detailed requirements under each. The Regulator will have a tightly defined scope and could not act outside of these four Threshold Conditions. It will not intervene in, for example, on-pitch rules of the game or ticket prices.

Financial regulation will be the Regulator's core focus, and will be based on improving financial resilience. At its most extreme, financial failure can lead to clubs ceasing to exist and so risks causing the most significant harm to fans and communities.

To protect against this, the Regulator will require clubs to:

- demonstrate good basic financial practices;
- have appropriate financial resources or 'buffers' to meet cash flows and financial shocks; and
- protect the core assets of the club - such as the stadium - from harm.

To address corporate governance issues in football, the Regulator will establish a compulsory 'Football Club Corporate Governance Code'. To date, the poor internal governance at some clubs has allowed owners to act unilaterally, pursuing short-term interests with little accountability or scrutiny. Under the new regulatory system, clubs will be required to apply a new code and report on how they have applied it, to improve transparency and accountability. The code will be applied proportionally, with regard to the size, league and complexity of the club's business model, and where risk may exist as a result of weak corporate governance.

The Regulator will establish new tests for prospective owners and directors of football clubs. This will aim to avoid any more unsuitable custodians causing or contributing to problems at clubs, and risking harm to fans.

The new tests will consist of three key elements:

1. a fitness and propriety test to ensure integrity of owners and directors,
2. enhanced due diligence of source of wealth (owners),
3. a requirement for robust financial plans (owners).

The Regulator will implement a minimum standard of fan engagement. Fans are the most important stakeholder for any football club, and both parties benefit from their involvement in the long-term decision-making process at a club. The Regulator

will ensure clubs have a framework in place to regularly meet a representative group of fans to discuss key matters at the club, and other issues of interest to supporters (including club heritage).

The Regulator will also add, and reinforce existing, protections around club heritage. The Regulator will require clubs to comply with the Football Association (FA) on its new rules for club heritage, which will give fans a veto over changes to the badge and home shirt colours, in addition to the strong existing protections for club names. The Regulator will also require clubs to seek its approval for any sale or relocation of the club's stadium.

Clubs will only be able to compete in competitions that are approved by the Regulator. This will allow the Regulator to prevent English clubs from joining breakaway competitions that did not meet predetermined criteria, in consultation with the FA and fans. Crucially, this will safeguard against a future European Super League-style breakaway league.

The Regulator will have a targeted power of last resort to intervene in relation to financial distributions, to deliver a solution if football fails to find one itself. A mutual agreement between the football authorities remains the preferred solution to resolving the issue of insufficient and destabilising financial flows. However, the Regulator will have statutory powers to intervene on this issue, should certain thresholds be met. The Regulator will empower and encourage football to reach an agreement itself first, but provide a crucial backstop to deliver a lasting resolution if the football authorities cannot.

The Regulator will operate an 'advocacy-first' approach to regulation, but with the power and mandate to intervene swiftly and boldly when necessary. This means it will aim to use constructive engagement rather than formal intervention wherever possible, but use its strong powers and sanctions to enforce compliance if necessary.

The Regulator will be proportionate and adaptive in its approach, rather than take a 'one size fits all' approach. The requirements on clubs will reflect their circumstances, meaning they might vary based on criteria like league, club size, and financial health or riskiness. Where clubs are already well run, the Regulator will not look to intervene unless necessary.

The Regulator will ensure the domestic regulatory landscape remains coherent and simple for all involved. There may be functions that existing industry bodies can assist with, but the Regulator will have the responsibility and necessary powers to manage concurrent regulation to ensure coherence.

Checks and balances will be embedded in the design of the Regulator and its system, to ensure it exercises its functions in a fair and appropriate way. In addition to its duties and principles, the Regulator will be subject to legal processes to govern how it uses its powers, including requirements to consult and to meet legally defined thresholds to intervene. Clubs will have the right to appeal the Regulator's decisions to a court or tribunal if they feel it has acted unfairly or outside its statutory remit.

The Regulator will take steps to ensure a smooth transition to the new regulatory system. The proposed reforms are novel and will represent a significant change for the industry, so it will be crucial for the Regulator to be operationally ready and for clubs to be supported in the early years of the new system. As part of this, the Regulator will be able to phase-in rules, and offer clubs 'grace periods' to become compliant, as appropriate.

Some of the issues flagged in the Fan-Led Review of Football Governance will fall outside of the Regulator's immediate scope.

- On women's football, the Future of Women's Football Review is in progress.
- On player welfare, the industry continues to push for progress but some key gaps remain.
- On equality, diversity and inclusion, the industry has taken on greater accountability and the government will continue to support reform in this space.
- On agent regulation, the government will continue to liaise with the FA and FIFA on incoming regulations.
- On alcohol at football, the government acknowledges the case for pilots made in the Review in the lower leagues and will continue speaking to stakeholders on a way forward.

The government will continue to engage closely with a range of stakeholders across football and beyond as we work towards legislation. We will undertake a process of targeted consultation ahead of finalising our policy to put football back onto a sustainable footing for fans to enjoy for generations to come.

PART 1: INTRODUCTION

1: Background

- 1.1. This country created the beautiful game; the first football club in 1857, the Football Association in 1863, the first Football League in 1888 and the world's foremost league, the Premier League, in 1992. English football is undeniably a success story - watched by billions globally and with some of the most exciting players, clubs and stories in any league.
- 1.2. However, despite the phenomenal success of football at home and abroad since then, we have seen all too many examples of the catastrophic impact the failure of a beloved club can have on its fans and a local community. There have been over 60 instances of clubs going into administration since 1992, and we have lost historic clubs like Bury and Macclesfield Town. We have seen fans fighting back against their owners at Blackpool and Charlton Athletic and events at Derby County leaving it on the brink of liquidation in 2022. Multiple clubs failing to meet payroll in recent months shows these issues are only getting worse.
- 1.3. Football clubs are central to many communities and the benefits of a thriving club extend well beyond their fans. That is why the government considered it critical to look at how clubs could be put on a sustainable footing, through its 2019 manifesto commitment to conduct a Fan-Led Review of Football Governance ("the Review").
- 1.4. The Review was commissioned in April 2021 by the then Secretary of State for Digital, Culture, Media and Sport. Its purpose was to explore ways of improving the governance, ownership and financial sustainability of clubs in English football in order to protect these vital community assets.
- 1.5. COVID-19 had a huge impact on clubs' already fragile finances, and the botched plan for a breakaway European Super League threatened the fundamental tenets of the football pyramid. These events have only strengthened the case for reform and the need to protect some of our most historic clubs.
- 1.6. The Review was published on 24 November 2021.¹ The government is extremely grateful to Tracey Crouch CBE MP, the Chair, for her comprehensive work, which laid the foundations for the reforms we are proposing.
- 1.7. In the Government Response to the Fan-Led Review of Football Governance ("the Government Response"),² the government agreed with the case for

¹ [Fan-Led Review of Football Governance](#), November 2021.

² [Government Response to the Fan-Led Review of Football Governance](#), April 2022.

reform. We also accepted or supported the ten strategic recommendations for successfully implementing that reform, with some nuance where needed.

- 1.8. This White Paper builds on those recommendations, and outlines a comprehensive plan to introduce an independent Regulator (“the Regulator”) for English football clubs.³ It will be a Regulator that is free from the vested and conflicting interests that have hindered progress in the past, and one that makes sure football works for its fans and communities.
- 1.9. Several issues which were flagged in the Review and the Government Response are outside of the Regulator’s immediate scope. This White Paper also provides updates on these points, highlighting where we want to work with the football leagues and the FA to continue progress towards much-needed reform.

³ In this White Paper, ‘English football’ refers to the top five tiers of the English men’s football pyramid (the Premier League, Championship, League 1, League 2, and National League) and all 116 professional English and Welsh clubs competing in them at any point in time.

2: The Case for Reform

Summary

- The commercial growth of English football's top division is an achievement to be celebrated. The Premier League is a global success, attracting more viewers and higher revenues than any of its international rivals. It is a force for good in promoting the UK abroad, and a product that should be protected.
- However, this cannot disguise the underlying fragility of the English football pyramid. Fundamental problems of perverse incentives, poor governance, and defective industry self-regulation mean there is a high and growing risk of financial failure among clubs.
- This, along with the risk of breakaway competitions like the European Super League, threatens the stability of the football pyramid as a whole and risks leaving fans powerless.
- The unique importance of football clubs to their fans and local communities means the social costs of financial failures would be significant. This includes the risk of irreversibly damaging valued cultural heritage. Reform is needed to avoid these failures and prevent these impacts from arising.
- Government intervention is needed to effect this reform. This is because the free market does not properly account for the full social value of clubs to their fans and communities, and industry self-regulation has remained inadequate despite countless opportunities to reform, and plenty of time to do so.
- Football needs a strong centre to independently apply reformed rules. Intervention to establish a statutory independent regulator would achieve this, and deliver a future-proofed and nuanced solution to football's problems.

2.1 Recent years have seen English football propelled to a world-leading position. Its top league attracts more viewers⁴ and higher revenues than any of its international rivals.⁵ The 2022 Summer Transfer Window saw record gross spending by Premier League clubs of £1.9 billion – almost as much as the other four top leagues (in Spain, Germany, Italy and France) combined⁶ - fuelled by a new broadcasting deal, which rose in value while other major European leagues' deals decreased. Clearly, English football is in demand,

⁴ The Premier League, [Entertaining audiences](#).

⁵ In the 2020/21 season, the Premier League's €5.5 billion revenue was €1.5 billion greater than the next best league, the German Bundesliga (€3 billion). Deloitte (2022) [Annual Review of Football Finance 2022](#).

⁶ [Records smashed in transfer window: Deloitte reports highest ever Premier League spend of £1.9bn](#).

attracting investors and consumers from around the world. These are achievements to be celebrated, and a product that should be protected.

- 2.2 However, this success cannot disguise the underlying fragilities of the English football pyramid. The Review laid bare the incentives to take reckless decisions, poor management, opaque governance structures, and ineffective industry self-regulation that threatens the sustainability of many clubs. Since the Review was published, we have seen high-profile crises at Chelsea and Derby County. These have further shone the spotlight on an industry that has developed cracks under the watch of its self-regulatory system.
- 2.3 Ultimately, for every club with a crisis it is the fans that are hurt the most. It is fans and the local communities that face the uncertainty around the future of lifelong passions, and the holes it leaves in towns across the country.
- 2.4 The challenge facing English football today is to repair these cracks while the pyramid continues to grow, to allow the entirety of the game and all its fans to benefit from sustainable growth. It is the government's view that the industry has shown itself unsuitably equipped to properly address this challenge, and so we have a responsibility to intervene to prevent harm to the country's fans and communities.

The Problem

- 2.5 As set out in detail in the Government Response,⁷ the government believes there is an unacceptably high and growing risk of financial failure among football clubs throughout English men's professional football. This, and the risk of breakaway competitions, threatens the stability of the football pyramid as a whole and risks irreversibly damaging valued cultural heritage.
- 2.6 The Government Response set out the three core underlying problems:
- i. The structure and dynamics of the market give rise to incentives for reckless financial overreach.
 - ii. The financial and operational management at many clubs is inadequate, exacerbated by poor corporate governance.
 - iii. The existing self-regulatory structures have proved ineffective at addressing issues.
- 2.7 In conjunction, these root problems mean many clubs throughout the English football pyramid are operating in financially unsustainable ways.

⁷ [Government Response to the Fan-Led Review of Football Governance](#), April 2022.

- The prevailing business model exhibits a significant reliance on owner funding to sustain consistent loss-making. Pre-tax losses across the Premier League and Championship were nearly £1.1 billion in 2020/21 - albeit as clubs recovered from the pandemic.⁸
- This is typically fuelled by high spending on transfers and wages. For example, 19 out of 24 Championship clubs reported wage-to-revenue ratios of over 100% in 2020/21, with a league average of 125%.⁹
- The result has been a steady rise in borrowing, mostly through ‘soft’ loans from owners.¹⁰ Net debt in the Premier League and Championship combined reached £5.9 billion at the end of the 2020/21 season.¹¹
- Analysis of the financial health of clubs by expert academics confirmed this fragile picture. The analysis of a variety of financial metrics concluded that there are serious concerns around the sustainability and fragility of football finances. Clubs are being run in unsustainable ways, and with a reliance on owner funding that increases insolvency risk if the personal circumstances of these owners change.¹² When the vetting of these owners is not as rigorous as it should be, this risk grows even greater.

2.8 As a result, many clubs lack resilience against financial ‘shocks’. The recent situations at Chelsea and Derby County have highlighted how many clubs are just one ‘shock’ - a geopolitical shift, a failed gamble for promotion, or a disinterested benefactor - away from a crisis.

2.9 Breakaway competitions represent another potential shock to the market. Proposals like the European Super League would exclusively benefit a small number of clubs at the expense of others (see Box 5). These pose a significant risk to the stability of the English football pyramid and its clubs, the majority of whom would be excluded by design.

Case Study: Leeds United - Financial overreach

Box 1

“Should we have spent so heavily in the past? Probably not, but we lived the dream.”

⁸ Deloitte (2022) [Annual Review of Football Finance 2022](#).

⁹ Ibid.

¹⁰ Injections or subsidies from owners typically take the form of ‘soft loans’ usually offered on interest-free terms.

¹¹ Deloitte (2022) [Annual Review of Football Finance 2022](#).

¹² Christina Philippou and Kieran Maguire (2022) [Assessing the Financial Sustainability of Football](#).

In 2003, Leeds United Chairman Peter Ridsdale made a statement to the media regarding the club's financial situation, which included this now infamous line.¹³

The club's fragile position was built on several years of high transfer spending, financed by borrowing from financial institutions. When the club's gamble for Champions League football failed in successive seasons in the early 2000s, it was laden with an £82 million net debt. Even revenue from the growing Premier League broadcast deal could not cover the spiralling debts and wage bill, and in 2003 Leeds posted net losses totalling £49.5 million.

The mass sale of players to reduce the wage bill led to Leeds' relegation from the Premier League in the 2003-04 season. Following relegation, the sale of players continued and the club was forced to sell its training ground and stadium in 2004. Leeds entered administration in 2007, with the ensuing ten-point deduction guaranteeing its relegation to the third tier of English Football.

Leeds was ultimately saved from liquidation, and has now risen back to the Premier League under new ownership. However, the years of hurt for its fans, the city of Leeds, and the club's creditors could not be reversed.

The case for intervention

- 2.10 Football is the most popular sport in the country. It is an important part of the lives of a large proportion of the population and its clubs play a pivotal role in many communities. The loss of a football club can result in substantial economic and social costs felt by a range of affected parties (see Figure 1).
- 2.11 **Fans** - Unlike typical consumers of typical products, fans have deep emotional and social connections to their club. In economic terms, this means when their club ceases to exist, they will not substitute to an alternative 'supplier' - their demand will simply remain unfulfilled. In football terms, an Everton fan is not going to cross Stanley Park to switch allegiance to Liverpool if the worst happens to their club.
- 2.12 **Fans** - In addition, club failures can have wider impacts on the welfare of fans. They are the ones who suffer from not being able to watch the team their parents and grandparents supported, and who feel the gaping hole on weekends and in their communities. These impacts include the loss of a recreational and social outlet, psychological distress, and a loss of identity and pride. Since the Government Response, the government has commissioned research from Ipsos MORI to better understand the value of football clubs to their fans and communities. The research found that the

¹³ [Leeds United, Chairman Makes Statement](#). January 2003.

welfare gains generated through the continued existence of English men's professional football clubs amounted to £360 million per year.¹⁴

- 2.13 **Local communities** - Unlike typical businesses, football clubs are community assets with cultural heritage value. In addition to the direct and indirect economic benefits they deliver to local areas, they benefit wider society. Clubs often engage in community initiatives, and contribute to civic identity and pride in place. For example, Club Community Organisations in the English Football League (EFL) contribute £63 million to community and social projects each year,¹⁵ and The Premier League Charitable Fund has a three-year budget of around £100 million to support community organisations.¹⁶ Even non-football fans value their local football club, citing its cultural heritage value as well as associated charity and volunteering work.¹⁷ In the event of a football club failing, these contributions may be partially or fully lost.

Levelling up: the distributional impacts of club failures

Box 2

- The impacts of club financial failures are likely to fall disproportionately on lower income areas. Around two-thirds (73 of 115) of the clubs in English football's top five tiers are in regions where the average disposable household income is below the UK average. For EFL clubs, this rises to nearly 70% (50 of 72).¹⁸
- The Review found that the loss of football clubs can 'hollow out' towns and communities. In addition to the social impacts, this can lead to long-term economic damage ('scarring') as local economies can no longer benefit from the positive growth multipliers associated with football clubs.

- 2.14 **Wider football ecosystem** - When a club is in financial distress, there can be ripple effects through football. For example, analysis of club finances identified the interconnectivity of clubs through transfer fees owed as a potential risk factor for systemic problems if more clubs become distressed.¹⁹

- 2.15 **Supply chain** - Clubs indirectly support economic activity and employment in supply chains that depend on them.²⁰ When a football club enters

¹⁴ Contingent Valuation of Men's Professional Football Clubs and the Fan-Led Review Recommendations for DCMS, Ipsos MORI, 2022.

¹⁵ EFL (2020), '[Measuring the impact of EFL clubs in the community: insight and impact report 2020](#)', p. 11.

¹⁶ EY (2022), '[Premier League: Economic and social impact](#)', January.

¹⁷ Ibid.

¹⁸ Internal DCMS analysis using ONS Regional differences in productivity and household income data from 2018 by NUTS3 region, ONS, 2021.

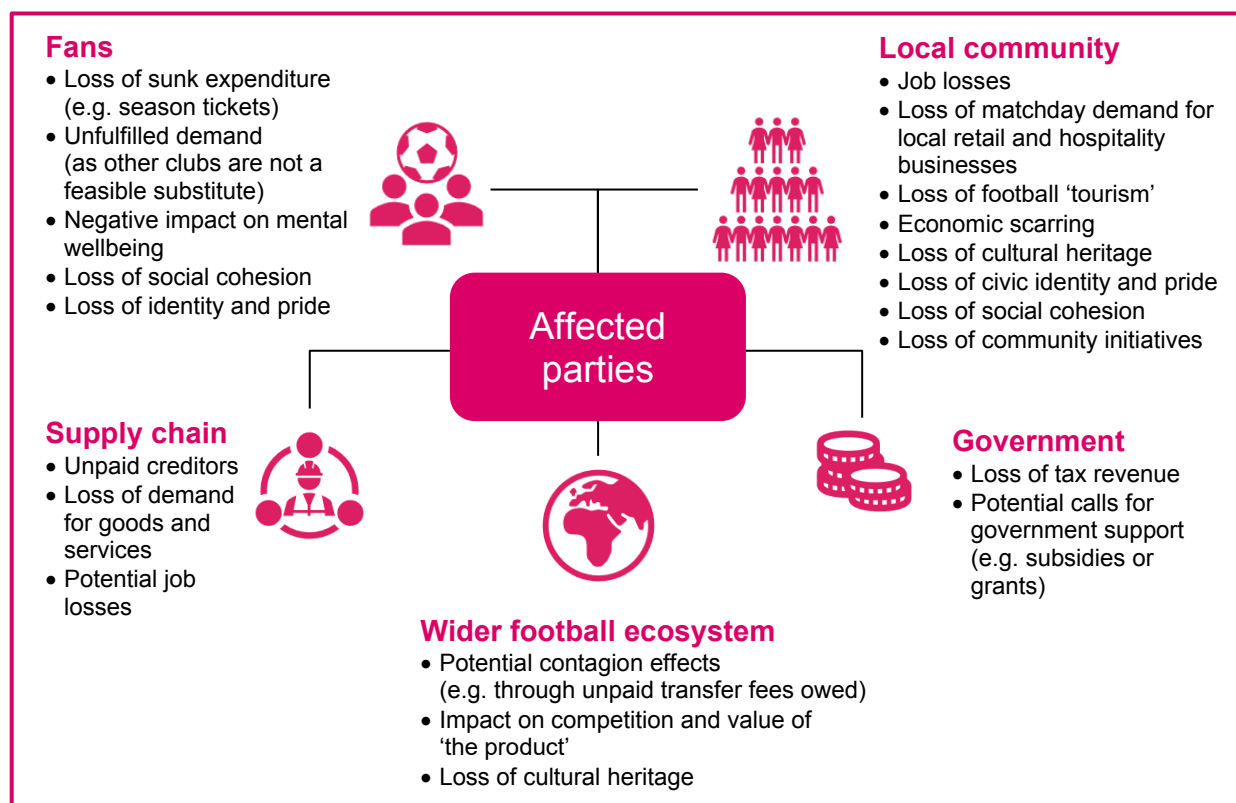
¹⁹ [Assessing the Financial Sustainability of Football](#), Christina Philippou and Kieran Maguire, 2022.

²⁰ For example, Premier League clubs alone spent £1.8 billion through their supply chains in 2019/20, supporting an estimated 47,000 jobs. EY - Premier League: Economic and social impact 2022.

administration, there is no guarantee that creditors in the club's supply chain will recoup what is owed to them.²¹ If the club goes into liquidation, those supply chains will lose future demand for their business too. For example, in 2007, Leeds United's administrators produced a 25-page list of creditors, including local hospitals and utilities providers, many of which were offered just pennies on the pound for what they were owed.²² The failure of football clubs has real world consequences for local businesses.

- 2.16 **Government** - The Football Creditors Rule also affects HMRC. For example, the EFL requires that for a club to successfully exit administration and retain its EFL membership, all football related debts must be paid in full and any other creditors should be offered a 25p/£ settlement.²³ HMRC is treated as 'any other creditor'. As a result, HMRC estimates that administrations at EFL clubs have contributed to the UK Government being unable to collect nearly £30 million in unpaid taxes since 2019. There can also be impacts on local governments, and club failures can lead to pressure by fans and stakeholder groups on the government to intervene to save them.

Figure 1: The impacts of a football club failure



²¹ The Football Creditors Rule prioritises repayment to 'football creditors' (e.g. players and other football clubs) in the event of an administration. This can often result in non-football creditors recovering only a small amount of what they are owed.

²² The Guardian, [Leeds leave creditors clinging to wreckage](#), May 2007.

²³ [EFL rule book](#), E25 - E34.

- 2.17 Unfit custodians, poor corporate governance, and financial mismanagement would result in the financial failure of almost any business. For most sectors in the economy this is the acceptable natural selection of the free market. However, as set out above, football is unique. Football clubs are more community and heritage assets than typical businesses, with fans rather than consumers. As such, football clubs should not be left to fail.
- 2.18 However, as set out in detail in the Government Response and summarised above, if football continues on its current trajectory there is a material risk of further and extensive financial failures. Despite these risks and trajectory, the free market in football has not fixed its problems. It has had years to do so, and yet we still see clubs not meeting payroll or at risk of administration today in 2023. Clearly, something needs to change to avoid the impacts detailed in Figure 1. Intervention is needed to effect this change because:
- i. The unique fan dynamic and social impacts mean the market will not freely rectify its problems.
 - ii. Oversight by the industry's existing bodies has been inadequate so far, and self-regulation cannot be trusted to deliver the reform required.

2.19 **The free market will not rectify problems**

- Since football clubs do not behave like typical businesses nor fans like typical consumers, football does not function like a typical market. So a large proportion of the value of clubs to their fans and communities is not properly captured in the market.
- As a result, private actors within the market do not fully account for the potential social costs and benefits of their actions. For example, when owners focused on short-term success take risky financial decisions, they may be placing insufficient weight on the long-term consequences of failure to the local community.
- Indeed, there is precedent for government regulatory intervention in other markets where service disruption (e.g. through the failure of individual businesses) risks imposing significant economic or social costs. For example, financial services regulation and utilities regulators.²⁴

2.20 **Industry self-regulation will not deliver the reform required**

- Many of the market's problems are not new. Despite repeated calls for reform from government, Parliament and the public,²⁵ neither clubs

²⁴ For example, the Prudential Regulation Authority undertakes stress-testing of the financial health of large financial institutions (banks, building societies and insurers). Similarly, Network regulators (e.g. Ofwat and Ofgem) are increasingly taking steps to monitor and promote financial resilience.

²⁵ See for example: [House of Commons Culture, Media and Sport Select Committee \(2011\), 'Football governance'](#), July.

nor leagues have taken the long-term necessary transformative actions. As set out in detail in the Government Response, the industry does not have the incentives and governance structures to make the behavioural and structural changes needed. This means targeted government intervention is required to specifically address financial sustainability.

- Since the Review and the Government Response, there has been limited movement from the industry towards reform. However, the market cannot rely on government pressure as a lasting solution and the proposed reforms we have seen to date do not go far enough to deliver long-term sustainability.
- We welcome further progress by the industry towards reform in the interim, and our plan for regulation does not prevent them from acting. The regulator will look to build on any industry reforms implemented but it is clear that genuinely independent regulation is required.

2.21 The government recognises that other sports are facing financial issues in the wake of the COVID-19 pandemic. At this stage, we are of the view that football alone warrants direct government intervention, because:

- **Football is a mature market that has had its chance to reform but has failed to do so.** Unlike other sports, football has been given ample opportunity to reform its self-regulatory system to address problems that have been highlighted repeatedly over the years.
- **The problems faced by football are unique in their type and scale.** The business models and financialisation of football mean the risk and potential magnitude of harm are greater than in other sports.
- **Football is unique in financial scale and attracts unrivalled public interest.**²⁶ In addition to its importance to fans and communities, the economic size of the football sector is greater than any other sport.

2.22 However, the government hopes that the leagues, governing bodies, and industry authorities of other sports will take inspiration and learnings from reform in football.

DCMS (2016), 'Government Expert Working Group on Football Supporter Ownership and Engagement', January.

House of Commons Digital, Culture, Media and Sport Committee (2020), 'Impact of COVID-19 on DCMS sectors: First Report', July.

²⁶ Aggregate attendances across the top four leagues stand at 35 million fans per season. The Premier League reported that 40% of the UK population (26.8 million people) watched live Premier League coverage in 2020/21.

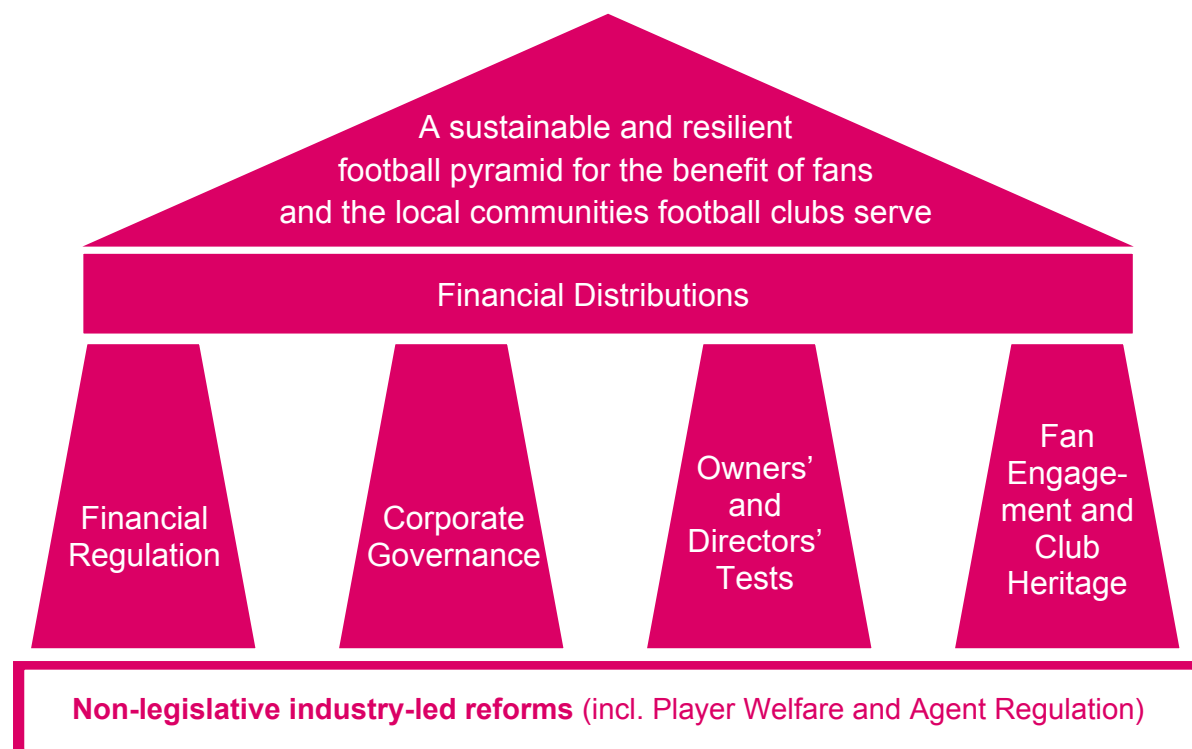
The case for a statutory independent regulator

- 2.23 We have considered options for intervention, including proposals by the FA and Premier League for non-statutory, industry-led reform. We are not convinced these models would be independent of influence from regulated clubs themselves, or that reforms would be guaranteed long-term. We also believe these proposals would not sufficiently tackle the key causes of harm in the market, and would carry a high risk of unintended consequences.
- 2.24 For example, salary caps tied to revenue would have negative impacts on competition if applied throughout the pyramid, and would not build resilience to shocks into clubs' finances and operations. There are no proposals to ensure all clubs pyramid-wide engage with their fans. There is also no guarantee these models would be able to protect against English clubs joining future breakaway competitions.
- 2.25 Instead, we believe the optimum solution is for the government to establish a new statutory independent regulator. Football needs a strong centre to take regulatory decisions away from clubs, put fans back at the forefront, and ensure a stable pyramid all the way down to the grassroots game. Any option that does not involve legislation would be a continuation of industry self-regulation. This would mean the same incentives, governance structures, and lack of independence that have led to poor regulation in the industry to date, with no guarantees that reform would not just be reversed down the line.
- 2.26 By contrast, legislating to establish an independent regulator would:
- Provide a **long-term solution** that could not be altered or revoked in the future by the majority vote of clubs, or under industry pressure.
 - Establish an **independent body** to regulate in the interests of the entire pyramid, rather than prioritising the interests of select clubs.
 - Set a framework and objectives to ensure **rules are designed and applied appropriately**. Legislation would guarantee a sophisticated regulatory system that is proportionate, and tackles the root causes of problems holistically rather than treating the symptoms one-by-one.
 - Provide **statutory weight** behind regulation with new powers and sanctions to ensure non-compliance is met with genuine consequences and sanctions, rather than drawn out legal proceedings that allow harm to grow.
 - Deliver a **coherent regulatory landscape**. Regulation would be carefully managed to avoid burdening clubs with overlapping rules or letting them slip through regulatory gaps.

- Create clear **accountability** for regulation. It would be clear who is responsible for regulation, and there would be clear levers to hold them accountable in the event they were failing.
- Deliver a **cultural shift** in football to one that is open and transparent, and in which fans are valued appropriately by all clubs.

2.27 There has been widespread public support for a new independent regulator, including from fans²⁷ and football finance experts.²⁸ The government has also heard from football investors, club owners, and representatives of the EFL and National League who all support a new statutory independent regulator.

Figure 2: The proposed pillars and foundations of reform



²⁷ The [2022 EFL Supporter Survey](#) found that "79% of fans would welcome the introduction of an Independent Regulator into English football".

²⁸ [Annual Review of Football Finance](#), Deloitte, 2022, p.27.

PART 2: THE INDEPENDENT FOOTBALL REGULATOR

3: The Regulator

Summary

- The government will introduce a new independent Regulator to reform the culture of governance in English football clubs, and mitigate the risk of clubs being entirely lost to fans and communities.
- The Regulator would have a primary strategic purpose to address the key source of potential harm in the market, that is to ensure that English football is sustainable and resilient for the benefit of fans and the local communities football clubs serve.
- To support this strategic purpose, it would have three detailed primary duties: i) Club sustainability, ii) Systemic stability, and iii) Cultural heritage.
- It would have three secondary duties, to have regard to: i) Domestic competition, ii) International competitiveness, and iii) Investment. This would ensure it balances these objectives when striving for its primary purpose.
- This would be a specialist regulator with a precise focus on the issues of financial sustainability. Through the design of its duties and powers in statute, it would be constrained to only acting within a few specific functional areas.
- The government is not convinced that an industry regulator would be genuinely independent from the influence of clubs, or could be sufficiently held accountable for its actions and performance. As such, we do not believe a football body is an appropriate home for the Regulator at this stage. This need not prevent the industry from taking action to reform in the interim.
- The institutional location of the Regulator will be determined based on several guiding principles, including ensuring independence and proper accountability.
- The government believes regulated clubs should bear the cost of regulation, which would ultimately benefit the industry. Therefore, the Regulator would be funded by a levy on clubs proportionate to their revenue.

- 3.1 In the Government Response, the government agreed to the founding principle of the Review, to legislate for a new Regulator when Parliamentary time allows. That remains the case.

The Regulator's purpose

- 3.2 *Section 2: The Case for Reform* outlined the high and growing risk of financial failure throughout the English football pyramid. This is largely driven by the unsustainable ways clubs are run, and a widespread lack of resilience.
- 3.3 The Regulator's strategic purpose and primary duties will be centred on this problem. To provide the legal basis for its actions, legislation would specify that the Regulator must always act in a way which is compatible with its strategic purpose, and advances one or more of its primary duties.

Regulator's strategic purpose

Box 3

To ensure that English football is sustainable and resilient, for the benefit of fans and the local communities football clubs serve.

- 3.4 To achieve this strategic purpose, the Regulator's primary duties would be:
- i. **Club sustainability** - to ensure the financial sustainability of football clubs in the English pyramid. This means individual clubs have the necessary resources and are appropriately run so they are resilient to risks.
 - ii. **Systemic stability** - to ensure the overall stability of the English football pyramid. This means there is protection against an event or events triggering the instability of multiple clubs at once, or of harming the football pyramid as a whole.
 - iii. **Cultural heritage** - to protect the cultural heritage of football clubs for their fans. This means key heritage aspects of the club, which matter greatly to their fans and communities, are protected from harm.
- 3.5 The government's proposed approach differs from the Review's recommendation for the Regulator's objective. As set out in the Government Response, we do not believe a dual primary focus on sustainability and competitiveness is appropriate. The Regulator would still have regard to competition impacts as a secondary duty (see paragraph 3.7)
- 3.6 As outlined in *Section 2: The Case for Reform*, the government recognises the importance of maintaining a thriving 'on-field' product. Sustainability is critical, but it will count for little if English football cannot continue to attract the best players, global viewers and investors. Therefore, the Regulator would have supplementary, 'secondary' duties to mitigate risks to the on-field product.

- 3.7 When acting in a way that advances its primary duties, the Regulator must also have regard to its secondary duties:
- i. **Domestic competition** - the competitive sporting balance of the English football pyramid, where there is dynamic competition within leagues and a genuine chance/risk of moving between leagues.
 - ii. **International competitiveness** - the competitive advantage of English football clubs including in international markets for talent.
 - iii. **Investment** - the benefits of sustainable investment from new and existing investors both domestically and from abroad.
- 3.8 The Regulator may face trade-offs between sustainability and these other objectives, which industry stakeholders have expressed concerns around. This structure of duties would clearly establish the Regulator's priorities in these instances. The Regulator would not pursue the secondary duties in their own right, but would balance these other important policy objectives when striving for sustainability, and attempt to minimise any negative impacts on them where possible.

Not a 'zero-failure' system

Box 4

- Although the incidence of club liquidation is relatively low at present, the government expects this failure rate to increase without reform. The new regulatory system will be designed such that the likelihood of *any* financial distress is drastically reduced. However, the Regulator would not operate a 'zero-failure' system - it would not guarantee that no club ever goes into administration or is liquidated.
- In theory, there may be exceptional circumstances in which a club should be allowed to fail. For example, where a club has no viable owner and no interested buyers for an extended period of time, despite the Regulator's best efforts to maintain its asset value.
- A zero-failure system would introduce perverse incentives for owners and directors to take more risks, in the knowledge that the Regulator would bail them out if things went wrong.
- Instead, in the worst-case scenario, the Regulator's priority would be ensuring an orderly wind down that preserves the cultural heritage of a club in the interests of its fans.

The Regulator's scope

- 3.9 The population of clubs in scope of the Regulator's system is the top five tiers of the English men's football pyramid. It would not be proportionate or

effective to extend the scope beyond this, since the market failures identified relate specifically to professional football clubs.

- 3.10 This should be a specialist financial regulator with a precise focus. Too broad a scope of activities would spread the Regulator too thin and distract it from its primary purpose.²⁹ Similarly, a scope with uncertain outer limits risks scope creep, where the Regulator strays into areas beyond the remit intended by both the government and Parliament.
- 3.11 In addition, many aspects of football are immensely successful and have thrived under the watch of its existing authorities, such as the global commercial growth of English football. These are not areas in which the independent Regulator should or would interfere. Instead its focus would be on tackling harm where it exists and preserving the foundations for this success - a stable, thriving pyramid of sustainable clubs.
- 3.12 The Regulator's statutory duties and powers (see *Section 10: The Regulatory Model*) will help to implicitly define its scope. It would also be a statutory requirement that the Regulator must only act in relation to one or more of the four Threshold Conditions of club licensing (see *Section 4: The Regulatory Framework*). So, although Threshold Conditions would be requirements on clubs, they would have a dual purpose of defining the Regulator's scope.³⁰
- 3.13 The government is also considering explicitly listing in legislation areas the Regulator should not interfere in, which might otherwise be deemed 'grey areas'. For example, this might include ticket prices and fixture scheduling.

The Regulator's form

Institutional location

- 3.14 The location of the Regulator will be important, but it is crucial to get the functions right first. At this stage the government is still assessing the options on where to house the Regulator, including:
- i. Establishing a new standalone body;
 - ii. Housing the Regulator within an existing government arm's length body (ALB);
 - iii. Attaching the Regulator to an existing ALB as a subsidiary.

²⁹ A regulator's scope refers to how far reaching its powers and authority to intervene extend. This is determined by aspects such as the regulated population; and the regulator's statutory duties, functions, responsibilities, and powers.

³⁰ The Regulator's targeted power of last resort in relation to financial distributions would be the unique exception to this, as a power outside of the club licensing system. This power would also be subject to specific constraints on when and how it could be used. See *Section 9: Financial Distributions*.

- 3.15 To decide on the location of the Regulator, we will evaluate these options on core guiding principles. These principles have been informed by the Review, experts in managing ALBs, and experts currently sitting on regulators' boards:
- **Independence** - whether the Regulator would remain genuinely free of industry influence or impact on the body's other responsibilities.
 - **Accountability** - whether there would be a clear structure for the Regulator to be held accountable for its actions and performance.
 - **Implementation** - the ease and cost of setting up the Regulator.
 - **Strategic coherence** - whether there is a genuine alignment in the expertise, skills and knowledge of the body, that fits with the purpose and objectives of a football regulator.
- 3.16 While the government has not yet finalised its position based on the criteria above, we have ruled out housing the Regulator in a football body. This is primarily driven by issues of independence, accountability, and effectiveness. The Review highlighted significant concerns with football's governance and regulation which we agree with. Football has shown itself incapable of sufficient reform and of taking the necessary decisions for the good of the whole pyramid. The governance arrangements mean football has the wrong incentives, and is therefore unlikely to deliver the protections the game urgently needs.
- 3.17 The government will finalise a decision on the institutional location of the Regulator ahead of legislation. It will be independent of football, though will work cooperatively with the industry as appropriate (see *Section 10: The Regulatory Model*).

Funding

- 3.18 To meet its objectives, the Regulator will need to be sufficiently resourced and deliver good value for money. Its funding model will need to accommodate this, and should also be sufficient to regulate effectively, adaptable to changing risks, and fair to citizens and businesses.³¹
- 3.19 The government believes the cost of regulation should be covered by the industry. Football is a wealthy industry, and the likely cost of regulation would represent just a tiny fraction of its aggregate annual revenue (£5.7 billion in 2020/21).³² The industry would also benefit from regulation that would make its clubs more resilient and so protect the commercial value of its product.

³¹ [Good practice guidance: Principles of effective regulation](#), National Audit Office, 2021.

³² [Annual Review of Football Finance 2022](#), Deloitte, 2022.

- 3.20 In line with the government's guidance on Managing Public Money³³ and for budgetary reasons, a levy-funded model will be introduced and raised through the Regulator's licensing system (see *Section 4: The Regulatory Framework*). Clubs would pay an annual fee for the duration they are licensed.
- 3.21 The government believes the fees levied on clubs should be proportionate to their average total revenue. Just as the Premier League distributes revenue down the pyramid, the richest clubs should subsidise regulation for clubs in greater need. This would also spread the cost equitably to avoid poorer clubs being disproportionately burdened. Indicatively, based on 2020/21 revenue, the six richest clubs would cover approximately 50% of the total cost of regulation, and the 20 Premier League clubs approximately 80%.

Organisational structure and governance

- 3.22 The organisational structure and internal governance of the Regulator will be key to its success. It will ensure the Regulator functions properly, decisions are taken at the appropriate level and subject to scrutiny, and that the Regulator is accountable for its actions.
- 3.23 Subject to the final institutional location of the Regulator, it would have a Board responsible for ensuring it fulfils its statutory duties and delivers value for money. The chair and non-executive directors (NEDs) on the Board would have skills and experience across regulation, football, and other industries.
- 3.24 The Regulator would be able to invite the FA to take up an observer role³⁴ on the Board as necessary, as they are the national governing body of English football. The Regulator would manage this to ensure that football has sufficient insight via the FA, but that the independence of the Regulator is not threatened. For this reason, while the Regulator would work closely with the Premier League, EFL, and National League, the individual leagues would *not* have any role on the Board. It is not common practice and would not be appropriate for representatives of regulated parties to sit on the board of a regulator, even in an observational capacity.
- 3.25 The Regulator's culture would be strongly rooted in football. While developing this White Paper, the government has received offers of advice, ideas, and support from a range of experts from across the economy. We are therefore confident that the Regulator would similarly attract specialists with a genuine love of football, motivated to set it back on a sustainable path.

³³ [Managing Public Money](#), HM Treasury.

³⁴ An observer is permitted to attend and participate in meetings of the board, and to receive all information provided to members of the board, but is not permitted to vote on any decisions.

4: The Regulatory Framework

Summary

- The Regulator will operate a licensing system, where all clubs in the top five tiers of the English football pyramid need a licence to operate as professional football clubs.
- Legislation would establish four Threshold Conditions of the licence - on appropriate financial resources, suitable owners, fan interests, and approved competitions. The Regulator would set detailed Specific Licence Conditions to clubs, under each Threshold Condition.
- The Regulator would assess whether clubs were ready, willing and able to comply with the Threshold Conditions in principle upon application, and then monitor compliance with the detailed Specific Licence Conditions on an ongoing basis.
- Specific Licence Conditions would be risk-based. This means regulation would be proportionate to a club's circumstances. The requirements on a club might vary based on criteria like league, club size, and financial health or riskiness.
- The Regulator would monitor and supervise licensed clubs, with the support of the leagues. This would identify non-compliance with Specific Licence Conditions that might require enforcement action. It would also surface any material change in the club's circumstances that might require a change to their Specific Licence Conditions.

- 4.1 The Regulator will implement and enforce its regulation of clubs through a licensing system. All 116 clubs in the top five tiers of the English football pyramid would require a licence from the Regulator to operate as professional men's football clubs.
- 4.2 A licensing system would have several benefits relative to alternative models, such as prescribing detailed rules in legislation. It would allow the Regulator to tailor obligations proportionately to clubs, minimising the burden of regulation. Subject to appropriate consultation, it would give the Regulator the agility to quickly react to changing circumstances, rather than requiring amendments to legislation. It would provide the basis for enforcement action in the event of non-compliance.

Licence conditions and licensing in practice

- 4.3 The government is giving further consideration to the exact process for licensing, but indicatively it could work as follows. Each club would apply to the Regulator to be licensed. The Regulator would determine whether the club was ready, willing, and able to meet four Threshold Conditions in principle (see Table 1). The club would declare that it considered it was able to comply with these Threshold Conditions and the Regulator would make a preliminary assessment of its ability to do so prior to granting the licence. The club would also commit to becoming compliant with the detailed requirements the Regulator will impose. Guidance published by the Regulator would help parties understand what these requirements are likely to entail.

Table 1: Proposed Threshold Conditions for club licensing

| | |
|------------------------------|---|
| 1. Appropriate resources | The club must have adequate financial and non-financial resources and controls in place, to meet committed spending and foreseeable risks. |
| 2. Fit and proper custodians | Persons at a club deemed to exercise significant decision-making influence must be fit and proper custodians. |
| 3. Fan interests | The club must have appropriate provisions for considering the interests of fans on key decisions, and issues of club heritage, on an ongoing basis. |
| 4. Approved competitions | The club must agree to only compete in leagues and competitions that are approved by the Regulator based on predetermined criteria. |

- 4.4 While the four Threshold Conditions would be set in legislation, there will be detailed requirements underlying each called Specific Licence Conditions which would be determined by the Regulator. Clubs would have to comply with these Specific Licence Conditions in order to meet the overarching Threshold Condition.
- 4.5 The Regulator's discretion to set Specific Licence Conditions would be governed by checks and balances. It could not set detailed requirements on clubs unless they related to one of the Threshold Conditions. It would have to follow the framework set out in legislation, including to consult on and publish new types of rules, on which Specific Licence Conditions would be based.
- 4.6 On an ongoing basis, the Regulator would operate a monitoring and supervision system. This would entail more real-time monitoring of clubs,

engaging and steering them to ensure continued compliance with Specific Licence Conditions. This ongoing approach means licences would not need to be periodically reassessed and renewed.

- 4.7 Licensing of this kind may be a new concept to many football clubs, so there would be a transition period for all clubs to become licensed and compliant with the new system. See *Section 12: Transition and Shadow Regulation*.

Figure 3: An example of how the licensing process might work

| | |
|--|--|
| <p>1: Club applies for licence</p> | <ul style="list-style-type: none"> • After assessing guidance and engaging the Regulator, the club submits an application to the Regulator. • The Regulator appraises the club's circumstances and determines the Specific Licence Conditions it will be required to comply with in order to meet the Threshold Conditions. • The Regulator assesses the club's application to decide whether the club is ready, willing, and able to comply with these Specific Licence Conditions, and so will be able meet the Threshold Conditions. |
| <p>2: Club granted licence</p> | <ul style="list-style-type: none"> • The Regulator communicates to the club the Specific Licence Conditions it is expected to comply with, and how long it has to become fully compliant. • If the club is deemed ready, willing, and able, its licence is granted. |
| <p>3: Club becomes fully compliant</p> | <ul style="list-style-type: none"> • The club is given time and support from the Regulator to become compliant. • If the club is not compliant in time, the Regulator may take enforcement action. |
| <p>4: Club monitored and supervised</p> | <ul style="list-style-type: none"> • On an ongoing basis, the Regulator monitors and supervises the club, in cooperation with the respective league, to ensure continued compliance and identify where enforcement action might be needed. • Monitoring and supervision is also used to identify whether there has been a change in circumstances that might warrant a change to the club's Specific Licence Conditions. |

- 4.8 Specific Licence Conditions set by the Regulator would be risk-based, such that requirements would be targeted where the risk of harm was higher. The

exact requirements on clubs would vary according to a club's circumstances, including aspects like the league the club competes in, the club's size, existing financial health, and the riskiness of its business model.

- 4.9 For example, the following two clubs might not have to satisfy all the exact same requirements to meet their licence obligations:
- i. A mid-table League One club with low costs that meets costs through revenues;
 - ii. A newly promoted Premier League club with high costs funded through owner subsidies.

Table 2: Examples of possible Specific Licence Conditions

| | |
|---|--|
| <p>Threshold Condition <i>(set in legislation)</i></p> | <p>The club must have adequate financial and non-financial resources, and controls in place, to meet committed spending and foreseeable risks.</p> |
| <p>Specific Licence Conditions <i>(determined by the Regulator in accordance with statutory process)</i></p> | <ol style="list-style-type: none"> I. Club A must submit multi-year business plans to the Regulator on a regular basis, including scenario planning for [X, Y and Z] key potential risks. II. Club A must have appropriate finances to meet anticipated outgoings, and a financial buffer of [X] in preparation for worst-case scenarios. III. Club A must adhere to Tier [X] of the Football Club Corporate Governance Code on an 'apply and explain' basis. IV. Any plans to relocate from or sell Club A's registered home stadium must be pre-approved by the Regulator. |

Threshold condition 4: Approved competitions

- 4.10 The fourth Threshold Condition would require that clubs only compete in competitions that have been approved by the Regulator, based on predetermined criteria. The government is giving further consideration to the possible criteria. For example, the criteria could be:
- i. The competition must be fair and meritocratic.
 - ii. The competition must not unduly undermine the sustainability of English football's existing leagues and competitions.
 - iii. The Regulator must consult fans when approving a competition.
 - iv. The Regulator must consult the FA when approving a competition.

- 4.11 It is the government's view that all existing leagues or competitions would likely meet these criteria (including overseas competitions, such as UEFA's). However, this Threshold Condition would allow the Regulator to create a protective lock against English clubs joining breakaway competitions that did not meet these criteria. This would ensure fans no longer face the prospect of seeing their clubs join competitions, like the European Super League (see Box 5), that do not meet their values.
- 4.12 The Regulator would be expected to cooperate with competition organisers through the approval process. It would work through any concerns and come to a resolution that avoids undue disruption to service or harm to fans. The Regulator would need to establish clear evidence of a breach of one of the criteria to consider not approving a competition, informed by a published cost-benefit analysis and consultation with all relevant industry stakeholders.
- 4.13 As the international governing body of football, FIFA will take an interest in the approval of competitions. As such, the Regulator would have to consult with the FA - who would be expected to represent the interests of FIFA and UEFA - on any decisions related to approving competitions. The Regulator would be obliged to pay due regard to the outcome of this consultation.

Case Study: The European Super League

Box 5

In April 2021, twelve elite football clubs, including six English clubs, attempted to set up a European Super League (ESL). This new competition would have seen its founding members protected from relegation, with limited opportunities for the majority of other clubs in England and across Europe to qualify to compete. By benefiting a select few elite clubs to the detriment of all others, it presented a significant threat to the stability of the entire English football pyramid. As a result, it led to an unprecedented outpouring of protests from fans, clubs, the football leagues, the FA, and the government.

The ESL quickly fell away under this fan backlash and the government's threat to legislate. Nine of the clubs, including all six English clubs, withdrew from the competition. The threat posed by the ESL was a trigger for the Fan-Led Review of Football Governance, which concluded that it would be crucial to mitigate the risk of similar breakaway competitions in the future.

The model we have proposed would be able to prevent English clubs from joining a future breakaway competition if it does not meet predetermined criteria. This is a crucial protection for English football and its fans, especially as the ESL itself has only been temporarily suspended rather than fully renounced.

PART 3: THE REGULATOR'S SYSTEM

5: Financial Regulation

Summary

- The financial situation of many clubs across the pyramid is precarious, and the risk of financial failure high. Many clubs have poor financial plans, are over-reliant on owner funding, overspend, strip away their core saleable value (e.g. the stadium), and are unable to adapt to changing circumstances.
- Financial failure at its most extreme can lead to clubs ceasing to exist. This risks causing the most significant harm to fans and local communities.
- Financial sustainability regulation would be the Regulator's core focus, delivered through the first licence condition 'Appropriate resources'. It would be based on improving financial resilience, to protect the long-term sustainability of clubs for the benefit of their fans and communities.
- Clubs would be required to:
 - demonstrate good basic financial practices;
 - have appropriate financial resources or 'buffers' to enable the club to meet cash flows including in the event of a financial shock; and
 - protect the core assets and value of the club - such as the stadium.

The problem

- 5.1 Financial failure risks causing the most significant harm to English football - to the fans, the wider football pyramid, and the local communities these clubs serve. At its most severe, it can lead to clubs ceasing to exist.
- 5.2 Despite football's ability to generate vast revenues and attract significant investment, the finances of many clubs are a concern. The Review, Government Response and expert analysis^{35 36} demonstrated the magnitude of this problem. The collapse of Bury, the impact of COVID-19, and Derby's recent situation (see Figure 4) further exposed how real a crisis this is for many clubs. It is the government's view that there is an unacceptably high and growing risk of financial failure among clubs.

³⁵ [Annual Review of Football Finance 2022](#), Deloitte, 2022.

³⁶ [Assessing the Financial Sustainability of Football](#), Christina Philippou and Kieran Maguire, 2022.

- 5.3 The financial issues across the pyramid are due to several reasons, including: poor financial planning; over-reliance on owner funds; unsustainable levels of loss and debt; high costs; and a lack of resilience to shocks and changes of financial circumstance. When clubs overspend, experience a shock - such as withdrawal of owner funding - and lack a financial buffer, they find themselves distressed. The lack of resilience means they struggle to carry themselves over until they can return to a sustainable state - increasing income or safely downsizing financially. Instead, clubs may sell off assets hoping to make a quick return, further devaluing the club and ultimately making it hard to sell.
- 5.4 This is enabled by a defective regulatory landscape. Rules have existed for many years within football, but have been inadequate at mitigating financial distress. Rules on permitted losses - used in the Championship³⁷ and Premier League³⁸ - do not encourage sustainable spending. Regulations which cap spending on wages (often relative to turnover, called 'soft salary caps') can reduce overspending, but are prone to circumnavigation. They can also entrench the dominance of the richest clubs - there is a strong correlation between wage spend and league position,³⁹ and soft salary caps permit richer clubs to spend more, thereby increasing their chance of on-pitch success. As an indication, the Premier League club with the highest revenue in the 2020/21 season would have been able to spend over five times the amount on wages as the 'poorest' Premier League club.⁴⁰
- 5.5 Improving financial regulation, and in turn the financial situations of clubs throughout the pyramid, has the ability to make the biggest positive impact to the sustainability of clubs for the benefit of fans, clubs and local communities.

The solution

- 5.6 To address these shortcomings, the Review proposed that an independent regulator should oversee financial regulation in football, focused on ensuring long-term financial sustainability of the professional game. The government agrees, and we believe this should be the key focus of the Regulator.
- 5.7 The purpose of financial regulation would be to make clubs more resilient and sustainable long-term, and so to mitigate the risk of financial distress. The government believes financial regulation should address the key root causes

³⁷ [Appendix 5 Financial Fair Play Regulations](#), EFL.

³⁸ 'Profit and Sustainability Rules' - Premier League Handbook 2022-23.

³⁹ For example, Deloitte's annual review of football finances uses the Spearman's rank correlation coefficient - used to measure the relationship between league position and total wage cost rank - to indicate a strong positive correlation. The coefficient was 0.75 (2017/18), 0.82 (18/19), and 0.66 (19/20). [Deloitte UK Annual Review of Football Finance 2021](#).

⁴⁰ Based on [Deloitte \(2022\) UK Annual Review of Football Finance 2022](#).

of financial distress: clubs planning inadequately, spending far beyond their means, and being unable to adapt to changing circumstances ('shocks').

- 5.8 This regulation would be delivered through the Regulator's licensing system, under the first Threshold Condition of 'Appropriate resources' (see *Section 4: The Regulatory Framework*). The Regulator would set and apply Specific Licence Conditions, within the statutory parameters set by the government. The Regulator would be able to place requirements on clubs to:
- Ensure good basic financial practices;
 - Have appropriate financial resources;
 - Protect key assets for the long-term.
- 5.9 While all regulated clubs would need to adhere to financial requirements, a 'one size fits all' approach is inappropriate. The financial size, sophistication, business model and risk exposure of clubs varies considerably between and even within leagues. Requirements would need to be applied proportionately.

Good basic financial practices

- 5.10 For any well-run organisation, good basic financial practices are crucial: they ensure businesses have a good understanding of cashflows and can plan accordingly. Football clubs should be no different. Although this is basic, sensible practice which some clubs are already doing well, this is currently not the case for all clubs. All clubs should comply with good basic financial practices including scenario planning, multi-year forecasting, monitoring and reporting. This would improve financial oversight at clubs and reduce overspending, which is ultimately what fans would expect. For already well-run clubs, these basic requirements should have a minimal impact. For less well-run clubs, standards would need to be raised.
- 5.11 **Scenario planning or contingency planning** - Clubs would need to plan financially for the season based on a range of possible scenarios. There would be an emphasis on those scenarios that involve a material deterioration in business or sporting performance. This might include relegation or withdrawal of owner funding. Accordingly, clubs would need to demonstrate clear 'wind back' plans with actions they could enact to return the club back to a financially sustainable state. Although some clubs already do sophisticated scenario planning, many do not. The Regulator would need to be content that these plans are realistic, sufficient and stress tested, in that they accurately prepare for sporting and financial downturn and reflect clubs' finances to react, and could be enacted if required to ensure sustainability. If it deemed they were not, the Regulator would require them to be revised by the club.

- 5.12 **Multi-year forecasting** - To better understand and plan for how current spend impacts future spend (e.g. amortisation fees due on players contracts or funding of infrastructure projects) clubs should plan for the seasons ahead where possible. Well run clubs are already doing this. This approach would reduce the risk of clubs operating with a short-term mentality, which can lead to overspend and risk-taking.
- 5.13 Taken together, this would enable clubs to have better planning and build long-termism into spending. It is a straightforward way of embedding good practice upfront which would contribute to the ongoing viability of clubs.
- 5.14 **Monitoring and reporting** - Clubs would report their finances and plans to the Regulator on a sufficiently regular basis, to ensure it has a comprehensive, up-to-date picture. This oversight is crucial for monitoring, holds clubs accountable, and should allow for early regulatory intervention to prevent financial failure in the event that a club's finances are of concern. The leagues are already improving their own monitoring and reporting functions. For example, the EFL recently set up its Financial Reporting Unit - with an independently appointed expert review panel - which will oversee compliance with financial rules by working closely with clubs. We welcome this progress.
- 5.15 Monitoring and reporting is likely to include budgeted income and expenditure, scenario planning for seasons ahead, longer term financial plans and detail on cash flow. If a club encounters substantial deviation from its plans or financial circumstances it would need to inform the Regulator. This would allow the Regulator to assess if the club is still operating sustainably or needs to make a change. For example, to return its operations to a more sustainable state in line with scenario plans, or increase financial resources to meet outgoings.

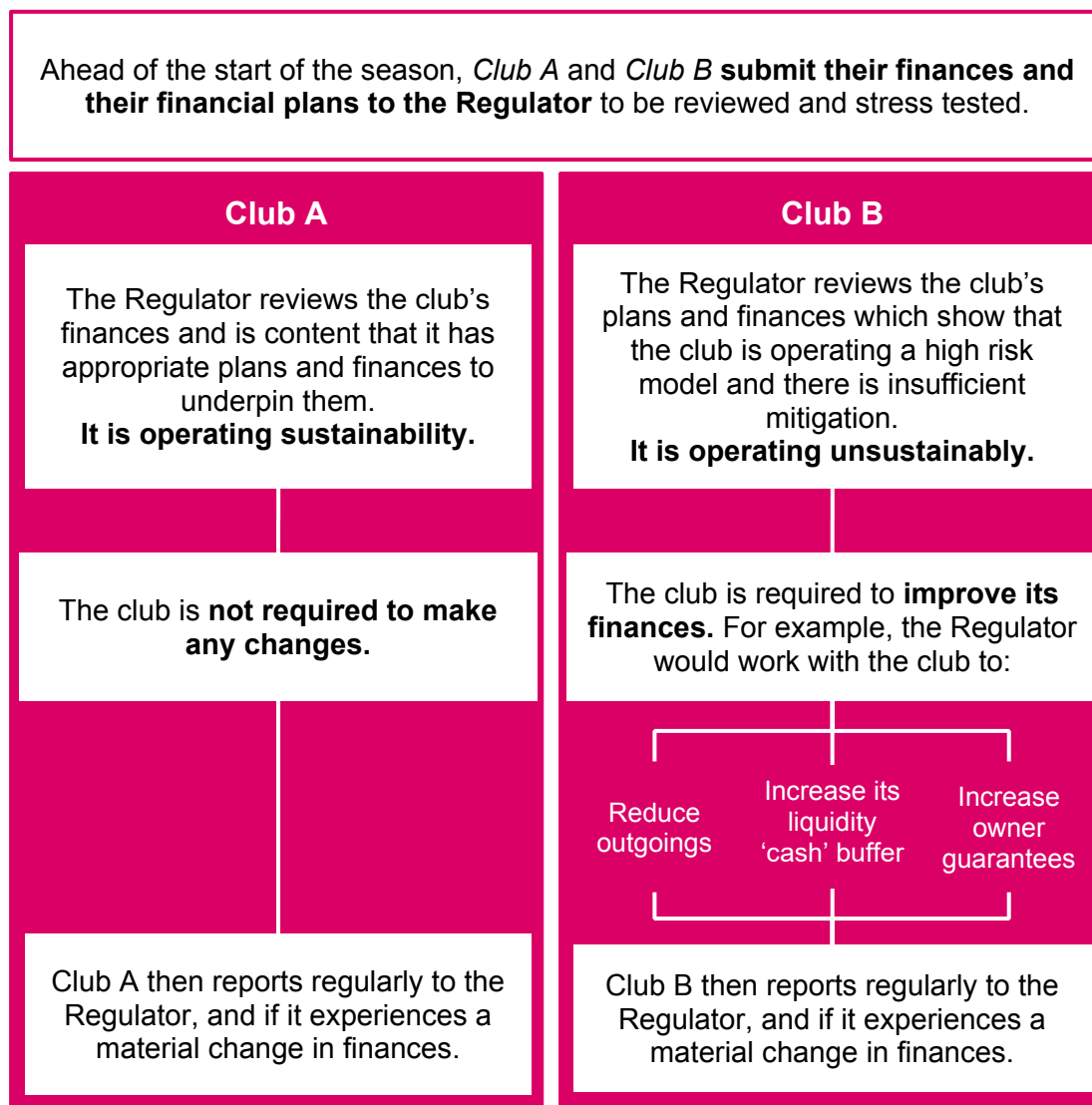
Appropriate financial resources

- 5.16 Plans would need to be underpinned by appropriate finances. If a club and/or owner cannot cover its outgoings long-term, it risks failing. Ensuring clubs have the financial resources to meet outgoings and respond to external shocks is sensible business management and could drastically improve resilience. Crucially, a financial buffer buys time: it allows a club to solve a cash flow issue until it can increase revenue or wind back to a financially smaller entity with lower outgoings.
- 5.17 The current financial resilience of clubs varies considerably. Some operate low-risk financial businesses, and would be able to survive a material financial change without stripping away the club's core assets. Other clubs operate on a 'hand-to-mouth' basis, or are heavily reliant on single or unreliable revenue streams - for example clubs which are heavily owner subsidised.

- 5.18 The Regulator would require clubs to hold adequate financial resources. It would need to make objective, risk-based decisions on what constitutes adequate financial resources according to the club's specific circumstances and its risk level. If a club lacks sufficient resilience, the Regulator may require the club to improve its financial resources, such as by building up its readily available liquid assets or seeking greater assurances on owner funding. The Regulator should work collaboratively with clubs and ensure that these requirements are applied proportionately and where necessary.
- 5.19 Owner funding and the financial resilience of clubs is interrelated. Where clubs are heavily owner funded, funding comes from a riskier source, or is not diversified, clubs are more susceptible and less resilient to shocks. This is true even if the owner has always previously met their financial obligations. A key factor which can lead to financial distress is this heavy reliance on owner funding, where some owners can overspend unconstrained, build up large debt, and then 'walk away'. This leaves fans with a financially distressed club at risk of being unable to attract new ownership, or worse, with no club at all. Historically, it is in these scenarios that we see the worst harm to fans and their local communities - this is why intervention is needed.
- 5.20 Owner funding can allow clubs to chase ambition, and has been a key factor in growing English football into the exciting, and valuable, product it is. Where requirements like salary caps would limit this dynamic competition, it is the government's view that the Regulator should not unduly limit or deter sustainable owner investment. Clubs should be allowed to enjoy the benefits of investment and spending, but enjoy them while being disciplined.
- 5.21 However, high owner subsidisation *can* contribute to overspend on player wages, in turn encouraging other clubs to overspend to compete and further driving up costs. Funding into the game is and will continue to be welcomed. There may be extreme circumstances when it would be sensible for the Regulator to have a role in considering where the overall level of owner injections into the game might be destabilising - given its primary objective on the overall stability of the regime. If the Regulator anticipated that - subject to a shock or change - the stability of the league could be severely threatened, it could use discretion to determine specific licence conditions taking account of the stability of the specific club, and also that of the leagues. A regulator taking a view on the stability of a market is a standard approach to regulation.
- 5.22 The government recognises the need for a balance between ensuring that clubs have sufficient financial resources, and minimising any deterrence of investment. Having risk-based and proportionate regulation would empower

the Regulator to intervene as little as possible where possible, but require clubs to improve their finances where necessary for long-term sustainability.

Figure 4: Example of how financial regulation might work in practice



Protecting key assets for the long-term

- 5.23 To protect a club's saleable value, and thereby minimise the likelihood of liquidation, the Regulator would have an interest in protecting its core assets and preventing activity that could damage its value.
- 5.24 As set out in greater detail in *Section 8: Fan Engagement and Club Heritage*, the stadium a club plays in not only has significant value to fans, but can also be a club's most valuable asset. Beyond its heritage or emotive value, the Regulator would seek to avoid situations where clubs are stripped of assets, sell stadia and have nowhere to play, or stadia are treated riskily as collateral.

- 5.25 On this basis, we believe the Regulator should pre-approve any stadium sale. Clubs would need to satisfy the Regulator that they could still play in the same stadium, or an appropriate alternative, and that long-term financial sustainability would not be undermined. Given the heritage value of stadiums, the Regulator would also need to consider the impact of a stadium sale on its fans (see *Section 8: Fan Engagement and Club Heritage*).
- 5.26 The Regulator would also have an interest in debt. While debt is not inherently problematic, it can lead to problems where it:
- i. challenges the day to day viability of the club. This may occur where the cost of servicing debt as a proportion of income ('debt service ratio') is very high, impacting cash flow; or
 - ii. could damage the value of the club. This is when the size of the debt is a large proportion of the club's future sale value ('leverage ratio').
- 5.27 The Regulator would be able to place controls on excessive debt where it could threaten the viability or value of the club. The Regulator would determine the appropriate limits and controls when setting its Specific Licence Conditions. We expect that these limits may need to be waived in exceptional circumstances, if agreed with the Regulator in advance. For example, a high-interest loan might be the only way to help a club survive to the start of the next transfer window, when players could be sold, debt repaid, and the club downsized.
- 5.28 The Regulator might also want to keep a more holistic eye on the overall level of debt in the game to ensure that, in the event of a wider financial shock (for example rapid inflation and rising interest rates), it is not destabilising. In these extreme circumstances, the Regulator might consider introducing some time-limited controls to mitigate the risk of wider instability or failure, but would need to consider any potential impact on investment or competition.

Additional considerations

- 5.29 The upstream interventions set out above would mitigate the risk of financial failure. Yet, without requiring clubs to hold large amounts of running costs as cash - which is more interventionist and has greater risk of unintended consequences - there may be rare occasions where clubs struggle financially.
- 5.30 The government is giving further consideration to empowering the Regulator to appoint a trusted third-party to run the club, as a last resort, in pre-defined circumstances where it is in financial difficulty but falling short of insolvency.

This would allow the Regulator to be less interventionist up front, but to act decisively to mitigate severe distress when necessary.

Interaction with other financial regulation

- 5.31 Regulation by the Regulator would not exist in a vacuum. Domestic leagues have pre-existing financial rules and UEFA is introducing a squad cost cap tied to revenue for clubs competing in its competitions (up to seven English clubs in any one season).
- 5.32 Regulation will need to be coordinated to minimise the potential compliance burden on clubs and deliver a system which allows the Regulator to fulfil its statutory duties. For further detail on the interaction with the current regulatory landscape, see *Section 10: The Regulatory Model*.
- 5.33 Other major European football leagues also apply financial regulations of their own. These can include explicit spending controls and blanket liquidity ratios, which we believe are more interventionist than the proposals set out in this White Paper. This, coupled with the existing significant financial advantages that English clubs have over overseas counterparts,⁴¹ means that our proposals would not put English clubs at a competitive disadvantage.

Transition

- 5.34 Where clubs are well-run, financial regulation should have less of an impact. However, transitioning would take time, particularly for clubs where standards need raising. The Regulator's initial focus would be on setting the detailed requirements on clubs to underpin 'appropriate financial resources', and supporting clubs to meet these obligations with minimal burden. Further detail is set out in *Section 12: Transition and Shadow Regulation*.

Next steps

- 5.35 Ahead of legislation and throughout the design process, the government will continue to refine policy, including through engagement with stakeholders, to ensure that the design of financial regulation works for the industry while ultimately benefiting the fans of these clubs. Legislation will set out that a club must have adequate financial and non-financial resources and controls in place to meet committed spending and foreseeable risks. It will also set out clear parameters for the Regulator in designing rules and applying Specific Licence Conditions proportionately to clubs.

⁴¹ In 2020/21, the Premier League's revenue was 80% higher than the next richest league's (Germany's Bundesliga) and the average revenue per club was over £100 million more. This gap has been, and is expected to continue, widening. [Deloitte \(2022\) UK Annual Review of Football Finance 2022](#).

6: Corporate Governance

Summary

- The Review found poor internal governance at clubs allowed owners to act unilaterally, pursuing short-term interests with little accountability or scrutiny.
- The Regulator would establish a compulsory 'Football Club Corporate Governance Code', to be enforced through the 'Appropriate resources' Threshold Condition.
- To demonstrate compliance with the Football Club Corporate Governance Code, and provide greater transparency to fans, clubs would be required to report annually on corporate governance compliance.
- The Regulator would apply proportionality in regulating corporate governance, with regard to the size, revenue, league and business model of the club, and the degree of risk. Risk would be determined via an assessment of whether a lack of basic accountability and transparency around decision making leaves it more susceptible to financial shocks.

The problem

- 6.1. Corporate governance refers broadly to the way in which organisations are governed and to what purpose. Aspects of corporate governance include board composition, director responsibilities, policies and processes, standards and conduct, risk management, and communications with stakeholders. High profile business collapses at Carillion⁴² and Patisserie Valerie⁴³ have been attributed to failures of corporate governance. Poor corporate governance can be a root cause for football's problems, particularly by exacerbating financial mismanagement. With poor corporate governance, fans have less confidence in the decisions being made in their club.
- 6.2. An absence of established governance structures and processes will often result in a lack of transparency and accountability. The Review presented evidence that poor practices in clubs allowed owners to act unilaterally, with short term-interests that can conflict with the long-term interests of fans. Clubs can lack transparency and accountability on key decisions, and there can be insufficient independent voices and scrutiny to challenge decision making.

⁴² [The governance lessons of Carillion's collapse](#), ACCA, April 2018.

⁴³ [The corporate icing on the cake](#), BL Global, 14 January 2019.

- 6.3. The Review found problems at football clubs that enabled reckless decisions, including but not limited to: non-existent non-executive directors, a lack of Annual General Meetings, 'boards' with only one director, and insufficient processes such as appropriate financial controls or risk planning. A lack of basic corporate governance practices can threaten the financial sustainability of football clubs and their vital heritage assets, by enabling reckless decisions to be made without scrutiny and challenge. Fans are often entirely unaware of how their club is being run, and cannot hold custodians to account.

Derby County

Box 6

Derby County recently spent nine months in administration, and was relegated to English football's third tier following a points deduction imposed by the EFL for breaching financial rules. The circumstances surrounding this were complex and varied, but demonstrate how corporate governance failures can exacerbate issues of financial sustainability and fan engagement.

Improved scrutiny, challenge, accountability and transparency may have prevented occurrences such as:

- The decision to sell the club's stadium to a separate company owned by the club's owner.
- Increasing the player wage bill far in excess of revenue, and posting operational losses of nearly £31 million in 2018.
- Inadequate financial reporting of 2016, 2017 and 2018 accounts that were found to have broken accounting rules.⁴⁴
- A lack of transparency and consistent engagement with fans.

The loss of Derby County would have been devastating to fans, employees and the local community. While the club was saved in the end, other clubs may not be so lucky in future. Bury and Macclesfield Town are both recent examples of clubs that have collapsed and been expelled by their leagues.

- 6.4. Football clubs are beloved by their fans and communities even through poor club performance both on and off the pitch. These clubs are community heritage assets that will outlive their owners and directors, and so it is vital that they are appropriately managed.
- 6.5. Men's professional football in England currently has distinctly minimal corporate governance reporting requirements. The sport-specific corporate governance measure currently in use in the UK is the Code for Sports

⁴⁴ [Derby County: Championship club file notice to appoint administrators](#), BBC, 17 September 2021.

Governance.⁴⁵ This applies to sport organisations in receipt of public funds, which generally excludes professional football clubs.

- 6.6. Broader corporate governance codes exist in the form of the UK Corporate Governance Code and the Wates Corporate Governance Principles for Large Private Companies.⁴⁶ However, no clubs in English football are publicly listed in the UK⁴⁷ or are of significant size to be required to report against these.
- 6.7. There is one existing requirement around good governance that will generally apply to all Premier League clubs and some Championship clubs, but no clubs further down the pyramid. In accordance with the Companies Act, companies that meet statutory criteria relating to size and turnover are required to submit a Section 172 statement.
- 6.8. Section 172 statements are an opportunity for relevant clubs to explain how directors have regard to the long-term consequences of decision making, business conduct, and their impact on the community.⁴⁸ In reality, they vary significantly in length and detail, and can be as brief as one short paragraph. For example, one Championship club's 2021 accounts included a Section 172 statement consisting of three lines.⁴⁹
- 6.9. The government believes clubs should be run well and act in the best interests of fans. However, failures of corporate governance would likely manifest elsewhere, such as financial mismanagement, the abuse of entrusted power for private benefit, or a lack of regard for fans. Promoting better decision-making, checks and balances, and longer-term planning would serve to mitigate these risks before it is too late. Better corporate governance presents an opportunity to football clubs to deliver better business outcomes, and to better connect clubs and their custodians with fans.

The solution

- 6.10. The Regulator should seek to improve corporate governance through the creation of a compulsory 'Football Club Corporate Governance Code'. Compliance with the code would be enforced through the 'Appropriate resources' Threshold Condition.
- 6.11. The Football Club Corporate Governance Code would draw on established corporate governance principles applied in other industries. The Regulator

⁴⁵ ['A Code for Sports Governance'](#), UK Sport and Sport England.

⁴⁶ [The Wates Corporate Governance Principles for Large Private Companies](#), December 2018.

⁴⁷ Manchester United are publicly listed on the New York Stock Exchange.

⁴⁸ [Section 172, Companies Act 2006](#).

⁴⁹ [Nottingham Forest Football Club Limited, Companies House](#), Submitted 3 March 2022.

may consider drawing on The UK Corporate Governance Code,⁵⁰ The Wates Corporate Governance Principles for Large Private Companies,⁵¹ and the Code for Sports Governance.⁵² However, it would be adapted to ensure it is specific to football and the challenges football clubs face, and to clearly set out both the unique nature of the responsibilities associated with custodianship of a football club and how these responsibilities should be exercised.

- 6.12. The Regulator (or shadow regulator) would conduct a 'State of Football' study (see *Section 12: Transition and Shadow Regulation*). This would be an initial detailed assessment of how the industry operates, including the current standards of corporate governance. The findings of this study would help to inform the design of the Football Club Corporate Governance Code and assess the scale of football's corporate governance issues.
- 6.13. While the specific requirements of the Football Club Corporate Governance Code would be established by the Regulator, indicative requirements may be linked to the following five areas:⁵³
- **Structure** - clubs shall have a clear, appropriate governance structure with a properly constituted board that makes decisions collectively.
 - **People** - clubs shall recruit and engage people with appropriate skills, knowledge, experience and independence to further the club's goals.
 - **Communication** - clubs shall be transparent and accountable, engaging effectively with fans and other stakeholders.
 - **Standards and conduct** - clubs shall uphold high standards of integrity, appropriately address breaches of those standards, and engage in regular evaluation to drive continuous improvement.
 - **Policies and processes** - clubs shall comply with all applicable laws and regulations, undertake responsible financial strategic planning, and have appropriate controls and risk management procedures.
- 6.14. The Football Club Corporate Governance Code should adopt a tiered approach to accommodate the vast difference in scale and resources of the clubs across the pyramid. Each tier would have a different level of requirements. For example, 'Tier A' would be more enhanced than 'Tier B', which would be more enhanced than 'Tier C'.

⁵⁰ [The UK Corporate Governance Code](#), Financial Reporting Council, April 2016.

⁵¹ [The Wates Corporate Governance Principles for Large Private Companies](#), Financial Reporting Council, December 2018.

⁵² Sport England, ['A Code for Sports Governance'](#).

⁵³ These five areas of focus align with the recommendations of the Review and corporate governance codes used in other industries.

- 6.15. The Regulator would assess which tier is appropriate for each club. This categorisation would be based on factors such as a club's size, income, league, business model, and risk (see *Section 4: The Regulatory Framework* for further detail on proportionality). If through ongoing monitoring the Regulator decides a club's circumstances have changed sufficiently, it would change its tier.
- 6.16. The Regulator would monitor corporate governance compliance in a consistent manner with other licence conditions, starting with advocacy and moving to direction and enforcement in cases of persistent non-compliance. This participative approach to intervention is explained in more detail in *Section 10: The Regulatory Model*.
- 6.17. Corporate governance will not be an unnecessary burden. Rather, corporate governance is an opportunity for clubs, helping them to achieve better business outcomes, risk management and transparency for fans. Therefore, it is essential that the Regulator prioritises advocacy and support in this area, so it is not onerous, and is instead focused on helping clubs to achieve higher standards of governance. The Regulator would provide guidance, training, and tools for clubs to help avoid the possibility of corporate governance becoming a 'tick-box' exercise.
- 6.18. To demonstrate compliance with the Football Club Corporate Governance Code, and improve transparency, clubs would be required to report and publish on corporate governance annually. The government accepts the Review's recommendation that compliance with the Football Club Corporate Governance Code should be demonstrated using an 'apply and explain' model. This requires all clubs to comply with all the requirements but allows them to provide an explanation as to how the principles of the code were applied rather than mandate an approach. This approach will allow clubs to engage with corporate governance in a manner that is proportionate to their circumstances and resources.

'Apply and explain'**Box 7**

This approach to corporate governance differs from the more commonly used 'comply or explain' in that it is outcomes-based rather than rules-based. It gives organisations some flexibility and the opportunity to explain *how* they have applied corporate governance principles.

While this model allows for more interpretation by clubs, compliance is compulsory, requiring clubs to engage with (their tier of) the Football Club Corporate Governance Code in full.

The Review identified 'apply and explain' as being more appropriate for football clubs, given the relative immaturity of the football corporate governance structures.⁵⁴

Requiring clubs to 'apply and explain' encourages them to *own* good governance, and avoids a perception of corporate governance as a box-ticking exercise.

- 6.19. The Regulator may identify corporate governance concerns through multiple possible channels, including (but not limited to):
- failure to (sufficiently) report on governance;
 - monitoring of other Threshold Conditions (e.g. financial regulation);
 - information from whistleblowers;
 - complaints (e.g. from creditors, auditors or supporters' groups).
- 6.20. When the Regulator's advocacy approach to corporate governance is unsuccessful and issues persist, the Regulator would apply progressively more targeted remedial powers. These may begin with specific requirements, such as compelling a club to provide information, or issuing a club with a compliance plan. In the most severe cases, the Regulator may proceed to enforcement powers (see *Section 10: The Regulatory Model*).
- 6.21. The Regulator should also apply its principle of proportionality to specific corporate governance risks or issues. The Regulator would be pragmatic in its approach and undertake a risk-based assessment to establish priorities.⁵⁵ *Section 10: The Regulatory Model* contains further detail on the Regulator's proportionate, risk-based approach to regulation.

Next steps

- 6.22. Ahead of legislation, the government will continue to engage with stakeholders and refine policy. Legislation will set clear parameters and guidance for the Regulator with regard to scope, content, proportionality and application of the Football Club Corporate Governance Code. The government is committed to ensuring a tight scope focused on the internal corporate governance of football clubs, and not looking at club's commercial decisions or the governance of leagues and competitions. The specific requirements of the Football Club Corporate Governance Code would be established by the Regulator.

⁵⁴ [Fan-Led Review of Football Governance](#), November 2021, paragraph 5.18.

⁵⁵ For example, the Charity Commission uses a [Risk and Regulatory Framework](#) to identify, assess and guide response to regulatory risks.

7: Owners' and Directors' Tests

Summary

- The Review found examples of unsuitable custodians, including owners with long histories of business bankruptcies, owners with serious criminal convictions, owners later imprisoned for crimes including money laundering, and directors recruited without a proper, transparent appointment process.
- To address these shortcomings, the Regulator would establish new owners' and directors' tests consisting of three key elements: a fitness and propriety test (owners and directors), enhanced due diligence of source of wealth (owners), and a requirement for robust financial plans (owners).
- Fitness and propriety tests would be designed to ensure that prospective owners and directors have sufficient integrity, honesty, financial soundness and competence to be suitable custodians of football clubs.
- The Regulator would combine the disqualifying conditions currently applied by the football leagues with selected criteria that address specific harms identified in the Review.
- The Regulator would conduct fitness and propriety tests for owners and directors, and potentially for other individuals at a club deemed to exercise significant decision-making influence, and clubs would be required to declare their Ultimate Beneficial Owner.

The problem

- 7.1. The Review found that the financial distress we have seen at some of English football's most historic clubs was partly down to i) acquisition by owners unsuited to the custodianship of these important cultural assets and ii) the appointment of unsuitable directors without a proper, transparent appointment process or assessment of skills or qualifications.
- 7.2. Currently, the Premier League, EFL and FA each conduct their own tests. The three existing tests cover broad criteria that disqualify owners from being a football club owner or director. These criteria include, but are not limited to:
- past involvement with club bankruptcies;
 - dishonest dealings with the football leagues or FA;
 - control or influence at multiple clubs;
 - specific unspent criminal convictions (primarily involving dishonesty or corruption);
 - personal insolvencies;

- suspension or ban from another sport;
 - being barred from entry to the UK; and
 - being a football agent.
- 7.3. Existing tests are conducted on a self-declaration basis, where the prospective owner or director completes a form to confirm that they are not barred by any of the disqualifying conditions. Prospective owners or directors may be deemed guilty of misconduct by the football leagues if any information on their application is found to be false.^{56 57}
- 7.4. The Review also flagged concerns about *how* tests are applied; often without clarity or transparency, or after an acquisition has been completed.
- 7.5. Despite the existing tests, the Review found examples of unsuitable owners (whose ownership led to financial difficulties for clubs with long-term consequences) including but not limited to:
- owners with serious criminal convictions;
 - owners with long histories of prior business bankruptcies;
 - owners subsequently imprisoned for offences (e.g. money laundering);
 - owners who acquired clubs without proof of funds;
 - offshore hedge funds with unclear ownership.
- 7.6. The failure of a football club will rarely be attributed solely to its custodians. Nonetheless, there is a clear link between owners and directors, and financial sustainability. Owners and directors with a history of personal or business bankruptcies may be more likely to mismanage or exploit a club's finances. Custodians with conflicts of interest, political or criminal affiliations may take harmful risks and decisions at odds with the interests of fans, abuse their position for private benefit, or embroil a club in legal difficulties.
- 7.7. Corrupt behaviour, defined as the abuse of entrusted power for private benefit, by club officials can lead to poor decision-making and place them at risk of legal, regulatory, and financial jeopardy that can threaten their existence. The investment of illicit or criminal wealth in clubs' finances can similarly threaten their financial health and place them at serious risk, as seen in cases where wealthy backers have had their assets frozen.
- 7.8. There is a risk that owners with a history of impropriety or crime may suddenly be removed by law enforcement, legal challenges or government-imposed sanctions. In these scenarios, clubs may suddenly face a huge financial deficit due to the removal of owner-funding. This risks exposing

⁵⁶ EFL, [Appendix 3 - Owners' and Directors' Test](#) Section 5.2, October 2020.

⁵⁷ [Premier League Handbook Season 2022/23](#), Section F: Owners' and Directors' Test', F.1.3.2.

clubs to financial collapse, and failing to protect vital heritage assets for fans and communities.

- 7.9. *Section 5: Financial Regulation* describes the reliance of many clubs on owner funding. Despite this, owners can walk away, leaving a club financially stretched or, in extreme cases, bankrupt. A requirement to demonstrate robust financial plans, evidence of funds that match the ambitions and risks of those plans, and an understanding of the risks and costs before acquiring a club (see paragraphs 7.28 to 7.31) would help to address this.
- 7.10. As set out in *Section 2: The Case for Reform*, football clubs hold unique importance to their fans and local communities, and it is ultimately they who lose out when clubs are exploited or mismanaged by unsuitable custodians. We have heard from fans at clubs who have experienced ownership issues. Fans of Charlton Athletic took previous owners to court and won, persuading the judge that it was wrong for the community for a club to be owned by people who couldn't run it properly. Blackpool fans explained they had to take matters into their own hands, which was not addressed or supported by the football authorities. Setting a higher bar for suitable owners and directors will serve to instil a culture of stewardship, a duty to protect clubs and ensure their sustainability for the fans and communities on which they rely.

The solution

- 7.11. The Regulator would establish and implement new tests for owners and directors, which would be enforced through the 'Fit and proper custodians' Threshold Condition.
- 7.12. The government recognises that it is important to ensure the right balance is struck when developing tests for owners and directors. Although enhancing the tests is aimed at rooting out unsuitable owners and directors, it must be done in a way that does not disproportionately deter desirable investors. The Regulator's tests will do this by ensuring that obligations and requirements are not too onerous or subject to change after investment has been made. This approach provides certainty to investors.
- 7.13. Strengthened tests would likely attract investors with a more long-term, prudent approach to stewarding and growing these community assets. This is because, along with other aspects of regulation, enhanced tests would create a clearer and more certain regulatory environment for investors.
- 7.14. Primary legislation will give the regulator power to administer owners' and directors' tests, but the specific test criteria will not be detailed in primary

legislation. The government will set clear parameters for the Regulator to operate within when designing owners' and directors' tests.

- 7.15. Tests would consist of three key elements:
- fitness and propriety test (owners and directors);
 - enhanced due diligence of source of wealth (owners);
 - a requirement for robust financial plans (owners).

Fitness and propriety test

- 7.16. A fitness and propriety test assesses an individual's integrity, honesty, financial soundness, and competence. The Regulator would make an evidence-based objective judgement to assess whether an owner or director is a suitable custodian of a club. This would draw on fit and proper persons tests applied by other regulators including the Financial Conduct Authority (FCA), HM Revenue and Customs (HMRC), the Solicitors Regulation Authority and Bar Standards Board.
- 7.17. The Regulator would combine the disqualifying conditions currently applied by the football leagues with *selected* criteria relating to honesty and integrity, financial soundness, and competence and capability. The Regulator would ensure that any additional criteria are relevant to the harms in the market. Indicatively, this *may* include extending test criteria to cover a broader range of past bankruptcies, insolvencies and convictions.
- 7.18. Fitness and propriety tests should be objective and evidence-based. The Regulator must not form subjective judgments or opinions regarding an individual's reputation, character or integrity.
- 7.19. Fitness and propriety tests should apply to prospective owners *and* directors but specific criteria may not apply equally to both roles. For example, testing competence and capability will be more relevant to a prospective finance director than an owner who does not intend to sit on the board of directors. The Regulator would conduct fitness and propriety tests for owners and directors, and potentially for other individuals at a club deemed to exercise significant decision-making influence. The Regulator would require clubs to declare their Ultimate Beneficial Owner as well as individuals holding senior management responsibilities, to improve transparency and accountability.

Ultimate Beneficial Owner

Box 8

Clubs often have complicated ownership structures and may be owned by a chain of companies or hedge funds. Fans have expressed concerns at this opacity, and not knowing who controls the club they support.

Requiring clubs to declare their Ultimate Beneficial Owners (UBO) will identify who ultimately owns and controls clubs, improving transparency and accountability.

While current league rules outline a requirement to declare who controls a club, the Review identified concerns with the application of this rule, in particular where clubs are owned by offshore entities, and where the investors in those entities are unknown, or where clubs are controlled by complex company structures.

- 7.20. For some additional criteria, applicants would have the opportunity to provide additional evidence (e.g. circumstances surrounding an incident) in support of their application. Nonetheless, tests will be objective and evidence-based.
- 7.21. Tests should also be strengthened with regard to *how* they are conducted. As a statutory body, the Regulator would have access to information gateways, facilitating enhanced background and criminal checks.
- 7.22. The Regulator should determine whether a prospective owner or director is a politically-exposed person (PEP).⁵⁸ Applicants would not be approved or rejected on the basis of being a PEP. However, as political affiliation can expose individuals to bribery, corruption or external influence, PEP-status may be considered as part of an in-the-round assessment. The Regulator may direct a club to manage potential higher risks through corporate governance. This approach mirrors the FCA's guidance on treatment of PEPs, which recognises that domestic PEPs are lower risk, and provides guidance on types of countries which also lower risk.⁵⁹

Enhanced due diligence on source of wealth

- 7.23. The Review found examples of owners who were subsequently imprisoned for offences including money laundering. The significant popularity and influence of English football heightens the risk of clubs being exploited as a money-laundering tool for illicit finance.
- 7.24. In support of its objectives relating to ensuring clubs' financial sustainability and promoting sustainable investment, the Regulator will aim to mitigate the presence and risk of the investment of illicit finance in English football clubs.
- 7.25. To address this, the Regulator would assist government agencies in conducting enhanced due diligence checks on a prospective owner's source of wealth, aimed at identifying links to criminality or corruption. The Regulator

⁵⁸ Defined by the Financial Action Task Force as an individual who is or has been entrusted with a prominent function.

⁵⁹ [FG 17/6 The treatment of politically exposed persons for anti-money laundering purposes.](#)

would *not* directly regulate money-laundering or crime, nor would it make unilateral judgments that risk straying into foreign policy. The Regulator would exchange information with existing regulators and agencies to support their statutory objectives.

Robust financial plans

- 7.26. The Review recommended that prospective owners should be required to submit a business plan for assessment by the Regulator, covering multiple elements including strategy, governance, plans for financial sustainability and corporate structure. The government supports this recommendation, but with some minor revisions.
- 7.27. Full business plans including corporate structure and governance should be agreed collectively by a club's board, which has collective responsibility for the club's management and strategy. The Regulator would therefore require clubs to submit detailed business plans periodically, but these would instead be assessed as part of corporate governance and financial regulation through the 'Appropriate resources' Threshold Condition.
- 7.28. Prior to a prospective owner acquiring control of a club (a club would be required to notify the Regulator of a prospective change in ownership), the Regulator would assess the individual's financial plans and resources. Indicatively, this would include:
- proof of sufficient financial resources;
 - financial forecasts;
 - personal guarantee (for owner injections);
 - contingency plans.
- 7.29. Analysis of prospective owners' financial resources would be essential in ensuring that owners would be suitable custodians of the heritage assets of football clubs. To help safeguard the financial sustainability of clubs, the government is considering whether the Regulator should set tougher restrictions around leveraged buyouts, whereby the purchase of a club is (in part or wholly) financed through loans secured against the club itself.
- 7.30. The Regulator would require prospective owners to declare how much money they intend to invest in the club in the short and long-term as part of their 'personal guarantee'. This would help to make owners more accountable to the Regulator. The Regulator should assess adherence to their personal guarantee as part of future owners' tests, when reapplied.
- 7.31. The Regulator would also ask prospective owners to outline contingency plans, explaining how they would manage an unexpected downturn in the

club's financial situation. This could be related to the team's performance, such as relegation or failing to qualify for European competitions, or wider economic impacts, such as a financial crisis or a global pandemic.

Timing and transition

- 7.32. Football clubs operate within temporal constraints such as league seasons, transfer windows, and short-term commercial contracts. Tests should therefore be as quick as possible to avoid unnecessarily deterring investors, frustrating fans, or leaving clubs 'in limbo'. The Regulator would be subject to a statutory deadline (see paragraph 11.9) in determining the outcome of a test, to provide certainty to clubs, fans, and other stakeholders.
- 7.33. Owners' and directors' tests may include a 'pre-notification' option, whereby clubs can confidentially inform the Regulator in advance of a proposed takeover, providing more time to gather information and perform checks.
- 7.34. The Regulator should increase oversight of owners and directors, to ensure their suitability on an ongoing basis. Incumbent owners and directors would be required to inform the Regulator of any relevant changes to club or personal circumstances, as part of an annual compliance statement. Changes in circumstances could trigger a retest of relevant owners and/or directors. The Regulator would have the power to retest owners or directors at any given time (or regular interval), such as following an update to the Regulator's rules, or in response to a change in the individual's circumstances.
- 7.35. In the event that an owner or director is retested and they fail to comply with requirements, leagues have existing rules to suspend or disqualify the individual. The Regulator would work with the leagues on this, and would have its own powers to disqualify individuals as a backstop.
- 7.36. Strengthened owners' and directors' tests will help to limit, at the point of entry, unsuitable custodians controlling football clubs. The government believes this will create a higher standard of stewardship and reduce the number of harmful risks taken by dishonest, incompetent, or nefarious owners, thus helping to protect the future of football clubs.
- 7.37. The owners' and directors' tests administered by the Regulator will set the minimum standard for prospective owners and directors. As membership organisations, the leagues would be entitled to add their own test criteria, separate to the Regulator's tests. This would be on the basis that any additions would not unduly delay or burden the process. The leagues are

also encouraged to continue making progress and strengthening their own tests in the meantime, as the Premier League have committed to doing.

Next steps

- 7.38. Ahead of legislation, the government will continue to engage with stakeholders, refine policy and analyse the relationship between investment and owners' and directors' tests. Legislation will set clear parameters and guidance for the Regulator, with regard to test criteria, proportionality, objectivity, transition, timing, and application.

8: Fan Engagement and Club Heritage

Summary

- Fans are the most important stakeholder for any football club, and both parties benefit from their involvement in the long-term decision-making process at a club. Supporters were at the heart of the Review and it is vital the Regulator ensures their views are better heard by clubs.
- The Regulator would set a minimum standard of fan engagement as part of its licensing regime through the 'Fan interests' Threshold Condition, in line with the aims of the Review. This would require clubs to have a framework in place to regularly meet a representative group of fans to discuss key strategic matters at the club, and other issues of interest to supporters (including club heritage).
- The Regulator should require clubs to engage with the FA on their new rules for club badges and home shirt colours (which will give fans a veto over any proposed changes), and adhere to all decisions.
- The Regulator should also require clubs to seek the Regulator's approval for any sale or relocation of the stadium. This would primarily be on the basis of financial considerations, with a remit to consider the implications for club heritage and the views of fans.

The problem

- 8.1. Supporter engagement can mean different things to different people. In the context of this regulatory system, it means dialogue between a football club and its fans, ensuring that the views of fans are listened to and acted upon.
- 8.2. The Review identified highly variable standards of fan engagement across clubs. While some clubs have effective structures in place, others have shown limited progress in delivering the standards set out by the Premier League and EFL. The result is that fans feel they are not consulted as part of the strategic decision-making process at some clubs.
- 8.3. These off-pitch decisions include proposals which affect the heritage of a football club. The badge, home team colours, and name of the club can be considered intrinsic representations of a club's history. The stadium and the club joining a new competition were also identified by the Review as key aspects of club heritage.

- 8.4. The benefit of an effective engagement strategy between a football club and its fanbase is two-fold. Clubs can receive valuable insight into their decision-making process from the perspective of their most important stakeholders, and they can also communicate the rationale behind their preferred choices for those decisions. In particular, this includes any changes to the heritage assets identified in the Review.

The solution

- 8.5. Clubs will need to satisfy the Regulator that they have appropriate and proportionate provisions for considering the interests of fans on key decisions and issues of club heritage. Clubs will need to show they are regularly consulting a representative group of fans on key strategic matters at the club, and other issues of interest to supporters (including club heritage). Fans deserve this level of engagement, and this system allows it to be done in a proportionate way by the regulator.
- 8.6. Clubs would need to engage with the FA's new rules⁶⁰ for changes to heritage assets and adhere to all decisions made by the FA. Finally, the government's intention is for clubs to seek the Regulator's approval prior to any stadium sale or relocation.

Fan engagement

- 8.7. The objectives of improving fan engagement would be to ensure that fans are consulted on strategic matters and other issues of interest to supporters in a manner which allows for open discussion and effective feedback. This can benefit the decision-making process of clubs in a number of areas - fans are a uniquely important stakeholder and their involvement improves transparency and accountability, improving the long-term sustainability of clubs.
- 8.8. Although a 'shadow board' can work well for many clubs, the government does not consider it appropriate for the Regulator to mandate the exact form that fan engagement should take at all 116 clubs it would license. A 'one size fits all approach' is unlikely to be optimal or proportionate given the diverse range of clubs across the pyramid and their fans' preferences with regards to engagement.⁶¹ A prescriptive 'shadow board' requirement would impose a large administrative burden on clubs, inhibit new or innovative forms of engagement, and may be counterproductive if the club believes it has existing processes which work better for their fanbase.

⁶⁰ The FA, [FA introduce new rules to protect heritage of clubs](#), August 2022.

⁶¹ Alternative forms of engagement could include fans' forums, regular meetings with supporter groups, or fan ownership (e.g. Exeter City, AFC Wimbledon and Newport County AFC). There are many ways of structuring a club's fan engagement and each one will be in the best position to decide how exactly to design their approach in line with the requirements of the Regulator.

- 8.9. The Regulator would provide this flexibility through the design and application of Specific Licence Conditions, and provide guidance on how clubs can meet them as part of its assessment process. However, at a high level, the Regulator would expect to see evidence (e.g. a Memorandum of Understanding, meeting agendas, minutes) that a club has an effective structure in place for senior members at the club to regularly discuss relevant strategic matters of interest to a representative group of fans. The Regulator would also expect to assess evidence from fan representatives on how the club's framework works in practice.
- 8.10. In practice, we expect most clubs will employ a 'shadow board', but this representative group should at least include a club's Supporters' Trust and adequate representation for the women's team if the club has one affiliated. If attendance is restricted to a small group of supporters – which would be the expectation – a significant proportion of this representative group of supporters should be elected, selected, or invited to these meetings in line with basic democratic principles and in line with the wider demography of the fanbase.
- 8.11. The Regulator would look to work with clubs to improve, where necessary, the structures that exist within a club to facilitate effective fan engagement. This would involve working with the relevant league, the club, the fanbase, and the Football Supporters' Association to help identify any issues and share best practice across clubs. The Regulator would have the power to review the structures clubs have for engaging their fans and make recommendations for improvements.
- 8.12. In all cases, the emphasis would be on collaboration between parties - involving fans in the decision-making process of their club to the benefit of both. However, the Regulator would have the power to sanction individual clubs if there is a persistent and wilful lack of engagement, in breach of its licence. The Regulator would publish guidance to outline the conditions for sanctions to be applied, but a range of options would be available to the Regulator. See *Section 10: The Regulatory Model* for further detail on the proposed approach to enforcement of the Regulator's licensing system.
- 8.13. This policy is designed to improve, where necessary, the structures around how clubs engage with their fans in a proportionate manner. Clubs are in the best position to understand how to engage with their own supporters and many already have structures in place which work well and would meet the proposed 'Fan Interests' Threshold Condition. The Regulator's role should be to ensure that all clubs meet a minimum standard of engagement with their supporters while providing flexibility to implement solutions which suit each club's unique fan base.

- 8.14. The 'Fan Engagement Standard', which the Premier League are planning to implement for their clubs, is welcomed by the government. This will see Premier League clubs introduce Fan Advisory Boards and nominate a board-level official responsible for the club's fan engagement activities. The Regulator should make its own assessment, but it is expected that clubs that comply with these new rules would meet the Regulator's requirements for fan engagement.

Club heritage

- 8.15. A 'Golden Share' (a special share held by a club's Community Benefit Society (CBS) requiring fan consent for certain actions) can work well for some clubs. However, after careful consideration for protecting club heritage, and alternatives, the government does not think it is appropriate for the Regulator to require every club to introduce a 'Golden Share'. This would require each club to amend its Articles of Association, establish a CBS if one does not exist, and involve a direct impact on the rights of existing owners and shareholders. This would place a significant burden on clubs and could deter investment and development with regards to stadiums as any proposal can be vetoed by the CBS.
- 8.16. No club will be prevented from utilising a 'Golden Share' model, however the government considers that the Regulator could ensure suitable protections are in place for club heritage across the football pyramid through alternative means.
- With regards to the badge, name of a club, and home shirt colours, we believe the FA's rules are simpler and give fans protection which is just as effective as a 'Golden Share'. These protections are in place now and, once live, the Regulator will give this a regulatory underpinning.
 - The Regulator will implement further protections for club stadiums by requiring every club to seek pre-approval for a sale or relocation. This would primarily be based on financial considerations, but the Regulator should also have a remit to consider the implications for club heritage of any proposal, the views of fans and the club's historical connection to its locality.
 - Fans will also be protected by the Regulator from their clubs joining breakaway leagues through the 'Approved Competitions' Threshold Condition (see *Section 4: The Regulatory Framework*).
- 8.17. In the response to the Review, the government noted that the FA were working to update their rules on changes to club heritage assets. We have discussed these with the FA in detail and welcome the introduction of new rules this season to cover changes to the badge and home shirt colours for

the top five tiers of men's football and the top two tiers of women's football. These are in addition to the strong existing protections for the name of a club.

- 8.18. Clubs will need to collect proof that a majority of fans are in favour of a change for it to go ahead, giving fans an effective veto over changes to these intrinsic representations of their club's history and heritage. These additional protections are already in place (including for the women's game) and will prevent owners from interfering with the heritage of their clubs against the wishes of the fans. Evidence this is working can already be seen at Bristol Rovers and Aston Villa, where fan consultation has resulted in the existing badge being kept at Bristol Rovers, and a new badge being approved by supporters at Aston Villa.
- 8.19. The Regulator should require clubs to seek the approval of their fans for these changes by complying with the rules and decisions made by the FA, and they would remain the relevant regulatory body in this regard. The Regulator should also reserve the right to implement its own rules at a later stage if it deems that necessary to continue that protection for fans, providing a regulatory backstop for heritage protection.
- 8.20. Moving the stadium is, rightly, an emotive issue for fans. Their clubs will have an historic connection to the location they play football in and their stadiums are often important landmarks for the local community. However, there are more stakeholders and issues in moving the stadium than making changes to the badge, colours or name of the club. Importantly, there will generally be wide ranging financial implications - moving stadium will involve selling or leasing the existing one, and renting or building a new one. The Regulator is in the best position to assess the merits of such a bid in the round i.e. it can balance the commercial, financial and stakeholder (in particular, fan) interests.
- 8.21. Our intention is for all stadium sales and relocations to require pre-approval by the Regulator given its status as a key heritage asset for any club. The Regulator's primary consideration when considering an application for a stadium relocation will be the financial sustainability of the move. Should the Regulator consider that the application is financially viable, they will also have a remit to consider the heritage impact of any proposal in consultation with fans and other relevant affected parties.
- 8.22. The conditions for approval would be published by the Regulator, but after assessing the financial sustainability of a proposal, it should also have a remit to consider the heritage implications of a stadium sale or move. This could include:

- The historical connection to a specific location;
- The views of supporters and the local community;
- The impact on other clubs in a new location.

8.23. Many clubs do not own the stadium they play in. The Review recommended that the government should explore the viability of introducing new security of tenure property rights for clubs where the club does not own the stadium in which it plays.

8.24. The government has committed to launching a review of the landlord and tenant relationship and the legislation surrounding it. This will cover, but will not be limited to, football grounds. Further details will be announced by the Department for Levelling Up, Housing and Communities in the coming months, including whether the scope of the review will include security of tenure.

Next steps

8.25. Ahead of legislation, the government will continue to engage with stakeholders to finalise the design of policy for fan engagement and club heritage. Legislation will require clubs to meet a minimum standard with regards to fan engagement and the Regulator will provide guidance to clubs for meeting its assessment. The Regulator should design these in a proportionate manner which does not unduly burden clubs, particularly where effective structures are already in place.

9: Financial Distributions

Summary

- The current distribution of revenue is not sufficient, contributing to problems of financial unsustainability and having a destabilising effect on the football pyramid. Therefore, there remains a clear need to reform financial distributions in English football.
- A football-led resolution to this important issue remains the government's preference, and football must come to an agreement soon. We do not see any reason why that cannot happen at pace.
- However, the Regulator will need targeted statutory powers to intervene as a last resort if necessary, should certain thresholds be met. This will be to a statutory timetable, and start with arbitration by the Regulator.
- The Regulator would ideally not need to intervene in this space, and the process will be designed to empower and encourage football to find a solution first. But if football fails to deliver a solution, the Regulator will deliver one.
- The government is giving further consideration to the exact model for the Regulator's targeted power of last resort. One option we are considering is binding final offer arbitration - the parties would each submit their proposal, the Regulator would assess them against predetermined criteria, and would choose and impose one as the binding arrangement.

The problem

- 9.1. English football clubs have been highly successful in growing their income. Combined revenues across the top four men's leagues increased from around £260 million in 1991/92 to around £6 billion in 2020/21, with a level of growth that has outperformed comparator leagues across Europe.⁶² Despite this, analysis of the financial health of English clubs indicates that a large number of clubs struggle to remain financially viable without the help of external owner funding. One way clubs will need to address this, as in any industry, is to better manage costs and seek ways to further grow commercial revenue.
- 9.2. However, it is widely accepted within the football industry that financial redistribution is also needed to maintain a competitive league system. This in turn protects sporting integrity, prevents clubs from having to gamble beyond their means in order to compete, and strengthens the commercial value of

⁶² Analysis based on Deloitte (2022) [Annual Review of Football Finance 2022](#).

English football. It is for this reason that the Premier League already willingly redistributes TV broadcast revenue down the pyramid.

- 9.3. However, the current distribution of revenues is considered by many to be insufficient and, as a result, is contributing to the problems of financial unsustainability:⁶³
- The majority (c.83%) of revenue earned by clubs in the top four divisions now sits within the Premier League, while League Two clubs account for just 1.5%. By comparison, in 1993 the Premier League's share of revenue was 57%.
 - The gap between the collective revenues of Premier League clubs and of Championship clubs exceeded £4 billion in 2020/21. The average revenue of a Premier League club (£243 million) was approximately eight times that of a Championship club (£25 million). There was also a wide gap between Championship (£25 million) and League One (£7.2 million) clubs.
 - There is a large revenue 'cliff edge' between the bottom of the Premier League (c. £120 million) and the top of the Championship (£70 million). This 'cliff edge' is even greater for clubs that do not receive parachute payments.⁶⁴
- 9.4. In addition to these issues regarding the elite men's game, there are concerns that too little money is being redistributed to the rest of football.
- 9.5. There remains a clear need for football to reassess both the magnitude of revenue distributions and the way in which money is allocated between teams. The current approach has affected competitiveness and led to financial risk-taking by clubs - the persisting revenue disparities encourage clubs to take financial gambles in an attempt to achieve promotion or avoid relegation. This is accentuated by parachute payments, which can distort competition in the Championship and encourage greater financial risk taking by clubs that are not in receipt of them.
- 9.6. The Government Response supported the principle of a football-led solution to revenue distribution, with additional proportionate contributions from the Premier League to the rest of the football pyramid. However, it noted that there has been no progress on reaching a solution and therefore reiterated the potential for the Regulator to play a role in redistributing income.

⁶³ All figures based on Deloitte (2022) [Annual Review of Football Finance 2022](#).

⁶⁴ "Parachute payments are made to clubs after they are relegated from the Premier League. They allow clubs to invest in their teams, and wider operations, in the knowledge that should they be relegated they have provisions in place to re-adjust their finances." Premier League (2017) [What are parachute payments?](#)

The solution

- 9.7. A football-led solution to solving distributional issues remains the strongly preferred outcome both now, and for the future. Both the Premier League and EFL are in agreement that a greater quantum of cash needs to flow through the pyramid, alongside cost controls, in order to achieve the financial sustainability that is so urgently needed. However, despite pressure from the Government to reach a solution, the parties have made limited progress on reaching an agreement and it remains a very real prospect that a football-led solution will not be reached without external pressure.
- 9.8. Therefore, the Regulator will require the statutory power to intervene on financial distributions, should certain high thresholds be met. This would be a targeted power of last resort only triggered if insufficient distributions threaten to undermine the ability of the Regulator to meet its objectives on sustainability. The Regulator will undertake a periodic assessment of how the industry is working and the health of finances. The process set out below will only be triggered if the Regulator has evidence of systemic financial issues, compromising its ability to deliver its purpose and sustainability duties.
- 9.9. Any Regulator intervention would only come after the market has been given adequate opportunity to reach a settlement. If the industry is able to reach a deal, the Regulator would be able to place a binding backstop behind it. If a deal is not reached, a first step would be for the Regulator to undertake a mediation role, similar to the Advisory, Conciliation and Arbitration Service (ACAS). Further intervention would only be taken if an impasse still remains after this mediation. This would all work to a set timetable, to push for a solution as quickly as possible.
- 9.10. The Regulator would ideally never need to intervene in this space. Its powers and the statutory process for intervention will be designed to empower and encourage football to find a solution itself first. However, if football fails to deliver a solution, the Regulator will use its targeted power of last resort to deliver one.
- 9.11. We are still determining the best model for this power. One model we are considering is to give the Regulator the power to oversee a model of binding final offer arbitration.

Binding final offer arbitration

- 9.12. In this model, the Regulator would set out the terms of the process, including the issues that any financing would need to address. In response, the Premier League and EFL would each set out their proposal, with accompanying analysis and justifications. The Regulator would then choose which of the two proposals is more appropriate based on the evidence

presented and in consultation with all relevant parties. The decision would be based on consideration of both proposals against pre-defined criteria set out by the Regulator. The proposal with the largest quantum would not necessarily be the one chosen. We would expect this model to incentivise the parties to take a reasonable approach on the level of financial support needed.

- 9.13. This intervention would only be triggered if the industry could not come to a solution itself and the Regulator had sufficient evidence that it would be unable to meet its statutory objective without intervention. Intervention would follow a clear and fair process, decisions would need to be evidence-based and there would be opportunities for affected parties to make representations and appeal decisions. Both the decision by the Regulator that the arbitration process has been triggered and any final determination would be open to appeal through the Courts (see *Section 11: Procedural Safeguards*). This gives all parties sufficient confidence that decisions will be evidence-based and have followed the correct procedure.
- 9.14. This would not be a tool for the Regulator to ensure the financial sustainability of individual clubs, but rather part of a balanced package of measures to maintain stability at the macro level. As such, the renegotiation of distributions would only occur periodically and not be a continuous exercise.

PART 4: REGULATION IN PRACTICE

10: The Regulatory Model

Summary

- The Regulator would operate an ‘advocacy-first’ approach to regulation as the default, but with the power and mandate to intervene swiftly and boldly when necessary.
- The Regulator would have a range of powers, including a variety of strong sanctions on clubs and individuals, to deliver its licensing system.
- It would operate an escalating model of enforcement, using increasingly stronger powers and with greater involvement in club operations if certain thresholds for intervention are met.
- It would be proportionate in its approach. Regulation would adapt to the circumstances and where clubs are already well run, the Regulator would have less of a role.
- This operating model would be defined through regulatory principles, which would also ensure the Regulator operates transparently and consistently.
- Existing and emerging regulation in football risks imposing additional burdens if it overlaps with the Regulator’s system. As such, the Regulator should have the ultimate responsibility for ensuring financial sustainability in football, while also consulting with industry and overseeing industry rules within this remit to ensure coherence.
- The Regulator may wish to allow concurrent systems, or delegate responsibilities to industry bodies, in certain circumstances. It would manage this in a way that is coherent and simple for all involved, especially clubs.

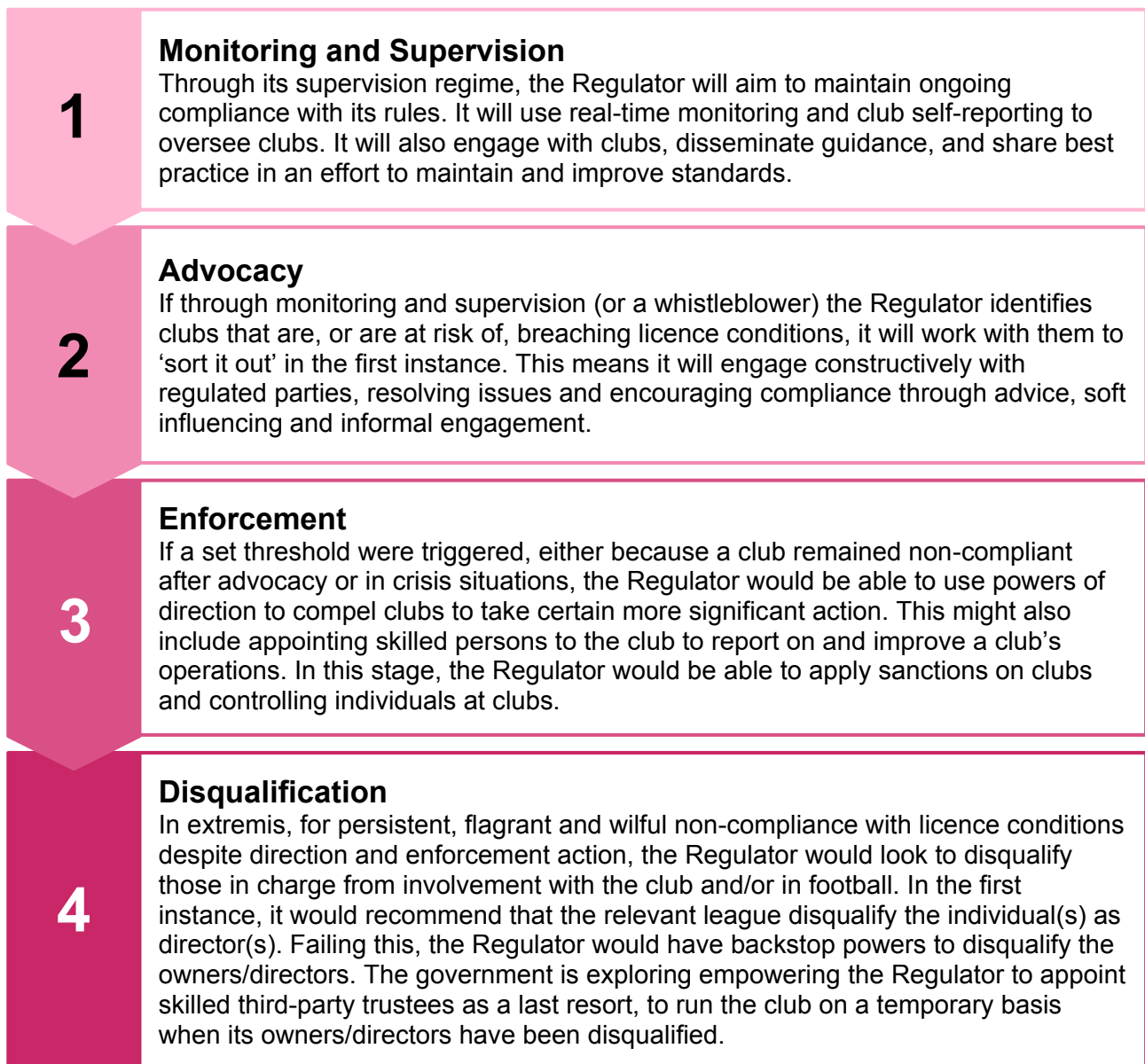
Approach to regulation and enforcement

- 10.1. The government recognises that *how* the Regulator exercises its functions in pursuit of its objectives, will be as important as the functions and objectives themselves. A clearly defined operating model will ensure that all regulated parties know what to expect.
- 10.2. The Regulator would take a participative approach to regulation as the default, aiming wherever possible to deliver its objectives through engaging constructively with clubs rather than enforcement. However, it would have the power and mandate to intervene boldly and swiftly when set thresholds have

been met to minimise the risk of harm. Any enforcement action would be evidence-based - facilitated by prior monitoring and/or investigation.

- 10.3. The Regulator's approach to regulation and enforcement would follow stages of escalating intervention, as illustrated in Figure 5. If a club remained non-compliant, the Regulator would ratchet up through these stages, and would become more directly involved in the operation of the club.

Figure 5: The Regulator's escalating approach to regulation



- 10.4. The Regulator would have the statutory powers necessary to deliver its functions and, when necessary, enforce its obligations. Checks and balances would be embedded within the system to govern its use of these powers (see *Section 11: Procedural Safeguards*). Its powers would include:

- Licensing and rule-making;
 - Monitoring and supervision;
 - Investigation and information gathering;
 - Direction and approval (e.g. pre-approval for stadium relocation);
 - Sanctions.
- 10.5. The Regulator would have the power to impose directions on clubs to take certain action. These would only be used if certain thresholds for intervention had been met, in order to address particularly urgent and significant problems, or if softer forms of advocacy had failed to address non-compliance.⁶⁵
- 10.6. We expect compliance would be the norm, as the Regulator would provide guidance on its system and expectations, and it would be in the best interests of clubs to comply in most cases. However, the Regulator would have a broad and varied suite of sanctions to enforce its licensing system if necessary. Its use of sanctions would be strong and aim to deter future non-compliance. Sanctions would only kick in if clubs repeatedly or egregiously failed to meet their obligations. These sanctions would include:
- Reputational sanctions (i.e. naming and shaming) on both clubs and controlling individuals;
 - Financial penalties on both clubs and controlling individuals;
 - Suspension or disqualification of controlling individuals from involvement in football;
 - Suspension of clubs via withdrawal of licences.
- 10.7. **The Regulator would deploy sanctions proportionate to the offence. For example, financial penalties may not be an appropriate sanction to apply to a club already in financial distress, or may be a weak deterrent to wealthy clubs or individuals. Sanctions would target the culprits (e.g. the decision makers at clubs) in isolation, with minimal undue impact on fans, club staff, and players wherever possible.**
- 10.8. The Regulator should not directly regulate on-pitch outcomes. So, the government does not believe the Regulator should have sanction powers directly related to sporting competition, such as points deductions. Sporting sanctions would be reserved for the respective leagues or the FA to apply in response to a breach of their own rules. However, the Regulator would have the ability to recommend that leagues or the FA apply sporting sanctions, and would supply any evidence it has to assist in their investigation. For example,

⁶⁵ For example, the FCA uses VREQ (voluntary requirement) and OIREQ (own initiative requirement) powers to vary permission, impose requirements, or change individuals' approvals in response to suspected serious misconduct and where harm needs to be prevented urgently.

the Regulator might provide evidence of financial strain as a result of transfer activity, and recommend that the league should consider a ban on player registrations. It would ultimately remain a decision for the league though.

- 10.9. The Regulator would hold a club's senior management accountable for the club's decisions and for compliance with regulation. Every club would be required to make it clear which individuals have significant decision-making influence at the club, and whether the owner is involved in day-to-day decisions. This means, where appropriate, it could take enforcement action against individuals as well as, or instead of, clubs.
- 10.10. Legislation will set parameters around sanctions. The Regulator would be obliged to assess the level of sanction against objective criteria, and take certain steps before imposing a penalty (e.g. issue notices). **The Regulator would also be subject to maximum limits for sanctions such as financial penalties, and individual sanctions would only be applicable in certain circumstances. We are giving further consideration to the appropriate process and maximum penalties for the Regulator. The Regulator's approach to enforcement and sanctions would be published in its guidance.**

Regulatory principles

- 10.11. Regulatory principles are basic and fundamental rules that the Regulator would be obliged to follow when discharging its functions. We have taken inspiration from the FCA's 'Principles of good regulation' which are designed to ensure the Regulator exercises its functions appropriately.⁶⁶
- 10.12. These regulatory principles would establish the Regulator's participative, evidence-based, and bold enforcement approach outlined above. They would also further define its regulatory philosophy as outlined in the proposed list in Table 3.

Table 3: The Regulator's proposed regulatory principles

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| 1. Participative | As the default, the Regulator should aim to deliver its statutory duties without formal intervention, but instead through advocacy. This means engaging constructively with clubs and steering them to compliance, wherever possible. |
| 2. Bold enforcement | When advocacy is ineffective or in critical situations, intervention and enforcement should be bold. Sanctions should be strong and aim to deter future non-compliance. |

⁶⁶ FCA, [Principles of good regulation](#).

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| 3. Evidence-based | All decisions taken by the Regulator should be evidence-led. This means it should make the case for its decisions using information and data gathered through monitoring and investigations, such that they are defensible under scrutiny. |
| 4. Senior management responsibility | Responsibility for the activities of football clubs and compliance with regulatory requirements rests collectively with the board of directors. Clubs would be required to make it clear which individuals hold board and/or senior management responsibilities, including the owner where relevant. The Regulator should hold these individuals, and the Board as a whole, to account as appropriate. |
| 5. Adaptive and context-specific | The Regulator should be flexible in its approach to regulating different clubs. This means, where appropriate, it should exercise its functions (e.g. set Specific Licence Conditions) in a way that recognises differences in the context (nature, circumstances, and objectives) of different clubs. |
| 6. Proportionality | The Regulator should ensure that any burden or restriction that it imposes on a person, club or activity is proportionate to the benefits expected as a result. It should perform a risk-based assessment, taking into account the potential for benefits and harm to any affected stakeholders. Where clubs are already well run and the risk of harm is lower, the Regulator would have less of a role. |
| 7. Efficiency and economy | The Regulator should use its resources in the most time efficient and cost efficient way possible. It should pre-empt or rectify problems as comprehensively and quickly as is reasonable and practicable. The Board of the Regulator would be accountable for delivering value for money. |
| 8. Transparency and consultation | The Regulator should exercise its functions as transparently as possible. It is important that it provides appropriate information on regulatory decisions, and should be open and accessible to the regulated population and the general public. It should publish guidance on its system. ⁶⁷ The Regulator should also consult on key decisions, particularly where these would affect fans. |
| 9. Coherence | The Regulator should ensure its requirements of clubs are simple, clear, and coherent with the wider regulatory |

⁶⁷ For example, like the FCA publishes the [FCA Handbook](#).

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| | landscape. This would provide regulatory certainty and minimise the compliance burden on clubs. |
| 10. Consistency | The Regulator should exercise its functions consistently. While it would take a proportionate and context-specific approach, it should ensure equivalent clubs are treated the same and regulation is applied consistently in response to the same circumstances, risks, and thresholds. |

Regulatory cooperation

- 10.13. In response to some of the challenges and concerns presented in the Review, the football industry has been considering how it can reform. Some of this reform is in closely related or identical areas to that which the Regulator would oversee. If these overlap with the Regulator's proposed remit, this risks confusing clubs and imposing additional burdens.
- 10.14. There needs to be clarity across the regulatory landscape and accountability for regulation, especially when problems occur. This was an issue explicitly highlighted by the Review, which found overlaps and gaps to be a key driver of bad regulatory outcomes. The roles and responsibilities of other bodies within football should be clearly defined to ensure these overlaps and gaps do not persist under the new Regulator's system. The Regulator should not simply layer additional requirements on clubs.
- 10.15. Therefore, the Regulator would have the primary responsibility for ensuring financial sustainability and resilience in English professional men's football. This means it would be ultimately responsible for achieving this objective, and accountable for any regulation related to the four Threshold Conditions of its licensing system.
- 10.16. Where rules of industry bodies stray into the Regulator's remit, the Regulator would have oversight to ensure that regulations are coherent and effective. It would work cooperatively with the industry to avoid duplication, conflict, and burdens. For example, leagues should consult the Regulator on planned changes to their rules if they think they might overlap with the Regulator's system. The Regulator would also engage with the industry when designing rules, and consult with the industry on certain decisions (see *Section 11: Procedural Safeguards*).
- 10.17. This way, both the Regulator and industry would have the space to act within their own remits and deliver on their own objectives. For example, domestic leagues could still apply financial rules aimed at delivering fair competition, but the Regulator might take a view if certain rules risked cutting across its

own financial resilience regulation. If cooperation does not work, the Regulator would need powers to enforce the boundaries of respective rules and responsibilities.

- 10.18. Regulatory issues that fall outside of the Regulator's remit would remain the sole responsibility of football's existing bodies domestically and internationally. For example, the Regulator would have no oversight of laws of the game, fixture scheduling etc.
- 10.19. Some domestic clubs are bound by the rules of non-domestic industry bodies such as UEFA and FIFA.⁶⁸ The Regulator should still aim to manage any overlaps cooperatively, but it would ultimately have to be reactive to these rules. The government expects the Regulator to maintain a healthy relationship with these external bodies, so that it can communicate concerns and jointly coordinate rules as appropriate.
- 10.20. The government recognises that there may be merit in sharing or delegating regulatory responsibilities in certain circumstances. For example, where leagues already have capability, are best placed, and can be trusted to perform certain regulatory functions. If responsibilities are coordinated correctly, the industry could help the Regulator to deliver some aspects of regulation more efficiently and effectively.
- 10.21. Therefore, we are considering whether the Regulator should have the statutory power to delegate some specific regulatory functions and responsibilities if it considers this is in the best interests of football. Crucially, the Regulator would need to be reassured that the industry body would make decisions independently of influence from clubs. For example, the proposals in *Section 8: Fan Engagement and Club Heritage* outline that the FA should have responsibility for making and enforcing some heritage protection rules. However, the Regulator would reserve the right to implement its own rules at a later stage if it deems it necessary to continue protecting heritage for fans.

Cooperation outside of football

- 10.22. We expect the Regulator would have good relationships with other regulators, government agencies, and bodies more widely across the economy. Two-way flows of information and advice with bodies such as the Financial Conduct Authority, National Crime Agency, HMRC, and Information Commissioner's Office, would help improve regulatory outcomes for all parties.

⁶⁸ UEFA's rules would only affect up to seven Premier League clubs at any one time. However, some additional clubs may feel softly bound by them, in the expectation that they might compete in UEFA competitions in the near future.

11: Procedural Safeguards

Summary

- Checks and balances would be embedded in the design of the Regulator and its system to ensure it is using its powers in a fair and appropriate way.
- In addition to its duties and principles, the Regulator would be subject to legal processes to govern how it uses its powers. These would include requirements to consult, and to meet set thresholds to intervene.
- The Regulator would use a Regulatory Decisions Committee to advise on certain key regulatory decisions. This would introduce expert scrutiny to ensure a more robust decision-making process.
- Although operationally independent of the government, as with other regulators, the Regulator would be ultimately accountable to Ministers.
- Regulated parties would have the right to appeal the Regulator's decisions to a court or tribunal. The majority of these would be on judicial review principles but, in certain rare circumstances, there would be a limited right to appeal a decision on the merits.

- 11.1 The Regulator would have a range of strong powers and a bold mandate. So it will be important to embed the appropriate safeguards into its system. These would ensure the Regulator is using its powers appropriately, is making considered evidence-led decisions, and is accountable for its actions.
- 11.2 The checks and balances that would apply to the Regulator can broadly be grouped into the five categories in Table 4. Each of these will be crucial to the success of the Regulator, the risk of any unintended consequences, and the burden regulation may place on football. While significant reform is needed in the industry, it is equally important to protect against over-regulation that might harm the successful commercial product that is English football.

Table 4: The Regulator's checks and balances

Duties, principles, and Government guidance

The Regulator's actions would be guided by its statutory duties and regulatory principles. These would place natural checks and balances on the way the Regulator operates. For example, its principle of proportionality and secondary duty to have regard to domestic competition would place important controls on when and how it intervenes. It would not strive for

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| | <p>sustainability at all costs, if the potential burden on clubs or the risk of harming competition was too high.</p> <p>The Regulator would also have regard to the government's guidance when exercising its functions. Though this guidance would be non-binding, it could further govern the Regulator's approach.</p> |
| Processes | <p>The Regulator would be required to follow set legal processes when exercising its functions. For example, it would have a duty to consult on certain decisions, and threshold tests would have to be met before it can take certain action.</p> |
| Structures | <p>There would be structural safeguards built into the design of the Regulator. For example, a separation of decision makers would mean certain predetermined key decisions are taken by experts with 'fresh eyes'.</p> |
| Accountability | <p>The Regulator should be accountable for its decisions and performance against its duties. This means its decisions should be subject to appropriate scrutiny and, if necessary, it should have to answer to Ministers (and then possibly Parliament) for its actions.</p> |
| Rights to appeal | <p>Affected parties would have the right to appeal key decisions made by the Regulator, to challenge that they were taken in line with public law principles, via a fair process and within a proper interpretation of the law.</p> <p>There may also be an internal review process for affected parties to contest decisions without going to the courts.</p> |

Government guidance

- 11.3 The government is considering issuing non-binding guidance to the Regulator alongside legislation, to support the Regulator in achieving its objectives. The guidance would provide additional instruction around how the government intends the Regulator to operate its system, without interfering with the independence of the Regulator.
- 11.4 It would be a statutory requirement for the Regulator to 'have regard to' this guidance when exercising its functions. This means it would be expected, but

not obliged, to act in accordance with the guidance. This is crucial in maintaining independence from ongoing political influence.

Processes

Consultation

- 11.5 The Regulator would have a duty to consult affected stakeholders ahead of taking certain key decisions or actions. These stakeholders could include: regulated clubs; supporter groups; industry bodies (e.g. the FA, domestic leagues, FIFA, UEFA); and the government.
- 11.6 The government is giving further consideration to the specific decisions and circumstances in which the Regulator would be obliged to consult, and with which parties. The form of consultation would be proportionate; it would not necessarily require a formal public consultation in every circumstance.
- 11.7 The Regulator would need to have due regard to the outcome of any consultation, but would not be obliged to act in accordance with it. The aim of consultation is to ensure the views of all affected parties are heard and taken into account. The Regulator should be trusted as the expert to make an independent decision based on these views and all the evidence.

Thresholds for intervention

- 11.8 In order to take certain action, such as escalating from advocacy to enforcement, the Regulator would have to be content that a set threshold for intervention has been met. These thresholds would be tests established in statute. They would ensure decisions are taken consistently and based on evidence. The government is giving further consideration to the exact thresholds for intervention, and which specific actions they should apply to.

Example threshold for intervention

Box 9

The Regulator would have to meet a set threshold in order to impose a direction on a club. For example, this might be to satisfy three tests:

- i. Is the club in breach of a Threshold Condition of its licence?
- ii. Has the club failed to rectify a breach following reasonable efforts by the Regulator to steer it towards compliance?
- iii. Would a direction advance one of the Regulator's primary duties?

Statutory deadlines

11.9 The Regulator would be subject to statutory deadlines for certain processes it undertakes. For example, the licensing of a club, or testing of an owner. These would inject expediency into the Regulator's system, and provide greater certainty for the industry. In some cases, these deadlines would be partly governed by football-specific constraints such as playing seasons and transfer windows. The government is giving further consideration to appropriate deadlines for key regulatory functions, including for when the Regulator would intervene on financial distributions.

Structures

Separation of decision makers

11.10 The Regulator would have an Expert Advisory Panel, appointed by the Secretary of State for Culture, Media and Sport and separate from the Board. Panel members would have expertise across a range of sectors and disciplines, including football. The Board would be able to draw on the Panel to form a Regulatory Decisions Committee (RDC) to advise on certain key or complex regulatory decisions, such as enforcement action.⁶⁹

11.11 This would ensure the correct experts are advising on the relevant issues, and manage the Regulator's capacity to take decisions. The Board (also appointed by the Secretary of State) would take strategic decisions, and the RDC would oversee certain technical regulatory decisions. While the Board would have the power to constitute the RDC as appropriate, the government is giving further consideration to whether certain issues might require, in statute, the use of the RDC before a final decision is taken.

11.12 This separation would also introduce internal scrutiny and challenge, since the autonomous RDC would approach an issue with fresh eyes. This would ensure a more robust and considered decision-making process, and provide greater certainty to the Regulator's decisions.

Accountability

11.13 It is important that the Regulator can be held accountable for its decisions. This would create the incentives for the Regulator to act appropriately, and ensure changes can be made if it is not fulfilling its statutory responsibilities.

⁶⁹ There is precedent for this proposal. For example, the Competition and Markets Authority (CMA) draws on the CMA Panel to act as fresh decision-makers in phase 2 market investigations, merger inquiries and regulatory appeals. Similarly the FCA Board has a Regulatory Decisions Committee to take contested enforcement decisions on behalf of the FCA.

- 11.14 Scrutiny from the public, industry, and government are important ways through which the Regulator would be held to account. The requirement for transparency, including through publication, would enable this scrutiny.
- The Regulator would be expected to publish detailed guidance on its regulatory system, including its rules and enforcement policy.⁷⁰
 - The Regulator would be required to publish an annual report detailing its operational and financial performance against key performance indicators set in legislation. These would include that it is fulfilling its statutory duties and delivering value for money. The report would be laid in Parliament, as is done with other statutory regulators, and so the Regulator's performance could be scrutinised, for example by the Culture, Media and Sport Select Committee.
- 11.15 If an affected regulated party felt that the Regulator had overreached beyond its statutory remit through a decision/action it had taken, the affected party would have a right to appeal the decision to a court or tribunal (see paragraphs 11.18 to 11.24).
- 11.16 As is the case with other public bodies, if the government is not content with the performance of the Regulator, Ministers will have powers to make changes. The Secretary of State for Culture, Media and Sport would have the levers to effect change by:
- appointing new Board and/or panel members; or
 - directing the Board to replace the Regulator's executive leadership.
- 11.17 These are common powers which ensure changes can be made at public bodies if necessary but do not open the door to ongoing political interference in regulation.

Appeals

- 11.18 The majority of the decisions of the Regulator would be appealable on judicial review principles.⁷¹ The opportunity to challenge the Regulator's decisions before an independent court or tribunal would give all parties confidence that the Regulator is acting fairly and within its powers. A legal challenge would be a remedy of last resort for regulated parties if they considered that alternative complaints procedures were not sufficient (see paragraphs 11.23 to 11.24).

⁷⁰ See for example, the [FCA's handbook](#).

⁷¹ This approach would be consistent with the approach commonly taken in the regimes of other economic regulators. For example, the CMA's markets regime and Ofcom's Significant Market Power regime.

- 11.19 Deciding an appeal by applying judicial review principles means that the court or tribunal reviewing the decision would focus on how the decision was made - whether the public body acted within its powers, applied proper reasoning having taken into account necessary considerations, and followed due process - rather than hearing the facts ('merits') of the case again.
- 11.20 While it is important that the Regulator's decisions are subject to an appropriate level of scrutiny, this must be balanced against the risk of those decisions being constantly challenged and its system being undermined. It is the government's view that a judicial review standard of appeal would:
- Provide effective oversight and assurance of the Regulator's decision-making process and judgement, if needed.
 - Allow a focused court appeals process, minimising delays to the final resolution of decisions.
 - Ensure appropriate trust and deference is given to the Regulator as an expert regulator best placed to make decisions of technical judgement.
- 11.21 The government recognises that, in some circumstances, it may be appropriate for the court/tribunal to go further than only reviewing the process through which a decision was taken. This situation is most likely to arise in appeals against more punitive regulatory sanctions. In these circumstances, there may be a limited right to appeal specific decisions on the merits.
- 11.22 The government is giving further consideration to the appropriate appeals standard for the full range of the Regulator's decisions - in particular, determining which decisions might be subject to a full merits review. We are also considering which court or tribunal is best placed to hear the claims.

Internal review

- 11.23 In addition to appeals to the courts, we are considering including an internal review function for the Regulator. This would allow affected parties to request that fresh decision makers within the Regulator re-evaluate contested decisions.
- 11.24 This would provide an alternative complaints procedure to avoid clubs immediately opting for litigation. This additional step ahead of clubs going to the courts would streamline the overall appeals process. This would support the Regulator to tackle harms swiftly and without undue hindrance, and minimise burdens on all parties.

12: Transition and Shadow Regulation

Summary

- The proposed reforms represent a significant change for the industry. The Regulator would need to take steps to ensure a smooth transition to the new system. The Regulator will need to be resourced and operationally ready, and clubs would need support to become compliant with new rules.
- The Regulator would undertake a State of Football study, to better understand the market and its individual clubs. This would identify problems, and inform the detailed design of the Regulator's system.
- The Regulator would incorporate transitional arrangements, such as 'grace periods' and phased-in rules. It would work with clubs to minimise early non-compliance.
- The government is actively exploring establishing a non-statutory shadow regulator to begin the work of the Regulator in advance of legislation coming into force.
- The government is also clear that the industry can continue to take steps towards reform itself, prior to the Regulator becoming operational. These reforms could help steer clubs towards financial sustainability and ease the transition to the Regulator's new system.

- 12.1 The introduction of an independent Regulator would be a significant and novel development in football. The industry would need time and support to implement required changes and become compliant with the new system.
- 12.2 The Regulator would also need time to become fully operational and fine-tune its system. This would involve designing and consulting on new detailed rules, including the new Football Club Corporate Governance Code and owners' and directors' tests. To achieve this, it would need to be ready with the resources, skills, and knowledge on day one. The Regulator would engage closely with the industry when designing the details of its system and proposed rules.
- 12.3 The government believes there should be certain arrangements in place to facilitate a smooth transition period. This would include a State of Football study, and transitional provisions within the Regulator's system. We are also considering whether it would be appropriate to establish a non-statutory Shadow Regulator in advance of legislation.

State of Football study

- 12.4 As an initial step, the Regulator (or a Shadow Regulator - see paragraphs 12.10 to 12.12) would undertake a State of Football analysis. This would be a market study type exercise, taking inspiration from the CMA's State of Competition reports,⁷² where the Regulator would take an in-depth look into the industry with its objectives in mind. In addition to understanding the finances and business models of clubs on a micro level, the study would help the Regulator assess the health of the game and the scale of its problems at a macro level.
- 12.5 This study would provide a forensic understanding of the market, on which the Regulator would base the detailed design of its system. In particular, it would inform:
- the design of detailed rules that would form the basis for Specific Licence Conditions;
 - the risk-based assessments of clubs, and accordingly which proportionate Specific Licence Conditions should apply;
 - the design of the Football Club Corporate Governance Code; and
 - the design of the owners' and directors' tests.
- 12.6 The Regulator would undertake a State of Football study with regularity in the future, and would publish the report each time. This would form part of ongoing monitoring, including evaluation of the Regulator's own system.

Transitional provisions

- 12.7 The Regulator would have some discretion in its approach to implementation, reflecting its view of a reasonable timeframe for compliance. However, it should seek to strike a balance between i) acting quickly to address harms, ii) ensuring clubs have sufficient time to put changes into effect, and iii) managing any initial disruption to the market when the new regulatory system is introduced.
- 12.8 The Regulator would include provisions in its system specifically aimed at 'phasing in' implementation. For example, these might include:
- sequenced functions, where the Regulator might prioritise certain aspects of its system and stagger the introduction of others;
 - 'grace periods', where clubs are given time to become fully compliant with specific rules;

⁷² CMA, [State of UK competition report 2022](#).

- phased-in rules, where specific requirements ratchet up over time;⁷³
- appropriate leeway for football-specific constraints (e.g. fixed-term player contracts, transfer windows, football seasons, promotions or relegations).

12.9 As outlined in *Section 4: The Regulatory Framework*, there would be a natural phase-in when clubs apply for a licence. Clubs would only have to demonstrate their intent to comply (i.e. that they are ready, willing, and able to comply) with Threshold Conditions when applying for a licence, rather than be fully compliant on day one.

Shadow regulation

12.10 One way of best supporting transition would be to create a non-statutory, or 'shadow', regulator. As it would be established prior to and without legislation, the Shadow Regulator would not have the full proposed statutory powers of the new Regulator. However, it could begin to operationalise the system and prepare the industry for regulation at an early stage. Football would be able to share information to help shape the design of the system. This would enable both the statutory Regulator and regulated parties to 'hit the ground running' once statutory regulation is introduced. This is an approach that has been used for other regulators.⁷⁴

12.11 The Shadow Regulator would largely focus on research and preparatory work. It may also start to guide clubs regarding expectations and requirements for compliance with the new statutory system. For example, a shadow regulator's responsibilities could include:

- **State of Football study** - subject to being able to gather the appropriate information, the shadow regulator could conduct the State of Football analysis in advance of legislation.
- **Determine the details of the system** - begin to determine the detailed rules that will form the basis of Specific Licence Conditions, the design of aspects like the Football Club Corporate Governance Code, and how all of these would be phased in.
- **Engagement work** - preparing clubs and leagues for regulation and the transition to new rules.
- **Preparatory work** - provisional work for licensing assessments and owners' and directors' tests.

⁷³ For example, UEFA's new Financial Sustainability regulations will follow a gradual transition path, with the squad cost threshold falling from 90% to 70% of revenue over the course of three seasons. UEFA, [Explainer: UEFA's new Financial Sustainability regulations](#), April 2022.

⁷⁴ For example, the Digital Markets Unit was established in 'shadow' form in the CMA as of 2021.

- **Operational work** - practical set up of the Regulator so that it is ready to be operational on day one of the new statutory system.

12.12 The government is actively exploring establishing a shadow regulator. We will evaluate the case for shadow regulation, alongside resource, timing, and deliverability considerations.

Industry reform prior to legislation

12.13 The government is committed to establishing the independent Regulator as soon as Parliamentary time allows. The legislative process, and the time it takes to set up a regulator, means this will not happen overnight. That is why the government is encouraging the industry to take steps towards reforming its own self-regulatory systems in the meantime, before the Regulator provides a backstop with legal underpinning.

12.14 The impending introduction of the new Regulator should not preclude football from taking action now. Improvements in areas such as financial regulation and owners' and directors' tests, prior to the Regulator becoming operational, can begin to move the industry in the right direction and steer clubs towards more sustainable futures. Such reforms by the leagues may also help the industry transition to the new system post-legislation, both as the Regulator may be able to fold these reforms into its own system and as clubs may find the step-change to the new system easier.

12.15 The government will continue to engage with the industry on the reforms it could introduce. The proposals in this White Paper should serve as an indication of what improvements the government believes are needed.

PART 5: NON-REGULATORY REFORMS

13: Government's Broader Strategy and Work with the Industry

Summary

- Some issues flagged in the Review fall outside of the Regulator's immediate scope. These include women's football, player welfare, equality, diversity and inclusion, agent regulation, and alcohol at football.
- Through ongoing liaison with football stakeholders, the government will continue to drive industry action in these areas for the ongoing development of the men's and women's games, at both elite and grassroots levels.

13.1 This White Paper has outlined that regulatory intervention is necessary to tackle the predominant issue threatening football - a lack of sustainability and resilience. However, there were a number of other key issues flagged in the Review related to the broader health and development of the game, which will fall outside of the Regulator's immediate scope.

13.2 The government has continued to engage extensively with the FA, the leagues, the FSA and the PFA since the Government Response to maintain momentum on these crucial matters. While good progress has been made on some issues, there remain areas which require continued work.

Areas for focus

13.3 Part 5 of this White Paper will cover, in detail:

- **Women's Football** - where the Future of Women's Football Review is in progress, chaired by Karen Carney MBE.
- **Player Welfare** - where the industry continues to push for progress, but gaps in independent youth support provisions remain.
- **Equality, Diversity and Inclusion (EDI)** - where the football leagues and the FA are placing increasing focus and resource, with an agreed intent to create a transparent, inclusive environment both on and off the pitch.
- **Agent Regulation** - where the government will continue to liaise with both the FA and FIFA on incoming regulations on agent activity.
- **Alcohol and Football** - where the government acknowledges the case for pilots made in the Review, recognises the many viewpoints on this complex issue, and will continue speaking to stakeholders on the way forward.

14: Women's Football

Summary

- The independent review of the Future of Women's Football launched in September 2022.
- The review's report is expected in 2023, and the government will respond afterwards.

- 14.1 The England Women's team's spectacular performance in the 2022 European Women's Championship shows how far the top of the women's game has come. While it is right that we celebrate and reflect on that success, it has only highlighted the need for an equal emphasis on key issues facing the women's game - including improving participation, employment opportunities, commercial investment, and visibility in the media.
- 14.2 In the summer, the government announced the Chair and Terms of Reference for the Future of Women's Football Review.⁷⁵ Former England and Great Britain footballer Karen Carney MBE is chairing the in-depth review into the future of domestic women's football.
- 14.3 Within the review, there is a particular focus on:
- Assessing the potential audience reach and growth of the game;
 - Examining the financial health of the game and its financial sustainability for the long-term;
 - Examining the structures within women's football.
- 14.4 A full report is expected to be published this year, with the government formally responding afterwards.
- 14.5 The Regulator will be designed to regulate the top five tiers of English men's professional football. However, in many places there is clear read-across and overlap with the women's game via affiliated teams. The government is giving further consideration to these areas of overlap and how these can be managed for the benefit of all impacted clubs.
- 14.6 Improving women's and girls' access to sport is fundamental to our ambition. The government's sport strategy will set out our ambition to increase participation, visibility and investment into all forms of women's sport. This thorough review of women's football is central to that ambition.

⁷⁵ [Future of Women's Football review - terms of reference](#), September 2022.

15: Player Welfare

Summary

- Support mechanisms for players, particularly in academies, have come a long way since the introduction of the Elite Player Performance Plan.
- A gap remains in the availability of independent support and advice for players in academies who don't yet qualify for PFA membership.
- The football leagues and the FA should work together to develop a standardised and agreed programme of support for *all* academy players.

The problem

- 15.1 As an urgent matter, the welfare of players exiting the game needs to be better protected - particularly at a young age.
- 15.2 As the number of players being recruited into professional academies continues to expand, a cultural issue remains where the dreams of young footballers are made to seem achievable, when in reality, very few will go on to secure professional football contracts.
- 15.3 The Elite Player Performance Plan (EPPP)⁷⁶ is a youth development system with the ultimate aim of increasing the number of home grown players progressing through football academies. The EPPP is delivered through four key functions: Games Programme, Education, Coaching, and Elite Performance. Since its introduction in 2012, player care resources and services have significantly improved. The progress and modernisation of service offerings in areas such as education and welfare are welcomed.
- 15.4 However, there remains a fundamental issue in that there is a clear conflict of interest where player and family support services are led by those whose ultimate objective is the footballing success of each academy player.
- 15.5 Children playing in football academies do not qualify for PFA membership, and the package of independent support that this includes, until they become scholars at their clubs at age 16. This means that in many cases, children will have progressed through football academies with no form of independent representation or support. This ultimately means that as many key decisions are taken by players and their families, these will be taken without a full understanding of the contractual obligations involved.

⁷⁶ Premier League, [Elite Player Performance Plan](#).

- 15.6 The PFA is able to provide an element of independent support and advice to academy players, through its ongoing collaboration with individual clubs. However, as this offer of support is not mandated in any way, clubs will ultimately remain in control of the degree to which their players are aware of the independent support that organisations such as the PFA can offer. The independent support offered by the PFA is therefore applied inconsistently and is dependent on individual employer/club engagement.

The solution

- 15.7 We are therefore recommending that the football leagues and the FA seek to address this issue, and work together to develop a consistent programme of support which allows all academy players to access an offering of independent support and advice as and when required.
- 15.8 This programme should formalise the delivery of these independent support mechanisms, and should be delivered in a standardised manner across the football pyramid as agreed by the football leagues, the FA, and clubs.
- 15.9 There is evidence to suggest that demand for independently led support channels has increased in recent years. It is therefore essential that, as the number of children entering academies continues to grow, a consistent programme of independent support exists, so that all academy players and their families have a clear understanding of the services available to them and can access this without the involvement of clubs.

Rationale behind this solution

- 15.10 The Review noted that the wellbeing and advisory support for players in academies should be led independently of clubs and leagues, and the government agrees with this recommendation.
- 15.11 The PFA already delivers a significant amount of support to academy players and their families. However, as mentioned above, access to these offerings is ultimately at the discretion of clubs. The introduction of an established programme of independent support for younger players should ensure that all children progressing through academies are aware of the independent support available to them, and that this support is delivered on a consistent basis across all clubs and leagues.
- 15.12 The government will look to convene the football leagues, the FA and the PFA in early 2023 to understand progress in this space.

16: Equality, Diversity and Inclusion (EDI)

Summary

- We fully support football clubs' efforts in their current EDI commitments which look to ensure they reflect their local football communities. We welcome all action by clubs in improving EDI through practices which seek to provide equity and fair opportunities for all.
- The government will monitor progress in this space as the football leagues continue to drive measures within clubs, shifting the culture in football to be more diverse, fully inclusive, and reflective of the communities that clubs serve.

The background

- 16.1 The appeal of English football for those who want to watch, play, support or work within the game transcends all characteristics. Therefore, football should be open and accessible to all to enjoy and participate in, free from discrimination or disadvantage.
- 16.2 The Review identified it is time for change and recommended that football needs to improve equality, diversity and inclusion in clubs. This is not only to address organisational diversity leading to better corporate culture and performance,⁷⁷ but also to increase transparency and accountability in this space. The Review also highlighted the need for greater consistency across EDI objectives, and that the lack of data on reports of discrimination should be addressed. The government's response to the Review accepted the need for action and supported clubs' commitment to improvements in this space.
- 16.3 The government supports the approach that clubs should be transparent in their EDI objectives and progress both on and off the pitch. We believe that clubs' actions should focus on producing outcomes which:
- reflect the local football community of the club;
 - widen opportunities for all underrepresented groups (including those from lower socioeconomic backgrounds);
 - promote women's football;
 - improve accessibility for those with disabilities;
 - combat racism, homophobia, and other abuse.

⁷⁷ FRC (2021) [Board Diversity and Effectiveness in FTSE 350 Companies](#).

Government recommendations to support a solution

- 16.4 The government supports improving EDI in football clubs through practices which seek to provide equity and fair opportunities for all. Regardless of status, background or characteristics there should be support and equal access throughout clubs, with a focus on developing talent within underrepresented groups.
- 16.5 Success in achieving fairer and more diverse outcomes is often attributed to greater transparency reporting and internal culture changes which garner and promote inclusion while taking a zero tolerance policy to discrimination and prejudice.
- 16.6 Kick It Out, an organisation that aims to end all forms of discrimination in football, is running a pilot programme to improve the transparency of reporting across football clubs on incidents of racism and discrimination.⁷⁸ The aim is to work with professional leagues and clubs to simplify and centralise reports of discriminatory issues, to drive change in behaviours.

Football leagues and the FA as part of the solution

- 16.7 The football leagues are making headway in supporting clubs to implement measures. The EFL's mandatory Equality Code of Practice⁷⁹ requires all EFL clubs to focus on priority groups in which under-representation exists (those characteristics protected under the Equality Act 2010). The Premier League Equality, Diversity and Inclusion Standard (PLEDIS) sets a mandatory framework for all Premier League clubs to follow.⁸⁰ The standards set by both the Premier League and the EFL are supported in parallel by the FA's Football Leadership Diversity Code (FLDC).⁸¹
- 16.8 The industry's enhanced requirements set out clear, coherent and proportionate approaches to improving equality and diversity. Through advocacy and support measures provided by the football leagues and the FA, as a matter of good practice clubs should continue to comply with the tiered standards and practices set. This includes being held to account through independent assessment by the industry.
- 16.9 There is an improving picture in football with positive action being taken. However, the football leagues, the FA and government recognise that there is

⁷⁸ Kick It Out, [Report It](#).

⁷⁹ EFL, [Equality Code Of Practice](#).

⁸⁰ Premier League, [Championing equality, diversity and inclusion in the Premier League](#).

⁸¹ The FA, [Football Leadership Diversity Code - Professional Clubs - Inclusion and Anti-Discrimination - Rules & Regulations](#).

still work to do. For example, the recent results published from the second year of the FA's FLDC showed clubs are missing six of the eight targets, including senior leadership and team operations roles across both race and gender.

- 16.10 Football clubs should continue to work closely with the FA, Premier League and the EFL to drive improvements in EDI measures, developing standards along with best practice to effect real change. The football authorities should own the strategies they continue to pursue, maintaining current momentum, so they can be held accountable for them by their stakeholders.

Next steps

- 16.11 As we take this White Paper forward, the government will continue to engage with the football leagues, the FA and civil society organisations to monitor transparency and progress in this space. We will set up roundtables with the industry over the coming months to maintain the focus in this area and drive forward progress on the initiatives across the game.

17: Agent Regulation

Summary

- The activity of football agents continues to be a significant contributor to the financial pressures on English football.
- The Review recommended that an international and game-wide solution would be preferable to any domestic regulatory attempt to resolve this issue.
- FIFA has now proposed reforms on the regulation of agents to its member associations.

The problem

- 17.1 English football is currently the world's biggest market for football agents. As noted in the Review, spending by football clubs on agents has continued to increase over the last ten years. Between 2011 and 2020, English football clubs spent \$919 million on intermediary fees⁸². This record amount shows how the activity of agents acts as an inflationary pressure on club finances.
- 17.2 The Review recognised that there have been real difficulties encountered by domestic and international governing bodies in trying to regulate agents. It recommended that an international, game-wide solution would be preferable to any attempt by the Regulator to regulate agents.

The solution

- 17.3 FIFA has recognised the need for better international regulation of agents and so has proposed a number of reforms to its member associations, which includes a cap on agent commissions. These reforms will bring greater transparency to transfers and reduce excesses that have sometimes seen agents being paid more for negotiating a deal than players received in wages.
- 17.4 FIFA's member associations will retain the ability to introduce stricter requirements on agents than those stipulated in FIFA's regulations. DCMS officials will work closely with the FA when this opportunity arises to ensure that any national agent regulations are fit for purpose. This may include a focus on the representation of youth and academy players.
- 17.5 The government will continue to work with the FA and FIFA to track the implementation of these regulatory reforms, which is due to begin in 2023.

⁸² FIFA, [Ten Years of International Transfers \(2011-20\)](#), May 2021.

18: Alcohol and Football

Summary

- The government acknowledges the case for pilots in the lower leagues made in the Review, and recognises the many viewpoints on this complex issue. We will continue speaking to stakeholders on a way forward.

The problem

- 18.1 The Review suggested that relaxing the current rules on the sale of alcohol in sight of the pitch for clubs in the National League and League Two might provide a regular and sustainable income stream for those clubs. Evidence to the Review from the EFL suggested a loss of approximately £184,000 per League Two club as a result of not being able to sell alcohol.⁸³
- 18.2 In the Government Response, the government accepted the recommendation to review the Sporting Events (Control of Alcohol etc.) Act 1985. Working with stakeholders from across football, including surveying fans, this review would allow the government to assess the interaction between alcohol and football in light of all the evidence. The Government Response also agreed to consider the case for pilots of the sale of alcohol in sight of the pitch, and whether they might be appropriate in the lower leagues as the review takes place.
- 18.3 Since the Government Response was published, the government has heard evidence and stakeholder testimony both for and against changes to the current arrangements, including evidence to the Casey Review, linking recent incidents of fan disorder to the consumption of alcohol. There is therefore a need to balance the potential commercial benefits of alcohol sales in the lower leagues with concerns around safety and disorder.

The next steps

- 18.4 The measures set out in this White Paper will improve the financial health of the football pyramid as a whole. This may provide a more reliable improvement to the finances of clubs than changing the current arrangements on the sale of alcohol. However, while the government acknowledges the case for pilots made in the Review and recognises the many viewpoints on this complex issue, we will continue speaking to stakeholders on the way forward - including the EFL, Football Supporters' Association, Home Office, UK Football Policing Unit, and the Sports Grounds Safety Authority.

⁸³ EFL submission to the Fan-Led Review, October 2021.

PART 6: CONCLUSION AND NEXT STEPS

19: Conclusion

- 19.1 Our 2019 manifesto commitment to a fan-led review of football was a critical milestone in the history of our national sport. In 2021, following the attempted European Super League breakaway, we took decisive action to kick start that process and last year, we accepted the Review's 10 strategic recommendations. This White Paper sets out the government's commitment to making that reform a reality, by establishing an independent Regulator when Parliamentary time allows.
- 19.2 When a club is managed poorly, gets into financial difficulty recklessly chasing unaffordable ambitions, or becomes the plaything of the rich and powerful, the impact can be felt right across our towns and villages. Recent events have demonstrated that the long-term sustainability of clubs cannot be taken for granted, and that it is fans that suffer most when the worst happens. That is why, by introducing the Regulator, the government's ambition is to deliver sustainable professional football clubs that are well run, resilient, and engaged with their fans.
- 19.3 The first ever independent Regulator of football will act to reduce the likelihood of club financial failure. On the rare occasion that problems do occur, it would be best placed to step in to minimise disruption to fans, and would aim to prevent any club from ever being lost entirely from its community.
- 19.4 While this ongoing sustainability is critical, the government is resolute that the 'on-field' product should also remain best in class. English football must remain the pinnacle of the game, continuing to attract the best talent, global audiences, sponsorship, broadcasting and investment opportunities, and unrivalled fan experience. English football is already a significant force for good in promoting the UK abroad; now we must make sure it continues to deliver for its fans and communities at home too.
- 19.5 Ultimately, the Regulator has been designed to deliver a shift in culture that puts fans back at the heart of the game. Football clubs are vital community assets that long outlive any owners, directors, players, or managers. As such, those clubs and the wider football pyramid should always function in the interests of their most important and longest-standing stakeholders - their fans and the local communities they are a part of.

- 19.6 While the Review addressed concerns relating to men’s professional football, the government is equally committed to identifying how best to support women’s football, and the unique challenges it faces. The independent review of the Future of Women’s Football was launched in September 2022, with its report expected in 2023. The government will respond afterwards.
- 19.7 **Football is nothing without its fans. That is why we are intervening now, before it is too late, to set football back onto a sustainable footing and put fans back at the heart of the beautiful game. This next bold step in the evolution of English football will ensure, for the first time since the very first club was established 165 years ago, that the proper protections are in place around our national sport for generations to come.**

20: Next Steps and Plans for Consultation

Engagement and Targeted Consultation

- 20.1 The Review offered a unique opportunity to understand the views and concerns of stakeholders across football and beyond. More than 20,000 fans responded to a survey and the panel heard over 100 hours of evidence. Since the Review, the government has continued to work closely with many of these stakeholders as we have developed the proposals in this White Paper. As we now move to deliver the proposed reforms, we remain committed to a cooperative approach as the best way to ensure a coherent and effective model of regulation that works for football.
- 20.2 We are clear that stakeholders should have a part in shaping the future of football, from fans and clubs to leagues and industry bodies. However, we are conscious of the need to balance this with moving at pace to deliver much-needed reform. This White Paper has clearly set out that football is on a dangerous trajectory, and action is needed sooner rather than later.
- 20.3 The government will now go through a process of targeted engagement and focused consultation with selected stakeholders on the key tenets of reform set out in this White Paper. This process will include:
- i. inviting comments and follow up discussions with select stakeholders, focusing on the model for regulation, including financial regulation and reformed tests for club owners;
 - ii. setting up panel discussions with key stakeholders on both the regulatory and broader reform proposals.
- 20.4 This targeted consultation will take place in early 2023, following the publication of this White Paper, and inform the development of our final proposals for legislation. Alongside this, we will continue to draw on advice from legal, regulatory and industry experts.

Future Legislation

- 20.5 The government will bring forward legislation when Parliamentary time allows, to put in statute the key principles of the regulatory system.

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2023 (*)

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European Superleague Company SL

v

Fédération internationale de football association (FIFA),

Union of European Football Associations (UEFA),

intervening parties:

A22 Sports Management SL,

Real Federación Española de Fútbol (RFEF),

Liga Nacional de Fútbol Profesional (LNFP),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe and O. Spineanu-Matei, Presidents of Chambers, J.-C. Bonichot, M. Safjan, L.S. Rossi, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, J. Passer (Rapporteur) and M. Gavalec, Judges,

Advocate General: A. Rantos,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 and 12 July 2022,

after considering the observations submitted on behalf of:

- European Superleague Company SL, by J.-L. Dupont, avocat, B. Irissarry Robina and M. Odriozola Alén, abogados,
- the Fédération internationale de football association (FIFA), by J.M. Baño Fos, abogado, M. Hoskins, Barrister, and A. Pascual Morcillo, abogado,
- the Union of European Football Associations (UEFA), by H. Brokelmann, abogado, B. Keane, avocat, S. Love, Barrister, D. Slater and D. Waelbroeck, avocats,
- A22 Sports Management SL, by L.A. Alonso Díez, F. Giménez-Alvear Gutiérrez-Maturana, F. Irurzun Montoro, abogados, and M. Sánchez-Puelles González-Carvajal, procurador,
- the Real Federación Española de Fútbol (RFEF), by P. Callol García, abogado, B. González Rivero, procuradora, T. González Cueto and J. Manzarbeitia Pérez, abogados,
- the Liga Nacional de Fútbol Profesional (LNFP), by D. Crespo Lasso de la Vega, Y. Martínez Mata, M. Pajares Villarroya, J. Ramos Rubio and S. Rating, abogados,
- the Spanish Government, by L. Aguilera Ruiz and A. Gavela Llopis, acting as Agents,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the Danish Government, by J. Farver Kronborg, V. Pasternak Jørgensen, M. Søndahl Wolff and Y. Thyregod Kollberg, acting as Agents,
- the German Government, by J. Möller, acting as Agent,
- the Estonian Government, by N. Grünberg, acting as Agent,
- Ireland, by M. Browne, Chief State Solicitor, A. Joyce and M. Tierney, acting as Agents, and by S. Brittain, Barrister at Law,
- the Greek Government, by K. Boskovits, acting as Agent,
- the French Government, by A.-L. Desjonquères, P. Dodeller, T. Stehelin and N. Vincent, acting as Agents,
- the Croatian Government, by G. Vidović Mesarek, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and by D. Del Gaizo and S.L. Vitale, avvocati dello Stato,
- the Cypriot Government, by I. Neophytou, acting as Agent,
- the Latvian Government, by J. Davidoviča, K. Pommere and I. Romanovska, acting as Agents,
- the Luxembourg Government, by A. Germeaux and T. Uri, acting as Agents,
- the Hungarian Government, by M.Z. Fehér, E. Gyarmati and K. Szíjjártó, acting as Agents,
- the Maltese Government, by A. Buhagiar, acting as Agent,
- the Austrian Government, by F. Koppensteiner, acting as Agent,
- the Polish Government, by B. Majczynna and M. Wiącek, acting as Agents,
- the Portuguese Government, by P. Barros da Costa, R. Capaz Coelho and C. Chambel Alves, acting as Agents, and by J.L. da Cruz Vilaça, advogado,
- the Romanian Government, by E. Gane, L. Lițu and A. Rotăreanu, acting as Agents,

- the Slovenian Government, by A. Dežman Mušič and N. Pintar Gosenca, acting as Agents,
- the Slovak Government, by E.V. Drugda and B. Ricziová, acting as Agents,
- the Swedish Government, by O. Simonsson, M. Salborn Hodgson and H. Shev, acting as Agents,
- the Icelandic Government, by J.B. Bjarnadóttir, acting as Agent, and by G. Bergsteinsson, lawyer,
- the Norwegian Government, by F. Bersgø, L.-M. Moen Jünge, O.S. Rathore and P. Wennerås, acting as Agents,
- the European Commission, by S. Baches Opi, M. Mataija, G. Meessen, C. Urraca Caviedes and H. van Vliet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 December 2022,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 101 and 102 TFEU, on the one hand, and Articles 45, 49, 56 and 63 TFEU, on the other.
- 2 The request has been made in proceedings between, on the one hand, European Superleague Company SL ('ESLC') and, on the other, the Fédération internationale de football association ('FIFA') and the Union of European Football Associations ('UEFA'), concerning an application seeking a declaration to the effect that FIFA and UEFA infringed Articles 101 and 102 TFEU, an order to cease the infringing conduct and the issuance of various injunctions in respect of those entities.

I. Legal context

A. *The FIFA Statutes*

- 3 FIFA is an association governed by private law having its headquarters in Switzerland. Article 2 of its Statutes, in the edition of September 2020 referred to in the order for reference ('the FIFA Statutes'), states that its objectives include, inter alia, 'to organise its own international competitions', 'to draw up regulations and provisions governing the game of football and related matters and to ensure their enforcement' and 'to control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the laws of the game' at world level.
- 4 Articles 11 and 14 of the FIFA Statutes state that any 'association which is responsible for organising and supervising football' in a given country may become a member of FIFA, provided, inter alia, that it is already a member of one of the six continental confederations recognised by FIFA and referred to in Article 22 of those statutes, which includes UEFA, and that it undertakes beforehand to comply, inter alia, with the statutes, regulations, directives and decisions of FIFA and those of the relevant continental confederation of which that association is already a member. In practice, more than 200 national football associations are currently members of FIFA. In that capacity, under Articles 14 and 15 of the FIFA Statutes, they have the obligation, inter alia, to cause their own members or affiliates to comply with the statutes, regulations, directives and decisions of FIFA, and to ensure that they are observed by all stakeholders in football, in particular by the professional leagues, clubs and players.
- 5 Article 20 of those statutes, entitled 'Status of clubs, leagues and other groups of clubs', provides in paragraph 1:

‘Clubs, leagues or any other groups affiliated to a member association shall be subordinate to and recognised by that member association. The member association’s statutes shall define the scope of authority and the rights and duties of these groups. The statutes and regulations of these groups shall be approved by the member association.’

6 Article 22 of those statutes, entitled ‘Confederations’, provides, in paragraphs 1 and 3:

‘1. Member associations that belong to the same continent have formed the following confederations, which are recognised by FIFA:

...

(c) [Union of European Football Associations] – UEFA

...

Recognition of each confederation by FIFA entails full mutual respect of each other’s authority within their respective institutional areas of competence as set forth in these Statutes.

...

3. Each confederation shall have the following rights and obligations:

- (a) to comply with and enforce compliance with the Statutes, regulations and decisions of FIFA;
- (b) to work closely with FIFA in every domain so as to achieve the objectives stipulated in [Article] 2 and to organise international competitions;
- (c) to organise its own interclub competitions, in compliance with the international match calendar;
- (d) to organise all of its own international competitions in compliance with the international match calendar;
- (e) to ensure that international leagues or any other such groups of clubs or leagues shall not be formed without its consent and the approval of FIFA;

...’

7 Article 24 of the FIFA Statutes provides that the bodies of FIFA include inter alia a ‘legislative body’, called ‘the Congress’, which constitutes the ‘supreme body’ thereof, a ‘strategic and oversight body’ called ‘the Council’, and an ‘executive, operational and administrative body’ called ‘the general secretariat’.

8 Article 67 of those statutes, entitled ‘Rights in competitions and events’, is worded as follows:

‘1. FIFA, its member associations and the confederations are the original owners of all of the rights emanating from competitions and other events coming under their respective jurisdiction, without any restrictions as to content, time, place and law. These rights include, among others, every kind of financial rights, audiovisual and radio recording, reproduction and broadcasting rights, multimedia rights, marketing and promotional rights and incorporeal rights such as emblems and rights arising under copyright law.

2. The Council shall decide how and to what extent these rights are utilised and draw up special regulations to this end. The Council shall decide alone whether these rights shall be utilised exclusively, or jointly with a third party, or entirely through a third party.’

9 Article 68 of those statutes, entitled ‘Authorisation to distribute’, provides, in paragraph 1:

‘FIFA, its member associations and the confederations are exclusively responsible for authorising the distribution of image and sound and other data carriers of football matches and events coming under

their respective jurisdiction, without any restrictions as to content, time, place and technical and legal aspects.’

10 Article 71 of the FIFA Statutes, entitled ‘International matches and competitions’, provides:

‘1. The Council shall be responsible for issuing regulations for organising international matches and competitions between representative teams and between leagues, club and/or scratch teams. No such match or competition shall take place without the prior permission of FIFA, the confederations and/or the member associations in accordance with the Regulations Governing International Matches.

2. The Council may issue further provisions for such matches and competitions.

3. The Council shall determine any criteria for authorising line-ups that are not covered by the Regulations Governing International Matches.

4. Notwithstanding the authorisation competences as set forth in the Regulations Governing International Matches, FIFA may take the final decision on the authorisation of any international match or competition.’

11 Article 72 of those statutes, entitled ‘Contacts’, provides in paragraph 1:

‘Players and teams affiliated to member associations or provisional members of the confederations may not play matches or make sporting contacts with players or teams that are not affiliated to member associations or provisional members of the confederations without the approval of FIFA.’

12 Article 73 of those statutes, entitled ‘Authorisation’, provides:

‘Associations, leagues or clubs that are affiliated to a member association may only join another member association or take part in competitions on that member association’s territory under exceptional circumstances. In each case, authorisation must be given by both member associations, the respective confederations and by FIFA.’

B. The FIFA Regulations Governing International Matches

13 Article 1 of the FIFA Regulations Governing International Matches, in the version thereof in force since 1 May 2014, provides that those regulations set forth the authorisations, notifications and other requirements for organising matches or competitions between teams belonging to different national football associations which are members of FIFA, for organising matches or competitions between teams belonging to the same national association but playing in a third country, and for organising matches or competitions involving players or teams not affiliated to a national association.

14 Article 2 of those regulations provides that they apply to all international matches and international competitions, except for the matches played in competitions organised by FIFA or one of the continental confederations recognised by FIFA.

15 Article 6 of those regulations provides that all international matches must, as applicable, be authorised by FIFA, by the continental confederation concerned and/or by the national football associations which are members of FIFA to which the participating teams belong and on whose territory the matches are to be played.

16 Under Articles 7 and 10 of those same regulations, any ‘tier 1 international match’, defined as any match in which both of the teams participating are the ‘A’ representative teams of the national football associations which are members of FIFA, must be authorised by both FIFA and the continental confederation and national associations concerned. By contrast, under Articles 8 and 11 of the FIFA Regulations Governing International Matches, any ‘tier 2 international match’, defined as any match involving the ‘A’ representative team of a single national association, another representative team of such a national association, a team made up of players registered with more than one club belonging to the same national association, or the first team of a club that participates in the highest division of a

national association, must be authorised only by the continental confederations and the national associations concerned.

C. *The UEFA Statutes*

17 UEFA is also an association governed by private law having its headquarters in Switzerland.

18 Article 2(1) of the UEFA Statutes states that the objectives of UEFA are to:

- (a) deal with all questions relating to European football;
- (b) promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason;
- (c) monitor and control the development of every type of football in Europe;
- (d) organise and conduct international football competitions and tournaments at European level for every type of football ...;
- (e) prevent all methods or practices which might jeopardise the regularity of matches or competitions or give rise to the abuse of football;
- (f) promote and protect ethical standards and good governance in European football;
- (g) ensure that sporting values always prevail over commercial interests;
- (h) redistribute revenue generated by football in accordance with the principle of solidarity and to support reinvestment in favour of all levels and areas of football, especially the grassroots of the game;
- (i) promote unity among Member Associations in matters relating to European and world football;
- (j) safeguard the overall interests of Member Associations;
- (k) ensure that the needs of the different stakeholders in European football (leagues, clubs, players, supporters) are properly taken into account;
- (l) act as a representative voice for the European football family as a whole;
- (m) maintain good relations with and cooperate with FIFA and the other Confederations recognised by FIFA;
- (n) ensure that its representatives within FIFA loyally represent the views of UEFA and act in the spirit of European solidarity;
- (o) respect the interests of Member Associations, settle disputes between Member Associations and assist them in any matter upon request.'

19 Under Article 5 of those statutes, any association based in a European country which is recognised as an independent state by the majority of members of the United Nations (UN) and which is responsible for the organisation of football in that country may become a member of UEFA. Under Article 7^{bis} of those statutes, membership entails the obligation, for the associations concerned, to comply with the statutes, regulations and decisions of UEFA and to ensure observance of them, in their country, by the professional leagues subject to them and by clubs and players. In practice, more than 50 national football associations are currently members of UEFA.

20 Under Articles 11 and 12 of those same statutes, the UEFA organs comprise, inter alia, a 'supreme organ' called 'the Congress' and an 'Executive Committee'.

21 Article 49 of the UEFA Statutes, entitled 'Competitions', provides:

‘1. UEFA shall have the sole jurisdiction to organise or abolish international competitions in Europe in which Member Associations and/or their clubs participate. FIFA competitions shall not be affected by this provision.

...

3. International matches, competitions or tournaments which are not organised by UEFA but are played on UEFA’s territory shall require the prior approval of FIFA and/or UEFA and/or the relevant Member Associations in accordance with the FIFA Regulations Governing International Matches and any additional implementing rules adopted by the UEFA Executive Committee.’

22 Article 51 of those same statutes, entitled ‘Prohibited relations’, provides:

‘1. No combinations or alliances between UEFA Member Associations or between leagues or clubs affiliated, directly or indirectly, to different UEFA Member Associations may be formed without the permission of UEFA.

2. A Member Association, or its affiliated leagues and clubs, may neither play nor organise matches outside its own territory without the permission of the relevant Member Associations.’

II. Facts in the main proceedings and the questions referred for a preliminary ruling

A. The Super League project

23 ESLC is a company governed by private law, established in Spain. It was established on the initiative of a group of professional football clubs, themselves established, as the case may be, in Spain (Club Atlético de Madrid, Fútbol Club Barcelona and Real Madrid Club de Fútbol), in Italy (Associazione Calcio Milan, Football Club Internazionale Milano and Juventus Football Club) and in the United Kingdom (Arsenal Football Club, Chelsea Football Club, Liverpool Football Club, Manchester City Football Club, Manchester United Football Club and Tottenham Hotspur Football Club). The order for reference states that its objective is to set up a new international professional football competition project known as the ‘Super League’. To that end, it established or planned to establish three other companies tasked with: (i) management of the Super League from a financial, sporting and disciplinary perspective once it is set up; (ii) exploitation of the media rights related to that competition; and (iii) exploitation of the other commercial assets related to that competition.

24 A22 Sports Management SL is also a company governed by private law, established in Spain. It describes itself as a company established to provide services related to the creation and the management of professional football competitions, more specifically the Super League project.

25 As regards the launching of that project, it is apparent from the order for reference, first of all, that the founding professional football clubs of ESLC intended to set up a new international football competition involving, on the one hand, 12 to 15 professional football clubs with the status of ‘permanent members’ and, on the other, an as-yet-undefined number of professional football clubs with the status of ‘qualified clubs’, selected according to a pre-determined process.

26 Next, that project was based on a shareholder and investment agreement providing for the conclusion of a set of contracts binding each of the professional football clubs participating or eligible to participate in the Super League and the three companies established or to be established by ESLC, having as their object, inter alia, to set out the detailed rules under which those clubs were to assign to ESLC their media or commercial rights to that competition and the remuneration for that assignment. Provision was further made for the conclusion of a set of contracts between those three companies, for the purpose of coordinating the supply of services necessary for the management of the Super League, exploitation of the rights assigned to ESLC and allocation of the funds to which ESLC has access to the participating clubs. The provision of those funds was itself provided for in a letter containing an undertaking given by JP Morgan AG to grant ESLC financial support and an infrastructure subsidy in the form of a bridging loan of up to approximately EUR 4 billion, in order to enable the Super League to be set up and provisionally financed, pending the issuance of bonds on the capital markets.

27 Lastly, the shareholder and investment agreement in question made the establishment of the Super League and the provision of the funds necessary for that purpose subject to a suspensive condition consisting in obtaining either the recognition of that international competition by FIFA or UEFA and confirmation of its compliance with the rules adopted by them, or the obtaining of legal protection from the competent administrative or judicial authorities to enable the professional football clubs having the status of permanent members to participate in the Super League without that affecting their membership of or participation in the national football associations, professional leagues or international competitions in which they had been hitherto involved. To that effect, that agreement provided inter alia that FIFA and UEFA were to be informed of the Super League project.

B. The main proceedings and the questions referred

28 The main proceedings have arisen out of a commercial action, including a petition for protective measures without an *inter partes* hearing, brought by ESLC before the Juzgado de lo Mercantil de Madrid (Commercial Court, Madrid, Spain), against FIFA and UEFA.

29 According to the referring court, that action was brought following the launch of the Super League project by ESLC and FIFA's and UEFA's opposition to that project.

30 In that regard, the referring court states that, on 21 January 2021, FIFA and the six continental confederations recognised by it, including UEFA, issued a statement, setting out, first, their refusal to recognise the Super League and, second, affirming that any professional football club or any player taking part in that international competition would be expelled from competitions organised by FIFA and UEFA and, third, emphasising that all international football competitions were to be organised or authorised by the competent entities as referred to in the FIFA and the continental confederations' Statutes. That statement contained in particular the following passage:

'In light of recent media speculation about the creation of a closed European "Super League" by some European clubs, FIFA and the six confederations ... once again would like to reiterate and strongly emphasise that such a competition would not be recognised by either FIFA or the respective confederation. Any club or player involved in such a competition would as a consequence not be allowed to participate in any competition organised by FIFA or their respective confederation.

As per the FIFA and confederations statutes, all competitions should be organised or recognised by the relevant body at their respective level, by FIFA at the global level and by the confederations at the continental level.'

31 On 18 April 2021, a further press release was issued by UEFA, the English, Spanish and Italian football associations and by certain professional leagues under their remit, stating inter alia that 'the clubs concerned will be banned from playing in any other competition at domestic, European or world level, and their players could be denied the opportunity to represent their national teams'.

32 On 19 and 20 April 2021, the referring court successively held that ESLC's action was admissible and, without an *inter partes* hearing, ordered a series of protective measures, the purpose of which was, in essence, to prevent, for the duration of the legal proceedings, any conduct on the part of FIFA and UEFA and, through them, their member national football associations, liable to thwart or hamper the preparations for and the establishment of the Super League and the participation therein of professional football clubs and players, inter alia, through any disciplinary measures or sanctions and any threat to adopt such measures or sanctions aimed at clubs or players.

33 In support of its request for a preliminary ruling, that court observes, in essence, in the first place, that it follows from the case-law of the Court of Justice and the General Court that sporting activities are not excluded from the scope of the FEU Treaty provisions on freedom of movement (judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497) and on the competition rules (judgments of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, and of 26 January 2005, *Piau v Commission*, T-193/02, EU:T:2005:22).

34 In the second place, that court considers that, from a substantive and geographical standpoint, the two distinct but complementary economic activities that make up the relevant market in the present case

are, on the one hand, the organisation and marketing of international interclub football competitions in the territory of the European Union and, on the other hand, the exploitation of the various rights related to those competitions, be they financial rights, audiovisual and radio recording, reproduction and broadcasting rights, other media rights, commercial rights or intellectual property rights.

- 35 In the third place, it takes the view that FIFA and UEFA have, for a long time, held an economic and commercial monopoly – and therefore a dominant position – on the market concerned, which allows them to conduct themselves independently of any potential competition, making them inevitable partners for any entity already operating or wishing to enter, in some capacity or other, into that market and conferring a particular responsibility on them to preserve competition.
- 36 In that regard, it observes, first of all, that the dominant position enjoyed by FIFA and UEFA affects not only undertakings that may wish to compete with them by organising other international football competitions but also, through their member national football associations, all of the other stakeholders in football, such as professional football clubs or players, a situation already noted by the General Court (judgment of 26 January 2005, *Piau v Commission*, T-193/02, EU:T:2005:22). Next, it observes that the dominant position of FIFA and UEFA on the market at issue in the main proceedings is based not only on an economic and commercial monopoly but also, ultimately and especially, on the regulatory, control and decision-making powers, and the power to impose sanctions, which enable FIFA and UEFA, in a mandatory and complete manner, to set the framework for the conditions in which all the other stakeholders present on that market may pursue an economic activity there. Lastly, it states that the combination of all of those factors in practice gives rise to a barrier to entry that is almost impossible for potential competitors of FIFA and UEFA to overcome. In particular, they are confronted by the prior approval rules applicable to the organisation of international football competitions and the participation of professional football clubs and players therein, and by the rules governing the exclusive appropriation and exploitation of the various rights related to those competitions.
- 37 In the fourth place, the referring court is uncertain as to whether FIFA's and UEFA's conduct amounts to a two-fold abuse of a dominant position prohibited by Article 102 TFEU.
- 38 On that point, it states, on the one hand, that it follows from the case-law of the Court of Justice and the General Court (judgments of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 51 and 52, and of 16 December 2020, *International Skating Union v Commission*, T-93/18, EU:T:2020:610, paragraph 70), that the fact of entrusting, by regulatory or legislative means, a sporting organisation which pursues the economic activity of organising and marketing competitions while at the same time having the power to designate, *de jure* or *de facto*, the other undertakings authorised to set up those competitions, without that power being made subject to appropriate restrictions, obligations and review, confers on that sporting association an obvious advantage over its competitors by allowing it both to deny those competitors access to the market and to favour its own economic activity.
- 39 In view of that case-law, the referring court considers that it is possible to find in the present case that FIFA and UEFA are abusing their dominant position on the market at issue in the main proceedings. Indeed, the rules adopted by those two entities, in their capacity as associations and by virtue of the regulatory and control powers they have conferred on themselves as regards prior approval of international football competitions, enable them to prevent the entry of potentially competing undertakings on that market, especially since those powers are combined with decision-making powers and the power to impose sanctions, which allow them to force both their member national football associations and other stakeholders in football, in particular professional football clubs and players, to abide by their monopoly on that market. Nor do the FIFA or UEFA Statutes contain provisions guaranteeing that the implementation of those prior approval rules and, more broadly, the decision-making powers and the power to impose sanctions with which they are combined, is guided solely by objectives of general interest and not by commercial or financial interests linked to the economic activity pursued in parallel by those two entities. Lastly, those rules and powers are not placed within a framework of substantive criteria and detailed procedural rules which are suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, so as to limit the discretionary powers of FIFA and UEFA. The measures announced by those two entities in the present case, following the launch of the Super League project, illustrate that situation.

- 40 The referring court is also uncertain as to whether FIFA and UEFA are also infringing Articles 101 and 102 TFEU by appropriating, through their statutes, all of the legal and economic rights related to international football competitions which are organised on European Union territory and by reserving for themselves the exclusive exploitation of those rights. The rules adopted by FIFA to that effect give it, UEFA and their member national football associations the status of ‘original owners’ of those rights, thereby depriving professional football clubs participating in such competitions of the proprietary rights thereto or obliging them to assign them to those two entities. Those rules are also combined with the rules on prior approval and, more broadly, the regulatory, control and decision-making powers, and the power to impose sanctions held by FIFA and UEFA, to close the market concerned to all potentially competing undertakings or, at the very least, to dissuade them from entering that market, by limiting their opportunity to exploit the various rights related to the competitions in question.
- 41 In the fifth place, that court observes that FIFA’s and UEFA’s conduct is also liable to infringe the prohibition on agreements laid down in Article 101 TFEU.
- 42 In that regard, it takes the view, first, that Articles 20, 22, 67, 68 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes and also the relevant articles of the FIFA Regulations Governing International Matches reflect the decision, taken by each of those two associations of undertakings and applicable, inter alia, on European Union territory, to coordinate, by making it subject to certain rules and certain common conditions, their conduct and that of the undertakings which are, directly or indirectly, members on the market for the organisation and marketing of interclub football competitions and also the exploitation of the various rights related thereto. Irrespective of the rules on prior approval, decision-making and sanctions laid down in those articles, they contain various provisions aimed at ensuring compliance therewith both by national football associations which are members of FIFA and UEFA and by professional football clubs which are members of those national associations or are affiliated therewith.
- 43 Second, the referring court considers that the examination of the content of the rules at issue, of the economic and legal context of which they form a part, of the objectives they pursue and, in the present case, the specific measures announced by FIFA and UEFA on 21 January and 18 April 2021, shows that those rules are capable of restricting competition on the market at issue in the main proceedings. Restating in that regard all of the factors referred to above in its analysis relating to Article 102 TFEU, it adds, more generally, that the competition issue before it ultimately arises from the fact that FIFA and UEFA are both undertakings which monopolise the market for the organisation and marketing of international interclub football competitions, inter alia on European Union territory, and also the exploitation of the various rights related to those competitions, and associations governed by private law entrusted, by virtue of their own statutes, with regulatory, control and decision-making powers, and the power to impose sanctions applicable to all other stakeholders in football, be they economic operators or sportspersons. Thus, in being both ‘legislature and party’, FIFA and UEFA are manifestly in a situation of conflict of interest that is liable to lead them to use their powers of prior approval and to impose sanctions in such a way as to prevent the setting up of international football competitions not within their system and, therefore, to impede all potential competition on that market.
- 44 In the sixth and last place, the referring court is uncertain as to whether the rules on prior approval and sanctions adopted by FIFA and UEFA, as well as the measures announced by them in the present case on 21 January and 18 April 2021, also infringe the right of free movement of workers enjoyed by the players who are or could be employed by the professional football clubs wishing to participate in international football competitions such as the Super League, the freedom to provide services and the freedom of establishment enjoyed by both those clubs and the undertakings offering other services related to the organisation and marketing of such competitions, and also the freedom of movement of the capital necessary to set them up.
- 45 In that regard, the referring court observes, in particular, that it is apparent from the settled case-law of the Court that rules of a public or private nature introducing a system of prior approval must not only be justified by an objective of general interest, but must also comply with the principle of proportionality, which entails inter alia that the exercise of the competent authority’s discretion to grant such approval must be based on criteria which are transparent, objective and non-discriminatory

(judgment of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 35 and the case-law cited).

46 In the present case, however, those various requirements are not fulfilled, as is apparent from the various factors referred to in the analysis carried out in relation to Articles 101 and 102 TFEU.

47 In those circumstances, the Juzgado de lo Mercantil de Madrid (Commercial Court, Madrid) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Must Article 102 TFEU be interpreted as meaning that that article prohibits the abuse of a dominant position consisting of the stipulation by FIFA and UEFA in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any similar article contained in the statutes of the member associations and national leagues) that the prior approval of those entities, which have conferred on themselves the exclusive power to organise or give permission for international club competitions in Europe, is required in order for a third-party entity to set up a new pan-European club competition like the Super League, in particular where no regulated procedure, based on objective, transparent and non-discriminatory criteria, exists, and taking into account the possible conflict of interests affecting FIFA and UEFA?
- (2) Must Article 101 TFEU be interpreted as meaning that that article prohibits FIFA and UEFA from requiring in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any similar article contained in the statutes of the member associations and national leagues) the prior approval of those entities, which have conferred on themselves the exclusive power to organise or give permission for international competitions in Europe, in order for a third-party entity to create a new pan-European club competition like the Super League, in particular where no regulated procedure, based on objective, transparent and non-discriminatory criteria, exists, and taking into account the possible conflict of interests affecting FIFA and UEFA?
- (3) Must Articles 101 and/or 102 [TFEU] be interpreted as meaning that those articles prohibit conduct by FIFA, UEFA, their member associations and/or national leagues which consists of the threat to adopt sanctions against clubs participating in the Super League and/or their players, owing to the deterrent effect that those sanctions may create? If sanctions are adopted involving exclusion from competitions or a ban on participating in national team matches, would those sanctions, if they were not based on objective, transparent and non-discriminatory criteria, constitute an infringement of Articles 101 and/or 102 [TFEU]?
- (4) Must Articles 101 and/or 102 TFEU be interpreted as meaning that the provisions of Articles 67 and 68 of the FIFA Statutes are incompatible with those articles in so far as they identify UEFA and its national member associations as “original owners of all of the rights emanating from competitions ... coming under their respective jurisdiction”, thereby depriving participating clubs and any organiser of an alternative competition of the original ownership of those rights and arrogating to themselves sole responsibility for the marketing of those rights?
- (5) If FIFA and UEFA, as entities which have conferred on themselves the exclusive power to organise and give permission for international club football competitions in Europe, were to prohibit or prevent the development of the Super League on the basis of the abovementioned provisions of their statutes, would Article 101 TFEU have to be interpreted as meaning that those restrictions on competition qualify for the exception laid down therein, regard being had to the fact that production is substantially limited, the appearance on the market of products other than those offered by FIFA/UEFA is impeded, and innovation is restricted, since other formats and types are precluded, thereby eliminating potential competition on the market and limiting consumer choice? Would that restriction be covered by an objective justification which would permit the view that there is no abuse of a dominant position for the purposes of Article 102 TFEU?

- (6) Must Articles 45, 49, 56 and/or 63 TFEU be interpreted as meaning that, by requiring the prior approval of FIFA and UEFA for the establishment, by an economic operator of a Member State, of a pan-European club competition like the Super League, a provision of the kind contained in the [FIFA and UEFA Statutes] (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any other similar article contained in the statutes of member associations [and] national leagues) constitutes a restriction contrary to one or more of the fundamental freedoms recognised in those articles?’

III. Procedure before the Court

- 48 In its order for reference, the Juzgado de lo Mercantil de Madrid (Commercial Court, Madrid) requested that the Court determine the present case pursuant to the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice. In support of that request, it referred, first, to the important and sensitive nature, in economic and social terms, of the dispute in the main proceedings and of the questions referred to the Court, inasmuch as the dispute and those questions relate to the organisation of football competitions on European Union territory and the exploitation of various rights related to those competitions. Second, it stated that those questions are referred in the context of legal proceedings at national level which have already given rise to protective measures being ordered and are of a certain urgency, given the harm alleged by the founding professional football clubs of ESLC and, more broadly, the practical and financial consequences for the football sector caused by the COVID-19 pandemic, inter alia on European Union territory.
- 49 By decision of 1 July 2021, the President of the Court rejected that request on the ground that the circumstances relied on in support thereof did not by themselves justify the present case being dealt with under the expedited procedure.
- 50 That procedure is a procedural instrument meant for an exceptional situation of urgency, the existence of which must be established in the light of exceptional circumstances specific to the case in connection with which an application for an expedited procedure is made (orders of the President of the Court of 20 December 2017, *M.A. and Others*, C-661/17, EU:C:2017:1024, paragraph 17, and of 25 February 2021, *Sea Watch*, C-14/21 and C-15/21, EU:C:2021:149, paragraph 22).
- 51 The important and sensitive nature, in economic and social terms, of a dispute and the questions referred to the Court in connection therewith in a given field of EU law, is not such as to establish the existence of an exceptional situation of urgency and, consequently, the need to have recourse to the expedited procedure (see, to that effect, orders of the President of the Court of 27 February 2019, *M.V. and Others*, C-760/18, EU:C:2019:170, paragraph 18, and of 25 February 2021, *Sea Watch*, C-14/21 and C-15/21, EU:C:2021:149, paragraph 24).
- 52 Moreover, the fact that a dispute is urgent and that the national court with jurisdiction is required to do everything possible to ensure that it is resolved swiftly is not in itself sufficient to justify that the Court should deal with the corresponding reference for a preliminary ruling pursuant to the expedited procedure, having regard to its purpose and the conditions for its implementation (see, to that effect, order of the President of the Court of 25 February 2021, *Sea Watch*, C-14/21 and C-15/21, EU:C:2021:149, paragraphs 26 to 29). It is primarily up to the national court before which the dispute has been brought, which is best placed to assess the specific issues for the parties and considers it necessary to refer questions to the Court, to adopt, pending the decision of the latter, all adequate interim measures to guarantee the full effectiveness of the decision that it itself is called upon to make (see, to that effect, order of the President of the Court of 25 February 2021, *Sea Watch*, C-14/21 and C-15/21, EU:C:2021:149, paragraph 33), as the referring court has done in the present case.

IV. Admissibility

- 53 The defendants in the main proceedings, one of the two interveners in the main proceedings who support them, Ireland and the French and Slovak Governments question the admissibility of the request for a preliminary ruling in its entirety.

54 The arguments they put forward in that regard are, in essence, of three types. They include, first, arguments of a procedural nature alleging that the decision to make a request for a preliminary ruling was taken following the adoption of protective measures without an *inter partes* hearing, and thus without the parties to the dispute in the main proceedings having been heard beforehand, as required by the applicable provisions of domestic law and, moreover, without the referring court having ruled on the request put forward by the defendants in the main proceedings seeking to have that court decline jurisdiction in favour of the Swiss courts. Second, arguments of a purely formal nature are put forward, alleging that the content of that decision fails to comply with the requirements laid down in Article 94(a) of the Rules of Procedure inasmuch as it does not present in a sufficiently accurate and detailed manner the legal and factual context in which the referring court is making a reference to the Court. That situation is particularly problematic in a complex case relating essentially to the interpretation and application of the EU competition rules. It also tends to prevent the parties concerned from effectively putting forward their viewpoints on the issues to be decided. Third, substantive arguments are put forward relating to the hypothetical nature of the request for a preliminary ruling, inasmuch as there is no actual dispute the resolution of which necessitates any interpretative decision whatsoever from the Court. That is, in particular, because no proper application for approval of the Super League project has been submitted to FIFA and UEFA, and because that project was still vague and at an early stage both on the date when it was announced and on the date when the action giving rise to dispute in the main proceedings was instituted.

55 The French, Hungarian and Romanian Governments have questioned the admissibility of the third to sixth questions put by the referring court, on grounds which are, in essence, analogous to those put forward to call into question the admissibility of the request for a preliminary ruling in its entirety, namely that they are insufficiently substantiated or hypothetical. The principal factors put forward to that end relate to the lack of actual or sufficiently defined factual or legal connection, in the order for reference, between, on the one hand, the dispute in the main proceedings, and, on the other, the FIFA rules on the appropriation and exploitation of the various rights related to international football competitions (fourth question) and the provisions of the FEU Treaty on freedoms of movement (sixth question).

A. *The procedural conditions for issuing an order for reference*

56 In the context of a preliminary ruling procedure, it is not for the Court of Justice, in view of the distribution of functions between itself and the national courts, to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and their procedure. The Court is, moreover, bound by that order for reference in so far as it has not been rescinded on the basis of a means of redress provided for by national law (judgments of 14 January 1982, *Reina*, 65/81, EU:C:1982:6, paragraph 7, and of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 70).

57 In the present case, it is not for the Court either to determine which procedural rules, under national law, govern the making of orders such as the order for reference where, as in the present case, protective measures were ordered beforehand without an *inter partes* hearing, or to ascertain whether that order was made in accordance with those rules.

58 Moreover, given the arguments relied on by certain of the defendants in the main proceedings, it should be noted that a national court is free to make a reference for a preliminary ruling to the Court of Justice both in proceedings of an urgent nature, such as proceedings seeking the grant of protective measures, or other interim measures (see, to that effect, judgments of 24 May 1977, *Hoffmann-La Roche*, 107/76, EU:C:1977:89, paragraphs 1 and 4, and of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraph 20), and in proceedings which are not adversarial in nature (see, to that effect, judgments of 14 December 1971, *Politi*, 43/71, EU:C:1971:122, paragraphs 4 and 5, and of 2 September 2021, *Finanzamt für Steuerstrafsachen und Steuerfahndung Münster*, C-66/20, EU:C:2021:670, paragraph 37), provided that all of the conditions laid down in Article 267 TFEU are met and the reference complies with the applicable requirements as to its form and content (see, to that effect, judgment of 18 June 1998, *Corsica Ferries France*, C-266/96, EU:C:1998:306, paragraphs 23 and 24).

B. *The content of the order for reference*

59 The preliminary reference procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. According to settled case-law, which is now reflected in Article 94(a) and (b) of the Rules of Procedure, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and regulatory context of the questions it is asking or, at the very least, to explain the factual hypotheses on which those questions are based. Furthermore, it is essential, as stated in Article 94(c) of the Rules of Procedure, that the request for a preliminary ruling itself contain a statement of the reasons which prompted the referring court or tribunal to enquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the dispute in the main proceedings. Those requirements are of particular importance in those fields which are characterised by complex factual and legal situations, such as competition (see, to that effect, judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 83, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraphs 23 and 24).

60 Moreover, the information provided in the order for reference must not only be such as to enable the Court to reply usefully but must also give the governments of the Member States and other interested parties an opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union (see, to that effect, judgments of 1 April 1982, *Holdijk and Others*, 141/81 to 143/81, EU:C:1982:122, paragraph 7, and of 11 April 2000, *Delière*, C-51/96 and C-191/97, EU:C:2000:199, paragraph 31).

61 In the present case, the request for a preliminary ruling complies with the requirements set out in the two preceding paragraphs of the present judgment. The order for reference sets out in detail the factual and regulatory context surrounding the questions referred to the Court. Next, it sets out in detail the factual and legal reasons that led the referring court to consider it necessary to refer those questions and the connection, in its view, between Articles 45, 49, 56, 63, 101 and 102 TFEU and the dispute in the main proceedings, in the light of the case-law of the Court of Justice and the General Court. Lastly, the referring court states therein, in a clear and precise manner, the factors on which it based itself to draw certain factual and legal conclusions of its own.

62 In particular, the referring court's findings relating to, first, the market at issue in the main proceedings, defined as the market for the organisation and marketing of interclub football competitions on European Union territory, and also the exploitation of the various rights related to those competitions, and second, the dominant position held therein by FIFA and UEFA, afford an understanding of the actual relationship, in the context thus defined, between the dispute in the main proceedings and the fourth question put to the Court, by which the referring court enquires as to the interpretation of Article 102 TFEU for the purpose of a potential application of that article to the FIFA rules on the appropriation and exploitation of the rights at issue.

63 Moreover, the gist of the written observations submitted to the Court highlights the fact that the parties submitting them had no difficulty in grasping the factual and legal context surrounding the questions put by the referring court, in understanding the meaning and scope of the underlying factual statements, in comprehending the reasons why the referring court considered it necessary to refer them and also, ultimately, in effectively setting out a complete and proper position on them.

C. *The facts of the dispute and the relevance of the questions referred to the Court*

64 It is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation sought bears no relation to the actual facts of the dispute in the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful

answer to those questions. (see, to that effect, judgments of 16 December 1981, *Foglia*, 244/80, EU:C:1981:302, paragraphs 15 and 18, and of 7 February 2023, *Confédération paysanne and Others* (In vitro random mutagenesis), C-688/21, EU:C:2023:75, paragraphs 32 and 33).

65 In the present case, the Court finds, by way of corollary to the findings set out in paragraph 61 of the present judgment, that the referring court's statements summarised in paragraphs 28 to 32 above affirm the actual state of the dispute in the main proceedings. Moreover, those same statements, as well as those referred to in paragraphs 33 to 46 above, show that it cannot be said that the referring court's reference to the Court on the interpretation of Articles 45 and 101 TFEU manifestly bears no relation to the actual facts of the dispute in the main proceedings or its purpose.

66 In particular, although it is true that there is some disagreement between the parties to the main proceedings as to whether that court may simultaneously apply FEU Treaty provisions on EU competition rules and articles on freedoms of movement, given the terms in which the applicant in the main proceedings has drafted its heads of claim, the fact remains that, as observed by the Spanish Government at the hearing, at the current stage that court appears to have taken the view that it has jurisdiction to do so, and the Court does not have jurisdiction to review the merits of that position.

67 It follows that the request for a preliminary ruling is admissible in its entirety.

V. Consideration of the questions referred

68 By its first five questions, the referring court asks the Court to interpret Articles 101 and 102 TFEU, under which anticompetitive agreements and abuse of a dominant position are prohibited, with a view to ruling on the compatibility of a set of rules adopted by FIFA and UEFA with those two articles.

69 By its sixth question, that court asks the Court about the interpretation of Articles 45, 49, 56 and 63 TFEU, relating to freedoms of movement guaranteed under EU law, for the purpose of ruling in parallel on the compatibility of those same rules with those four articles.

70 The dispute in which those questions are referred to the Court has arisen from an action brought by an undertaking complaining, in essence, that the rules adopted by FIFA and UEFA, in view of their nature, content and purpose, the specific context of which they form a part and the implementation which may be made thereof, prevent, restrict or distort competition on the market for the organisation and marketing of interclub football competitions on European Union territory, and also the exploitation of the various rights related to those competitions. More specifically, that undertaking submits that, following the launch of the new international football competition project it intends to set up, FIFA and UEFA infringed Articles 101 and 102 TFEU by stating that they intended to implement those rules and by setting out the specific consequences that that implementation could have for the competition concerned as well as the participating clubs and players.

71 In view of both the gist of the questions referred to the Court and the nature of the dispute in which they have arisen, it is appropriate to set out three sets of preliminary observations before examining those questions.

A. Preliminary observations

1. The subject matter of the case in the main proceedings

72 The questions submitted by the referring court concern solely a set of rules by which FIFA and UEFA intend to govern the prior approval of certain international football competitions and the participation therein of professional football clubs and players, and also the exploitation of the various rights related to those competitions.

73 In that regard, first of all, it is apparent from the wording of those questions that the rules in question are found in Articles 22, 67, 68 and 71 to 73 of the FIFA Statutes and in Articles 49 to 51 of the UEFA Statutes. However, as is apparent from the statements of the referring court, those rules are at issue in the dispute in the main proceedings only in so far as they are applicable to international competitions

- ‘between’ or ‘in which [clubs] participate’, as per the terminology used in Article 71(1) of the FIFA Statutes and Article 49(1) of the UEFA Statutes. Also categorised as ‘interclub competitions’ in Article 22(3)(c) of the FIFA Statutes, those competitions are part of the broader category of the ‘tier 2’ international football competitions referred to in Articles 8 and 11 of the FIFA Regulations Governing International Matches and come within the purview of the prior approval mechanism referred to in those articles.
- 74 Consequently, the rules adopted by FIFA and by UEFA in respect of, first, the prior approval of other international football competitions, such as those solely between representative teams of national football associations which are members of FIFA and UEFA, second, the participation of teams or players in those competitions and, third, the exploitation of the various rights related thereto, are not at issue in the dispute in the main proceedings and therefore in the present case.
- 75 Nor, a fortiori, does the present case involve either the rules which may have been adopted by FIFA and UEFA in respect of other activities, or the provisions of the FIFA and UEFA Statutes on the functioning, organisation, objectives or even the very existence of those two associations, it being observed, in that regard, that the Court has held previously that, whilst enjoying legal autonomy allowing them to adopt rules on, inter alia, the organisation of competitions in their discipline, their proper functioning and the participation of sportspersons therein (see, to that effect, judgments of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 67 and 68, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 60), such associations may not, in so doing, limit the exercise of the rights and freedoms conferred by EU law on individuals (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 81 and 83, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 52).
- 76 That being so, the finding set out in the preceding paragraph in no way precludes provisions such as those relating to the organisation or functioning of FIFA and UEFA from being taken into consideration by the referring court as part of the examination it will be called upon to carry out in order to rule on the dispute in the main proceedings, in so far as that is justified for applying the articles of the FEU Treaty in respect of which that court is referring questions to the Court, in the light of the interpretation set out in the present judgment.
- 77 Next, it must be observed that, although the dispute in the main proceedings has arisen from an action brought by a company that announced the launch of a new international football competition project called ‘Super League’, and even though the third question put by the referring court concerns specifically the actual conduct by which FIFA and UEFA reacted to that launch, the other five questions from that court concern the FIFA and UEFA rules on which that conduct was based (namely those on the prior approval of competitions of that nature and participation therein by professional football clubs or players) and other rules related, in that court’s view, to the market concerned as defined by it (namely those on the appropriation and the exploitation of the various rights related to those competitions).
- 78 Those questions, viewed as a whole, are thus aimed at enabling the referring court to determine whether those various rules, inasmuch as they are liable to be implemented in respect of any new interclub football competition organised or envisaged on European Union territory, such as the one the launch of which gave rise to the dispute in the main proceedings, in view of their nature, content, objectives and the specific context of which they form a part, amount to an infringement of Articles 45, 49, 56, 63, 101 and 102 TFEU.
- 79 In those circumstances, in its answers to all of the questions referred to it, the Court will take account of all the relevant features of the FIFA and UEFA rules which are at issue in the dispute in the main proceedings, such as those cited in the order for reference and referred to by all the parties to the main proceedings.
- 80 Lastly, however, it is clear that the referring court is not asking the Court about the interpretation of Articles 45, 49, 56, 63, 101 and 102 TFEU with a view to ruling, one way or another, on the compatibility of the Super League project itself with those various articles of the FEU Treaty.

81 Nor are the features of that project of any particular relevance in the context of the answers to be given to the first, second and fourth to sixth questions submitted by the referring court, given their object. Moreover, since those features are the subject of some robust debate by the parties to the main proceedings, the Court will limit itself, in that regard, to elucidating, where necessary, how they might be relevant, subject to verifications of fact which it will be for the referring court to carry out.

2. *The applicability of EU law to sport and the activities of sporting associations*

82 The questions referred to the Court relate to the interpretation of Articles 45, 49, 56, 63, 101 and 102 TFEU in the context of a dispute involving rules which were adopted by two entities having, according to their respective statutes, the status of associations governed by private law responsible for the organisation and control of football at world and European levels, and relating to the prior approval of international interclub football competitions and the exploitation of the various rights related to those competitions.

83 It must be borne in mind in that regard that, in so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such activity (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraph 4, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 27).

84 Only certain specific rules which were adopted solely on non-economic grounds and which relate to questions of interest solely to sport per se must be regarded as being extraneous to any economic activity. That is the case, in particular, of those on the exclusion of foreign players from the composition of teams participating in competitions between teams representing their country or the determination of ranking criteria used to select the athletes participating individually in competitions (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraph 8; of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 76 and 127; and of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 43, 44, 63, 64 and 69).

85 Apart from those specific rules, the rules adopted by sporting associations in order to govern paid work or the performance of services by professional or semi-professional players and, more broadly, those rules which, whilst not formally governing that work or that performance of services, have an indirect impact thereon, may come within the scope of Articles 45 and 56 TFEU (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraphs 5, 17 to 19 and 25; of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 75, 82 to 84 and 87; of 12 April 2005, *Simutenkov*, C-265/03, EU:C:2005:213, paragraph 32; and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 28 and 30).

86 Similarly, the rules adopted by such associations may come within the scope of Article 49 TFEU (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen v Commission*, C-519/04 P, EU:C:2006:492, paragraph 28), and even Article 63 TFEU.

87 Lastly, those rules and, more broadly, the conduct of associations which have adopted them come within the scope of the FEU Treaty provisions on competition law where the conditions of application of those provisions are met (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen v Commission*, C-519/04 P, EU:C:2006:492, paragraphs 30 to 33), which means that those associations may be categorised as ‘undertakings’ within the meaning of Articles 101 and 102 TFEU or that the rules at issue may be categorised as ‘decisions by associations of undertakings’ within the meaning of Article 101 TFEU.

88 Thus, more generally, since such rules come within the scope of the aforementioned provisions of the FEU Treaty, where they set out edicts applicable to individuals, they must be drafted and implemented in compliance with the general principles of EU law, in particular the principles of non-discrimination and proportionality (see, to that effect, judgment of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraphs 60, 65 and 66 and the case-law cited).

89 The rules at issue in the main proceedings, however, irrespective of whether they originate from FIFA or UEFA, do not form part of those rules to which the exception referred to in paragraph 84 of the present judgment might be applied, which exception the Court has stated repeatedly must be limited to

its proper objective and may not be relied upon to exclude the whole of a sporting activity from the scope of the FEU Treaty provisions on EU economic law (see, to that effect, judgments of 14 July 1976, *Donà*, 13/76, EU:C:1976:115, paragraphs 14 and 15, and of 18 July 2006, *Meca-Medina and Majcen v Commission*, C-519/04 P, EU:C:2006:492, paragraph 26).

90 On the contrary, first, as the Court has already observed, the rules on a sporting association's exercise of powers governing prior approval for sporting competitions, the organisation and marketing of which constitute an economic activity for the undertakings involved or planning to be involved therein, come, in that capacity, within the scope of the FEU Treaty provisions on competition law (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 28). For the same reason, they also come within the scope of the FEU Treaty provisions on freedom of movement.

91 Second, the rules adopted by FIFA and UEFA to establish a framework for participation by professional football clubs and players in international interclub football competitions also come within the scope of those provisions. Although they do not formally govern the players' conditions of work or of performance of services or the conditions of performance of services or, more broadly, of the exercise of their economic activity by professional football clubs, those rules must be regarded as having a direct impact, as the case may be, on that work, that performance of services or the exercise of that economic activity, since they necessarily affect whether the players and clubs may participate in the competitions in question.

92 Third, the rules adopted by FIFA to govern the exploitation of the various rights related to international football competitions have the very object of providing a framework for the conditions in which the undertakings which are the proprietors of those rights may exploit them or delegate the exploitation thereof to third-party undertakings; such activities are economic in nature. They also have an indirect impact on the conditions in which those third-party undertakings or other undertakings may hope to exploit, be assigned or have transferred those rights in any form whatsoever, in order to become involved in intermediation activities (such as resale of the rights in question to television broadcasters and other media service providers) or final activities (such as distribution or broadcast of certain matches on television or via the internet), which are also economic in nature.

93 Those different economic activities, consisting in the organisation of sporting competitions, the marketing of the sports event, the distribution thereof and the placement of advertising are, moreover, complementary and even closely related, as observed previously by the Court (see, to that effect, judgments of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 56 and 57, and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 33).

94 Hence, all of the FIFA and UEFA rules about which the referring court is submitting questions to the Court come within the scope of Articles 45, 49, 56, 63, 101 and 102 TFEU.

3. *Article 165 TFEU*

95 All of the parties to the main proceedings and a large number of the governments that participated in the procedure before the Court have expressed differing views on the inferences liable to be attached to Article 165 TFEU in the answers to be given to the different questions put by the referring court.

96 In that regard, it should be noted, first, that Article 165 TFEU must be construed in the light of Article 6(e) TFEU, which provides that the Union has competence to carry out actions to support, coordinate or supplement the actions of the Member States in the areas of education, vocational training, youth and sport. Article 165 TFEU gives specific expression to that provision by specifying both the objectives assigned to Union action in the areas concerned and the means which may be used to contribute to the attainment of those objectives.

97 Thus, as regards the objectives assigned to Union action in the area of sport, the second subparagraph of Article 165(1) TFEU states that the Union is to contribute to the promotion of European sporting issues, while taking account of the specific characteristics of sport, its structures based on voluntary activity and its social and educational function and, in the last indent of paragraph 2, that Union action in that area is to be aimed at developing the European dimension in sport, by promoting fairness and

openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportspersons, especially the youngest sportspersons.

- 98 As regards the means which may be employed to contribute to the attainment of those objectives, Article 165(3) TFEU provides that the Union is to foster cooperation with third countries and the competent international organisations in the field of sport and, in paragraph 4, that the European Parliament and the Council of the European Union, acting in accordance with the ordinary legislative procedure, or the Council, acting alone on a proposal from the Commission, may adopt incentive measures or recommendations.
- 99 Second, as follows from both the wording of Article 165 TFEU and that of Article 6(e) TFEU, by those provisions, the drafters of the Treaties intended to confer a supporting competence on the Union, allowing it to pursue not a 'policy', as provided for by other provisions of the FEU Treaty, but an 'action' in a number of specific areas, including sport. Thus, those provisions constitute a legal basis authorising the Union to exercise that supporting competence, on the conditions and within the limits fixed thereby, being inter alia, as provided for in the first indent of Article 165(4) TFEU, the exclusion of any harmonisation of the legislative and regulatory provisions adopted at national level. That supporting competence also allows the Union to adopt legal acts solely with the aim of supporting, coordinating or completing Member State action, in accordance with Article 6 TFEU.
- 100 By way of corollary, and as is also apparent from the context of which Article 165 TFEU forms a part, in particular from its insertion in Part Three of the FEU Treaty, devoted to 'Union policies and internal actions', and not in Part One of that treaty, which contains provisions of principle, including, under Title II, 'provisions having general application', relating, inter alia, to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against any discrimination, environmental protection and consumer protection, that article is not a cross-cutting provision having general application.
- 101 It follows that, although the competent Union institutions must take account of the different elements and objectives listed in Article 165 TFEU when they adopt, on the basis of that article and in accordance with the conditions fixed therein, incentive measures or recommendations in the area of sport, those different elements and objectives, as well as those incentive measures and recommendations need not be integrated or taken into account in a binding manner in the application of the rules on the interpretation of which the referring court is seeking guidance from the Court, irrespective of whether they concern the freedom of movement of persons, services and capital (Articles 45, 49, 56 and 63 TFEU) or the competition rules (Articles 101 and 102 TFEU). More broadly, nor must Article 165 TFEU be regarded as being a special rule exempting sport from all or some of the other provisions of primary EU law liable to be applied to it or requiring special treatment for sport in the context of that application.
- 102 Third, the fact remains that, as observed by the Court on a number of occasions, sporting activity carries considerable social and educational importance, henceforth reflected in Article 165 TFEU, for the Union and for its citizens (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraphs 33 and 34).
- 103 Sporting activity also undeniably has specific characteristics which, whilst relating especially to amateur sport, may also be found in the pursuit of sport as an economic activity (see, to that effect, judgment of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraph 33).
- 104 Lastly, such specific characteristics may potentially be taken into account along with other elements and provided they are relevant in the application of Articles 45 and 101 TFEU, although they may be so only in the context of and in compliance with the conditions and criteria of application provided for in each of those articles. The same assessment holds true in respect of Articles 49, 56, 63 and 102 TFEU.
- 105 In particular, when it is argued that a rule adopted by a sporting association constitutes an impediment to the free movement of workers or an anticompetitive agreement, the characterisation of that rule as an obstacle or anticompetitive agreement must, at any rate, be based on a specific assessment of the content of that rule in the actual context in which it is to be implemented (see, to that effect, judgments

of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 98 to 103; of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 61 to 64; and of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraphs 48 to 50). Such an assessment may involve taking into account, for example, the nature, organisation or functioning of the sport concerned and, more specifically, how professionalised it is, the manner in which it is practised, the manner of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it at all levels, with which the Union is to foster cooperation, in accordance with Article 165(3) TFEU.

106 Moreover, once the existence of an obstacle to the free movement of workers is established, the association which adopted the rule in question may yet demonstrate that it is justified, necessary and proportionate in view of certain objectives which may be regarded as legitimate (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 104), which themselves are contingent on the specific characteristics of the sport concerned.

107 It is in the light of all of the foregoing considerations that an examination must be made of the referring court's questions relating to the competition rules, followed by an examination of the rules on freedom of movement.

B. Consideration of the first to fifth questions: the competition rules

108 The first two questions relate, in essence, to the manner in which the rules such as those of FIFA and UEFA on the prior approval of international interclub football competitions, and on the participation of professional football clubs and sportspersons in those competitions, must be construed in the light of Article 102 TFEU, on the one hand, and Article 101(1) TFEU, on the other.

109 The third question relates to the manner in which the announced implementation of those rules, in the form of the statement and press release referred to in paragraphs 30 and 31 of the present judgment, must be construed in the light of those same articles.

110 The fourth question, for its part, concerns how rules such as those adopted by FIFA concerning the rights of exploitation relating to those competitions are to be construed in the light of those articles.

111 The fifth question, put in the event that the rules referred to in the three preceding paragraphs of the present judgment must be regarded as constituting an abuse of a dominant position under Article 102 TFEU or an anticompetitive agreement prohibited by Article 101(1) TFEU, is aimed at enabling the referring court to ascertain whether those rules may nevertheless be allowed in the light of the Court's case-law on Article 102 TFEU or as permitted under Article 101(3) TFEU.

112 In view of the scope of those different questions, it should, as a preliminary point, be borne in mind, in the first place, that Articles 101 and 102 TFEU are applicable to any entity engaged in an economic activity that must, as such, be categorised as an undertaking, irrespective of its legal form and the way in which it is financed (see, to that effect, judgments of 23 April 1991, *Höfner and Elser*, C-41/90, EU:C:1991:161, paragraph 21; of 11 December 2007, *ETI and Others*, C-280/06, EU:C:2007:775, paragraph 38; and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 20 and 21).

113 Consequently, those articles are applicable, inter alia, to entities which are established in the form of associations which, according to their statutes, have as their purpose the organisation and control of a given sport, in so far as those entities exercise an economic activity in relation to that sport, by offering products or services, and where they must, in that capacity, be categorised as 'undertakings' (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 22, 23 and 26).

114 Article 101 TFEU is also applicable to entities which, although not necessarily constituting undertakings themselves, may be categorised as 'associations of undertakings'.

115 In the present case, given the subject matter of the main proceedings and the referring court's statements, the Court finds that Articles 101 and 102 TFEU are applicable to FIFA and UEFA inasmuch as those two associations carry out a two-fold economic activity consisting, as is apparent from paragraphs 34, 90 and 92 of the present judgment, in the organisation and marketing of interclub

football competitions on European Union territory and the exploitation of the various rights related to those competitions and that, in that capacity, they must be categorised as ‘undertakings’. Moreover, Article 101 TFEU is applicable to them since those associations’ members are national football associations which may themselves be categorised as ‘undertakings’ inasmuch as they carry on an economic activity related to the organisation and marketing of interclub football competitions at national level and the exploitation of the rights related thereto, or themselves have, as members or affiliates, entities which, like football clubs, may be categorised as such.

- 116 In the second place, unlike Article 102 TFEU, which is aimed solely at unilateral conduct by undertakings holding, individually or, as the case may be, collectively, a dominant position, Article 101 TFEU is aimed at catching various forms of conduct having as their common point that they arise from collaboration by several undertakings, namely ‘agreements between undertakings’, ‘concerted practices’ and ‘decisions by associations of undertakings’, without regard being had to their position on the market (see, to that effect, judgment of 16 March 2000, *Compagnie maritime belge transports and Others v Commission*, C-395/96 P and C-396/96 P, EU:C:2000:132, paragraphs 34 to 36).
- 117 In the present case, one prerequisite, among other conditions, for the application of Article 102 TFEU to an entity such as FIFA or UEFA is that it be demonstrated that that entity holds a dominant position in a given market. In the present case, it is apparent from the statements of the referring court that it considers that each of those two entities holds a dominant position on the market for the organisation and marketing of interclub football competitions on European Union territory and also the exploitation of the various rights related to those competitions. It is thus on the basis of that factual and legal premiss, which is, moreover, indisputable, especially since FIFA and UEFA are the only associations which organise and market such competitions at world and European levels, unlike the situation prevailing in respect of other sporting disciplines, that answers should be given to the referring court’s questions on the interpretation of Article 102 TFEU.
- 118 As to Article 101(1) TFEU, its application in a situation involving entities such as FIFA or UEFA entails proving the existence of an ‘agreement’, ‘concerted practice’ or ‘[decision by an association] of undertakings’, which themselves may be of different kinds and present in different forms. In particular, a decision of an association consisting in adopting or implementing rules having a direct impact on the conditions in which the economic activity is exercised by undertakings which are directly or indirectly members thereof may constitute such a ‘[decision by an association] of undertakings’ within the meaning of that provision (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 64, and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 42 to 45). In the present case, it is in the light of decisions of that nature that the referring court is referring questions to the Court on the interpretation of Article 101(1) TFEU, namely those consisting in FIFA’s and UEFA’s having adopted rules on the prior approval of international interclub football competitions, control of participation by professional football clubs and players in those competitions, and also the sanctions that may be imposed in the event of disregard of those rules on prior approval and participation.
- 119 In the third and last place, since the questions put by the referring court concern both Article 101 and Article 102 TFEU, it should be borne in mind that the same conduct may give rise to an infringement of both the former and the latter article, even though they pursue different objectives and have distinct scopes. Those articles may thus apply simultaneously where their respective conditions of application are met (see, to that effect, judgments of 11 April 1989, *Saeed Flugreisen and Silver Line Reisebüro*, 66/86, EU:C:1989:140, paragraph 37; of 16 March 2000, *Compagnie maritime belge transports and Others v Commission*, C-395/96 P and C-396/96 P, EU:C:2000:132, paragraph 33; and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 146). They must, accordingly, be interpreted and applied consistently, although in compliance with the specific characteristics of each of them.

I. Consideration of the first question: the interpretation of Article 102 TFEU in situations involving rules on the prior approval of interclub football competitions and on the participation of clubs and of sportspersons in those competitions

- 120 By its first question, the referring court asks, in essence, whether Article 102 TFEU must be interpreted as meaning that the adoption and implementation of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, where there is no framework for that power providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective and non-discriminatory, constitutes abuse of a dominant position.
- 121 That being said, as is apparent from both the wording of the rules to which that question refers and the referring court's statements underlying that question, the rules at issue in the main proceedings relate not only to the prior approval of international interclub football competitions but also to whether professional football clubs and players are able to participate in such competitions. As is also apparent from those statements, non-compliance with those rules is also subject to sanctions applicable to non-complying natural or legal persons, which sanctions, as alluded to in the third question put by the referring court and as observed by all of the parties to the main proceedings, comprise exclusion of the professional football clubs from all competitions organised by FIFA and UEFA, a prohibition on players' taking part in interclub competitions and a prohibition on their taking part in matches between representative teams of national football associations.
- 122 In the light of those elements, the Court finds that, by its first question, the referring court asks, in essence, whether Article 102 TFEU must be interpreted as meaning that the adoption and implementation of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes abuse of a dominant position.

(a) Consideration of the concept of 'abuse of a dominant position'

- 123 Under Article 102 TFEU, abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it is to be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.
- 124 As follows from the consistent case-law of the Court, the purpose of that provision is to prevent competition from being restricted to the detriment of the public interest, individual undertakings and consumers, by sanctioning the conduct of undertakings in a dominant position that has the effect of hindering competition on the merits and is thus likely to cause direct harm to consumers, or which causes them harm indirectly by hindering or distorting that competition (see, to that effect, judgments of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 22 and 24; of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 20; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraphs 41 and 44).
- 125 Such conduct covers any practice which, on a market where the degree of competition is already weakened precisely because of the presence of one or more undertakings in a dominant position, through recourse to means different from those governing normal competition between undertakings, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition (see, to that effect, judgments of 14 October 2010, *Deutsche Telekom v Commission*, C-280/08 P, EU:C:2010:603, paragraphs 174 and 177; of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 24; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 68).
- 126 However, it is not the purpose of Article 102 TFEU to prevent an undertaking from acquiring, on its own merits, a dominant position on a market, or to ensure that competitors less efficient than an undertaking in such a position should remain on the market (see, to that effect, judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 21; of 6 September 2013, *Intel v*

Commission, C-413/14 P, EU:C:2017:632, paragraph 133; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 73).

127 On the contrary, competition on the merits may, by definition, lead to the departure from the market or the marginalisation of competitors which are less efficient and so less attractive to consumers from the point of view of, among other things, price, choice, quality or innovation (see, to that effect, judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 22; of 6 September 2017, *Intel v Commission*, C-413/14 P, EU:C:2017:632, paragraph 134; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 45).

128 A fortiori, whilst a dominant undertaking has a special responsibility not to allow its behaviour to impair genuine, undistorted competition on the internal market, Article 102 TFEU does not sanction the existence per se of a dominant position, but only the abusive exploitation thereof (see, to that effect, judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 23, and of 6 December 2012, *AstraZeneca v Commission*, C-457/10 P, EU:C:2012:770, paragraph 188).

(b) Consideration of the determination of whether there is abuse of a dominant position

129 In order to find, in a given case, that conduct must be categorised as ‘abuse of a dominant position’, it is necessary, as a rule, to demonstrate, through the use of methods other than those which are part of competition on the merits between undertakings, that that conduct has the actual or potential effect of restricting that competition by excluding equally efficient competing undertakings from the market(s) concerned (see, to that effect, judgment of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 25), or by hindering their growth on those markets, although the latter may be either the dominated markets or related or neighbouring markets, where that conduct is liable to produce its actual or potential effects (see, to that effect, judgments of 14 November 1996, *Tetra Pak v Commission*, C-333/94 P, EU:C:1996:436, paragraphs 25 to 27; of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 84 to 86; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 76).

130 That demonstration, which may entail the use of different analytical templates depending on the type of conduct at issue in a given case, must however be made in the light of all the relevant factual circumstances (see, to that effect, judgments of 19 April 2012, *Tomra Systems and Others v Commission*, C-549/10 P, EU:C:2012:221, paragraph 18, and of 19 January 2023, *Unilever Italia Mkt. Operations*, C-680/20, EU:C:2023:33, paragraph 40), irrespective of whether they concern the conduct itself, the market(s) in question or the functioning of competition on that or those market(s). That demonstration must, moreover, be aimed at establishing, on the basis of specific, tangible points of analysis and evidence, that that conduct, at the very least, is capable of producing exclusionary effects (see, to that effect, judgment of 19 January 2023, *Unilever Italia Mkt. Operations*, C-680/20, EU:C:2023:33, paragraphs 42, 51 and 52 and the case-law cited).

131 In addition, conduct may be categorised as ‘abuse of a dominant position’ not only where it has the actual or potential effect of restricting competition on the merits by excluding equally efficient competing undertakings from the market(s) concerned, but also where it has been proven to have the actual or potential effect – or even the object – of impeding potentially competing undertakings at an earlier stage, through the placing of obstacles to entry or the use of other blocking measures or other means different from those which govern competition on the merits, from even entering that or those market(s) and, in so doing, preventing the growth of competition therein to the detriment of consumers, by limiting production, product or alternative service development or innovation (see, to that effect, judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraphs 154 to 157).

132 Thus, although a Member State is not prohibited per se from granting exclusive or special rights on a market to an undertaking through legislative or regulatory measures, such a situation must not place that undertaking in a position of being able to abuse the resulting dominant position, for example by exercising the rights in question in a manner that prevents potentially competing undertakings from entering the market concerned or related or neighbouring markets (see, to that effect, judgments of 10 December 1991, *Merci convenzionali porto di Genova*, C-179/90, EU:C:1991:464, paragraph 14, and of 13 December 1991, *GB-Inno-BM*, C-18/88, EU:C:1991:474, paragraphs 17 to 19 and 342). That

requirement is all the more warranted when such rights confer on that undertaking the power to determine whether and, as the case may be, on what conditions other undertakings are authorised to carry on their economic activity (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 38 and 51).

- 133 Indeed, the maintenance or development of undistorted competition in the internal market can be guaranteed only if equality of opportunity is ensured as between undertakings. To entrust an undertaking which exercises a given economic activity the power to determine, *de jure* or even *de facto*, which other undertakings are also authorised to engage in that activity and to determine the conditions in which that activity may be exercised, gives rise to a conflict of interests and puts that undertaking at an obvious advantage over its competitors, by enabling it to deny them entry to the market concerned or to favour its own activity (see, to that effect, judgments of 13 December 1991, *GB-Inno-BM*, C-18/88, EU:C:1991:474, paragraph 25; of 12 February 1998, *Raso and Others*, C-163/96, EU:C:1998:54, paragraphs 28 and 29; and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 51 and 52) and also, in so doing, to prevent the growth of competition therein to the detriment of consumers, by limiting production, product or alternative service development or innovation.
- 134 Consequently, the grant of exclusive or special rights conferring such a power on the undertaking concerned, or the existence of a similar situation in the relevant markets, must be subject to restrictions, obligations and review that are capable of eliminating the risk of abuse of its dominant position by that undertaking, so as not to give rise to an infringement of Article 102 TFEU, read in conjunction with Article 106 TFEU (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 53).
- 135 More specifically, where the undertaking concerned has the power to determine the conditions in which potentially competing undertakings may access the market or to make determinations in that regard on a case-by-case basis, through a decision on prior authorisation or refusal of such access, that power must, in order not to infringe, by its very existence, Article 102 TFEU, read in conjunction with Article 106 TFEU, be placed within a framework of substantive criteria which are transparent, clear and precise (see, by analogy, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 84 to 86, 90, 91 and 99), so that it may not be used in an arbitrary manner. Those criteria must be suitable for ensuring that such a power is exercised in a non-discriminatory manner and enabling effective review (see, to that effect, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 99).
- 136 The power in question must also be placed within a framework of transparent, non-discriminatory detailed procedural rules relating, *inter alia*, to the time limits applicable to the submission of an application for prior approval and the adoption of a decision thereon. In that regard, the time limits set must not be liable to work to the detriment of potentially competing undertakings by denying them effective access to the market (see, by analogy, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 86 and 92) and, ultimately, in so doing, limiting production, alternative product or service development or innovation.
- 137 Requirements identical to those recalled in the three preceding paragraphs of the present judgment are all the more necessary when an undertaking in a dominant position, through its own conduct and not by virtue of being granted exclusive or special rights by a Member State, places itself in a situation where it is able to deny potentially competing undertakings access to a given market (see, to that effect, judgment of 13 December 1991, *GB-Inno-BM*, C-18/88, EU:C:1991:474, paragraph 20). That may be the case when that undertaking has regulatory and review powers and the power to impose sanctions enabling it to authorise or control that access, and thus a means which is different to those normally available to undertakings and which govern competition on the merits as between them.
- 138 Consequently, such a power must, at the same time, be subject to restrictions, obligations and review suitable for eliminating the risk of abuse of a dominant position, so as not to give rise to an infringement of Article 102 TFEU.

(c) Consideration of the categorisation of rules on the prior approval of interclub football competitions and on the participation of clubs and of sportspersons in those competitions as abuse of

a dominant position

- 139 In the present case, it is apparent from the referring court's statements that FIFA and UEFA both carry on economic activity consisting in the organisation and marketing of international football competitions and the exploitation of the various rights related to those competitions. Thus, in so far as they do so, those associations are both undertakings. They both also hold a dominant position, or even a monopoly, on the relevant market.
- 140 Next, it is apparent from the statements in the order for reference that the rules about which that court has made a reference to the Court are contained in the statutes adopted by FIFA and UEFA in their capacity as associations and by virtue of the regulatory and control powers that they have granted to themselves, and that those rules confer on those two entities not only the power to authorise the setting up and organisation, by a third-party undertaking, of a new interclub football competition on European Union territory, but also the power to control the participation of professional football clubs and players in such a competition, on pain of sanctions.
- 141 Lastly, according to the referring court's statements, those various powers are not placed within a framework of either substantive criteria or detailed procedural rules suitable for ensuring that they are transparent, objective and non-discriminatory.
- 142 In that regard, it follows from the case-law cited in paragraph 75 of the present judgment that associations which are responsible for a sporting discipline, such as FIFA and UEFA, are able to adopt, implement and ensure compliance with rules relating not only generally to the organisation and conduct of international competitions in that discipline, in this case professional football, but also, more specifically, prior approval and participation by professional football clubs and players therein.
- 143 **The sport of football is not only of considerable social and cultural importance in the European Union** (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 40), but also generates great media interest; its specific characteristics include the fact that it gives rise to the organisation of numerous competitions at both European and national levels, which involve the participation of very many clubs and also that of large numbers of players. In common with other sports, it also limits participation in those competitions to teams which have achieved certain sporting results (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 132), with the conduct of those competitions being based on matches between and gradual elimination of those teams. Consequently, it is, essentially, based on sporting merit, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity.
- 144 Those various specific characteristics support a finding that it is legitimate to subject the organisation and conduct of international professional football competitions to common rules intended to guarantee the homogeneity and coordination of those competitions within an overall match calendar as well as, more broadly, to promote, in a suitable and effective manner, the holding of sporting competitions based on equal opportunities and merit. It is also legitimate to ensure compliance with those common rules through rules such as those put in place by FIFA and UEFA on prior approval of those competitions and the participation of clubs and players therein.
- 145 Since such rules on prior approval and participation are thus legitimate in the specific context of professional football and the economic activities to which the practice of that sport gives rise, neither their adoption nor their implementation may be categorised, in terms of their principle or generally, as an 'abuse of a dominant position' (see, by analogy, in respect of a restriction of freedom to provide services, judgment of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraph 64).
- 146 The same holds true for sanctions introduced as an adjunct to those rules, since such sanctions are legitimate, in terms of their principle, as a means of guaranteeing the effectiveness of those rules (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen v Commission*, C-519/04 P, EU:C:2006:492, paragraph 44).

147 Be that as it may, none of the specific attributes that characterise professional football makes it possible to consider as legitimate the adoption nor, a fortiori, the implementation of rules on prior approval and participation which are, in a general way, not subject to restrictions, obligations and review that are capable of eliminating the risk of abuse of a dominant position and, more specifically, where there is no framework for substantive criteria and detailed procedural rules for ensuring that they are transparent, objective, precise and non-discriminatory, when they confer on the entity called on to implement them the power to deny any competing undertaking access to the market. Such rules must be held to infringe Article 102 TFEU, as follows from paragraphs 134 to 138 of the present judgment.

148 Similarly, in the absence of substantive criteria and detailed procedural rules ensuring that the sanctions introduced as an adjunct to those rules are transparent, objective, precise, non-discriminatory and proportionate, such sanctions must, by their very nature, be held to infringe Article 102 TFEU inasmuch as they are discretionary in nature. Indeed, such a situation makes it impossible to verify, in a transparent and objective manner, whether their implementation on a case-by-case basis is justified and proportionate in view of the specific characteristics of the international interclub competition project concerned.

149 In that regard, it is irrelevant that FIFA and UEFA do not enjoy a legal monopoly and that competing undertakings may, in theory, set up new competitions which would not be subject to the rules adopted and applied by those two associations. Indeed, as is apparent from the statements of the referring court, the dominant position held by FIFA and UEFA on the market for the organisation and marketing of international interclub football competitions is such that, in practice, at the current juncture it is impossible to set up viably a competition outside their ecosystem, given the control they exercise, directly or through their member national football associations, over clubs, players and other types of competitions, such as those organised at national level.

150 In the present case, however, it will be for the referring court to categorise the rules at issue in the main proceedings in the light of Article 102 TFEU, after carrying out the additional verifications it may deem necessary.

151 In that perspective, it should be noted that, in order for it to be held that the rules on prior approval of sporting competitions and participation in those competitions, such as those at issue in the main proceedings, are subject to transparent, objective and precise substantive criteria as well as to transparent and non-discriminatory detailed procedural rules that do not deny effective access to the market, it is necessary, in particular, that those criteria and those detailed rules should have been laid down in an accessible form prior to any implementation of those rules. Moreover, in order for those criteria and detailed rules to be regarded as being non-discriminatory, it is necessary, given, inter alia, the fact that entities such as FIFA and UEFA themselves carry on various economic activities on the market concerned by their rules on prior approval and participation, that those same criteria and detailed rules should not make the organisation and marketing of third-party competitions and the participation of clubs and players therein subject to requirements which are either different from those applicable to competitions organised and marketed by the decision-making entity, or are identical or similar to them but are impossible or excessively difficult to fulfil in practice for an undertaking that does not have the same status as an association or does not have the same powers at its disposal as that entity and accordingly is in a different situation to that entity. Lastly, in order for the sanctions introduced as an adjunct to rules on prior approval and participation, such as those at issue in the main proceedings, not to be discretionary, they must be governed by criteria that must not only be transparent, objective, precise and non-discriminatory, but must also guarantee that those sanctions are determined, in each specific case, in accordance with the principle of proportionality, in the light of, inter alia, the nature, duration and seriousness of the infringement found.

152 In the light of the foregoing considerations, the answer to the first question is that Article 102 TFEU must be interpreted as meaning that the adoption and implementation of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive

criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes abuse of a dominant position.

2. Consideration of the second question: the interpretation of Article 101(1) TFEU in situations involving rules on the prior approval of interclub football competitions and on the participation of clubs and of sportspersons in those competitions

153 By its second question, the referring court asks, in essence, whether Article 101(1) TFEU must be interpreted as meaning that the adoption and implementation, directly or through their member national football associations, of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, where there is no framework for that power providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective and non-discriminatory, constitutes a decision by an association of undertakings having as its object or effect the prevention of competition.

154 That being so, given the referring court's statements underlying that question, and for the same reasons as set out in paragraph 121 of the present judgment, the Court finds that, by that question, the referring court asks, in essence, whether Article 101(1) TFEU must be interpreted as meaning that the adoption and implementation, directly or through their member national football associations, of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes a decision by an association of undertakings having as its object the prevention of competition.

(a) Consideration of the concept of conduct having as its 'object' or 'effect' the restriction of competition and of the categorisation of the existence of such conduct

155 In the first place, under Article 101(1) TFEU, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market are incompatible with the internal market.

156 In the present case, as is apparent from the wording of the question, the referring court is asking the Court, in essence, whether Article 101(1) TFEU must be interpreted as meaning that decisions by associations of undertakings such as those embodied in the FIFA and UEFA rules referred to by it have as their 'object or effect' the 'prevention' of competition.

157 However, the referring court also clearly highlights the reasons that led it to find that those decisions by associations of undertakings may also affect trade between Member States.

158 In the second place, in order to find, in a given case, that an agreement, decision by an association of undertakings or a concerted practice is caught by the prohibition laid down in Article 101(1) TFEU, it is necessary to demonstrate, in accordance with the very wording of that provision, either that that conduct has as its object the prevention, restriction or distortion of competition, or that that conduct has such an effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 31).

159 To that end, it is appropriate to begin by examining the object of the conduct in question. If, at the end of that examination, that conduct proves to have an anticompetitive object, it is not necessary to examine its effect on competition. Thus, it is only if that conduct is found not to have an anticompetitive object that it will be necessary, in a second stage, to examine its effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 26 November 2015, *Maxima Latvija*, C-345/14, EU:C:2015:784, paragraphs 16 and 17).

160 The analysis to be made differs depending on whether the conduct at issue has as its ‘object’ or ‘effect’ the prevention, restriction or distortion of competition, with each of those concepts being subject to different legal and evidentiary rules (see, to that effect, judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 63).

(1) *Categorisation of the existence of conduct having as its ‘object’ the prevention, restriction or distortion of competition*

161 According to the settled case-law of the Court, as summarised, in particular, in the judgments of 23 January 2018, *F. Hoffmann-La Roche and Others* (C-179/16, EU:C:2018:25, paragraph 78), and of 30 January 2020, *Generics (UK) and Others* (C-307/18, EU:C:2020:52, paragraph 67), the concept of anticompetitive ‘object’, whilst not, as follows from paragraphs 158 and 159 of the present judgment, an exception in relation to the concept of anticompetitive ‘effect’, must nevertheless be interpreted strictly.

162 Thus, that concept must be interpreted as referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects. Indeed, certain types of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249; of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 78; and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 67).

163 The types of conduct that must be considered to be so include, primarily, certain forms of collusive conduct which are particularly harmful to competition, such as horizontal cartels leading to price fixing, limitations on production capacity or allocation of customers. Those types of conduct are liable to lead to price increases or falls in production and, therefore, more limited supply, resulting in poor allocation of resources to the detriment of user undertakings and consumers (see, to that effect, judgments of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraphs 17 and 33; of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51; and of 16 July 2015, *ING Pensii*, C-172/14, EU:C:2015:484, paragraph 32).

164 Without necessarily being equally harmful to competition, other types of conduct may also be considered, in certain cases, to have an anticompetitive object. That is the case, inter alia, of certain types of horizontal agreements other than cartels, such as those leading to competing undertakings being excluded from the market (see, to that effect, judgments of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraphs 76, 77, 83 to 87 and 101, and of 25 March 2021, *Lundbeck v Commission*, C-591/16 P, EU:C:2021:243, paragraphs 113 and 114), or certain types of decisions by associations of undertakings (see, to that effect, judgment of 27 January 1987, *Verband der Sachversicherer v Commission*, 45/85, EU:C:1987:34, paragraph 41).

165 In order to determine, in a given case, whether an agreement, decision by an association of undertakings or a concerted practice reveals, by its very nature, a sufficient degree of harm to competition that it may be considered as having as its object the prevention, restriction or distortion thereof, it is necessary to examine, first, the content of the agreement, decision or practice in question; second, the economic and legal context of which it forms a part; and, third, its objectives (see, to that effect, judgments of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 79).

166 In that regard, first of all, in the economic and legal context of which the conduct in question forms a part, it is necessary to take into consideration the nature of the products or services concerned, as well as the real conditions of the structure and functioning of the sectors or markets in question (judgments of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 80). It is not, however, necessary to examine nor, a fortiori, to prove the effects of that conduct on competition, be they actual or potential, or negative or positive, as follows from the case-law cited in paragraphs 158 and 159 of the present judgment.

167 Next, as regards the objectives pursued by the conduct in question, a determination must be made of the objective aims which that conduct seeks to achieve from a competition standpoint. Nevertheless, the fact that the undertakings involved acted without having a subjective intention to prevent, restrict or distort competition and the fact that they pursued certain legitimate objectives are not decisive for the purposes of the application of Article 101(1) TFEU (see, to that effect, judgments of 6 April 2006, *General Motors v Commission*, C-551/03 P, EU:C:2006:229, paragraphs 64 and 77 and the case-law cited, and of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

168 Lastly, the taking into consideration of all of the aspects referred to in the three preceding paragraphs of the present judgment must, at any rate, show the precise reasons why the conduct in question reveals a sufficient degree of harm to competition such as to justify a finding that it has as its object the prevention, restriction or distortion of competition (see, to that effect, judgment of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 69).

(2) Categorisation of the existence of conduct having as its 'effect' the prevention, restriction or distortion of competition

169 The concept of conduct having an anticompetitive 'effect', for its part, comprises any conduct which cannot be regarded as having an anticompetitive 'object', provided that it is demonstrated that that conduct has as its actual or potential effect the prevention, restriction or distortion of competition, which must be appreciable (see, to that effect, judgments of 28 May 1998, *Deere v Commission*, C-7/95 P, EU:C:1998:256, paragraph 77, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 117).

170 To that end, it is necessary to assess the way the competition would operate within the actual context in which it would take place in the absence of the agreement, decision by an association of undertakings or concerted practice in question (judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 250, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 118), by defining the market(s) in which that conduct is liable to produce its effects, then by identifying those effects, whether they are actual or potential. That assessment itself entails that all relevant facts must be taken into account.

(b) Consideration of the categorisation of the rules on the prior approval of interclub football competitions and on the participation of clubs and of sportspersons in those competitions as a decision of an association of undertakings having as its 'object' the restriction of competition

171 In the present case, it is apparent from the statements in the order for reference, first, that the FIFA and UEFA rules about which the referring court has put questions to the Court confer on those two entities not only the power to approve the setting up and organisation of any football competition on European Union territory, and thus any new interclub football competition envisaged by a third-party undertaking, but also the power to control the participation of professional football clubs and players in such a competition, on pain of sanctions.

172 As regards, more specifically, the content of the FIFA rules, it is apparent from the statements in the order for reference that they provide, first, that no international league or other similar group of clubs or leagues may be formed without the consent of FIFA and the national football association(s) of which those clubs or leagues are members. Second, no match or competition may take place without the prior approval of FIFA, UEFA and those association(s). Third, no player and no team affiliated to a national football association that is a member of FIFA or UEFA may play a match or make sporting contacts with other, non-affiliated players or teams without the approval of FIFA. Fourth, associations, leagues or clubs which are affiliated to a national football association that is a member of FIFA may join another member association or take part in competitions on that member association's territory only under exceptional circumstances and with the approval of FIFA, UEFA and the two associations in question.

173 The UEFA rules, for their part, provide, according to the referring court, first, that UEFA is to have sole jurisdiction to organise or abolish, within its territorial remit, international competitions in which national football associations which are UEFA members or their affiliated clubs participate, except for

competitions organised by FIFA. Second, international matches, competitions or tournaments which are not organised by UEFA but are played on its territory require the prior approval of FIFA, UEFA and/or the member associations concerned in accordance with the FIFA Regulations Governing International Matches. Third, no combinations or alliances between leagues or clubs affiliated, directly or indirectly, to different national football associations which are UEFA members may be formed without the approval of UEFA.

174 Moreover, according to the referring court, there is no framework for any of those powers held by FIFA and UEFA providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective and non-discriminatory, such as those referred to in paragraph 151 of the present judgment.

175 Next, it follows from paragraphs 142 to 149 of the present judgment that, although the specific nature of international football competitions and the real conditions of the structure and functioning of the market for the organisation and marketing of those competitions on European Union territory lend credence to the idea that it is legitimate, in terms of their principle, to have rules on prior approval such as those just recalled, those contextual elements nevertheless are not capable of legitimising the absence of substantive criteria and detailed procedural rules suitable for ensuring that those rules are transparent, objective, precise and non-discriminatory.

176 Lastly, although the stated reasons for the adoption of those rules on prior approval may include the pursuit of legitimate objectives, such as ensuring observance of the principles, values and rules of the game underpinning professional football, the fact remains that they make subject to the power of prior approval and the power to impose sanctions held by the entities that adopted them, in their capacity as associations of undertakings, the organisation and marketing of any international football competition other than those organised in parallel by those two entities, as part of their pursuit of an economic activity. In so doing, those rules confer on those entities the power to authorise, control and set the conditions of access to the market concerned for any potentially competing undertaking, and to determine both the degree of competition that may exist on that market and the conditions in which that potential competition may be exercised. Those rules thus make it possible, by their nature, if not to exclude from that market any competing undertaking, even an equally efficient one, at least to restrict the creation and marketing of alternative or new competitions in terms of their format or content. In so doing, they also completely deprive professional football clubs and players of the opportunity to participate in those competitions, even though they could, for example, offer an innovative format whilst observing all the principles, values and rules of the game underpinning the sport. Ultimately, they completely deprive spectators and television viewers of the opportunity to attend those competitions or to watch the broadcast thereof.

177 Moreover, in so far as the rules on prior approval for international interclub football competitions contain rules on the participation of professional football clubs and players in those competitions, and the sanctions to which that participation is liable to give rise, it should be added that they appear, *prima facie*, liable to reinforce the anticompetitive object inherent in any prior approval mechanism that is not subject to restrictions, obligations and review suitable for ensuring that it is transparent, objective, precise and non-discriminatory. Indeed, they reinforce the barrier to entry resulting from such a mechanism, by preventing any undertaking organising a potentially competing competition from calling, in a meaningful way, on the resources available in the market, namely clubs and players, the latter being vulnerable – if they participate in a competition that has not had the prior approval of FIFA and UEFA – to sanctions for which, as observed in paragraphs 148 of the present judgment, there is no framework providing for substantive criteria or detailed procedural rules suitable for ensuring that they are transparent, objective, precise, non-discriminatory and proportionate.

178 For all of the foregoing reasons, the Court finds that, where there is no framework providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, precise, non-discriminatory and proportionate, such as those referred to in paragraph 151 of the present judgment, rules on prior approval, participation and sanctions such as those at issue in the main proceedings reveal, by their very nature, a sufficient degree of harm to competition and thus have as their object the prevention thereof. They accordingly come within the scope of the prohibition laid down in Article 101(1) TFEU, without its being necessary to examine their actual or potential effects.

179 In the light of the foregoing considerations, the answer to the second question is that Article 101(1) TFEU must be interpreted as meaning that the adoption and implementation, directly or through their member national football associations, of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes a decision by an association of undertakings having as its object the prevention of competition.

3. *Consideration of the third question: the interpretation of Article 101(1) and Article 102 TFEU in situations involving conduct consisting of threatening the imposition of sanctions on clubs and on sportspersons participating in unauthorised competitions*

180 By its third question, the referring court asks, in essence, whether Article 101(1) and Article 102 TFEU must be interpreted as meaning that a public announcement by entities such as FIFA and UEFA to the effect that sanctions will be imposed on any professional football club and any player that participates in an interclub football competition that has not received their prior approval, where there is no framework for those sanctions providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes an anticompetitive decision by an association of undertakings or abuse of a dominant position.

181 In the light of the answers given to the two preceding questions and, more specifically, the considerations set out in paragraphs 148 and 177 of the present judgment, to the effect that such a public announcement constitutes implementation of the rules infringing both Article 102 and Article 101(1) TFEU, and that it therefore also comes within the scope of the prohibitions laid down in those two provisions, there is no need to answer the present question separately.

4. *Consideration of the fifth question: possible justification for rules on the prior approval of competitions and on the participation of clubs and of sportspersons in those competitions*

182 By its fifth question, which it is appropriate to address before the fourth question since it relates to the same FIFA and UEFA rules as those at which the first three questions are directed, the referring court asks, in essence, whether Article 101(3) TFEU and the Court's case-law on Article 102 TFEU must be interpreted as meaning that rules by which associations which are responsible for football at world and European levels, and which pursue in parallel various economic activities related to the organisation of competitions, make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, may benefit from an exemption or be held to be justified.

(a) *Consideration of the possibility of finding certain specific conduct not to come within the scope of Article 101(1) and Article 102 TFEU*

183 According to the settled case-law of the Court, not every agreement between undertakings or decision of an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context of which certain of those agreements and certain of those decisions form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; second, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, third, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition. That case-law applies in particular in cases involving agreements or decisions taking the form of rules adopted by an association such as a professional association or a sporting association, with a view to pursuing certain ethical or principled objectives and, more broadly, to regulate the exercise of a professional activity if the association

concerned demonstrates that the aforementioned conditions are satisfied (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 97; of 18 July 2006, *Meca-Medina and Majcen v Commission*, C-519/04 P, EU:C:2006:492, paragraphs 42 to 48; and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 93, 96 and 97).

184 More specifically, in the area of sport, the Court was led to observe, in view of the information available to it, that the anti-doping rules adopted by the International Olympic Committee (IOC) do not come within the scope of the prohibition laid down in Article 101(1) TFEU, even though they restrict athletes' freedom of action and have the inherent effect of restricting potential competition between them by defining a threshold over which the presence of nandrolone constitutes doping, so as to safeguard the fairness, integrity and objectivity of the conduct of competitive sport, ensure equal opportunities for athletes, protect their health and uphold the ethical values at the heart of sport, including merit (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen v Commission*, C-519/04 P, EU:C:2006:492, paragraphs 43 to 55).

185 However, the case-law referred to in paragraph 183 of the present judgment does not apply in situations involving conduct which, irrespective of whether or not it originates from such an association and irrespective of which legitimate objectives in the public interest might be relied on in support thereof, by its very nature infringes Article 102 TFEU, as is, moreover, already implicitly but necessarily apparent from the Court's case-law (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 53).

186 Given that the absence of a subjective intention to prevent, restrict or distort competition and the pursuit of potentially legitimate objectives are not decisive either for the purposes of application of Article 101(1) TFEU and that, moreover, Articles 101 and 102 TFEU must be interpreted consistently, the Court finds that the case-law referred to in paragraph 183 of the present judgment does not apply either in situations involving conduct which, far from merely having the inherent 'effect' of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, reveals a degree of harm in relation to that competition that justifies a finding that it has as its very 'object' the prevention, restriction or distortion of competition. Thus, it is only if, following an examination of the conduct at issue in a given case, that conduct proves not to have as its object the prevention, restriction or distortion of competition, that it must then be determined whether it may come within the scope of that case-law (see, to that effect, judgments of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 69; of 4 September 2014, *API and Others*, C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147, paragraph 49; and of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraphs 51, 53, 56 and 57).

187 As regards conduct having as its object the prevention, restriction or distortion of competition, it is thus only if Article 101(3) TFEU applies and all of the conditions provided for in that provision are observed that it may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU (see, to that effect, judgment of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

188 In the present case, in view of the statements in the order for reference and the answers provided by the Court in the light of those statements to the first three questions put by the referring court, the Court finds that the case-law referred to in paragraph 183 of the present judgment does not apply in situations involving rules such as those at issue in the main proceedings.

(b) The exemption under Article 101(3) TFEU

189 It follows from the very wording of Article 101(3) TFEU that any agreement, decision by associations of undertakings or concerted practice which proves to be contrary to Article 101(1) TFEU, whether by reason of its anticompetitive object or effect, may be exempted if it satisfies all of the conditions laid down for that purpose (see, to that effect, judgments of 11 July 1985, *Remia and Others v Commission*, 42/84, EU:C:1985:327, paragraph 38, and of 11 September 2014, *MasterCard and Others v Commission*, C-382/12 P, EU:C:2014:2201, paragraph 230), it being noted that those conditions are more stringent than those referred to in paragraph 183 of the present judgment.

- 190 Under Article 101(3) TFEU, that exemption in a given case is subject to four cumulative conditions. First, it must be demonstrated with a sufficient degree of probability (judgment of 6 October 2009, *GlaxoSmithKline Services and Others v Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 95), that the agreement, decision by an association of undertakings or concerted practice in question makes it possible to achieve efficiency gains, by contributing either to improving the production or distribution of the products or services concerned, or to promoting technical or economic progress. Second, it must be demonstrated, to the same degree of probability, that an equitable part of the profit resulting from those efficiency gains is reserved for the users. Third, the agreement, decision or practice in question must not impose on the participating undertakings restrictions which are not indispensable for achieving such efficiency gains. Fourth, that agreement, decision or practice must not give the participating undertakings the opportunity to eliminate all effective competition for a substantial part of the products or services concerned.
- 191 It is for the party relying on such an exemption to demonstrate, by means of convincing arguments and evidence, that all of the conditions required for the exemption are satisfied (see, to that effect, judgments of 11 July 1985, *Remia and Others v Commission*, 42/84, EU:C:1985:327, paragraph 45, and of 6 October 2009, *GlaxoSmithKline Services and Others v Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 82). If those arguments and that evidence are such as to oblige the other party to refute them convincingly, it is permissible, in the absence of such refutation, to conclude that the burden of proof borne by the party relying on Article 101(3) TFEU has been discharged (see, to that effect, judgments of 7 January 2004, *Aalborg Portland and Others v Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 79, and of 6 October 2009, *GlaxoSmithKline Services and Others v Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 83).
- 192 In particular, as regards the first condition referred to in paragraph 190 of the present judgment, the efficiency gains that the agreement, decision by an association of undertakings or concerted practice must make it possible to achieve correspond not to any advantage the participating undertakings may derive from that agreement, decision or practice in the context of their economic activity, but only to the appreciable objective advantages that that specific agreement, decision or practice makes it possible to attain in the different sector(s) or market(s) concerned. Moreover, in order for that first condition to be considered satisfied, not only must the actual existence and extent of those efficiency gains be established, it must also be demonstrated that they are such as to compensate for the disadvantages caused by the agreement, decision or practice at issue in the field of competition (see, to that effect, judgments of 13 July 1966, *Consten and Grundig v Commission*, 56/64 and 58/64, EU:C:1966:41, page 348; and of 11 September 2014, *MasterCard and Others v Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 232, 234 and 236; and also, by analogy, of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 43).
- 193 As regards the second condition referred to in paragraph 190 of the present judgment, it involves establishing that the efficiency gains made possible by the agreement, decision by an association of undertakings or concerted practice in question have a positive impact on all users, be they traders, intermediate consumers or end consumers, in the different sectors or markets concerned (see, to that effect, judgments of 23 November 2006, *Asnef-Equifax and Administración del Estado*, C-238/05, EU:C:2006:734, paragraph 70, and of 11 September 2014, *MasterCard and Others v Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 236 and 242).
- 194 It follows that, in a situation such as that at issue in the main proceedings, where the conduct infringing Article 101(1) TFEU is anticompetitive by object, that is to say, it presents a sufficient degree of harm to competition and is such as to affect different categories of users or consumers, it must be determined whether and, if so, to what extent, that conduct, notwithstanding its harmfulness, has a favourable impact on each of them.
- 195 Thus, in the case in the main proceedings, it will be for the referring court to examine whether the rules on prior approval, participation and sanctions at issue in the main proceedings are such as to have a favourable impact on the various categories of ‘users’, comprising, inter alia, national football

associations, professional or amateur clubs, professional or amateur players, young players and, more broadly, consumers, be they spectators or television viewers.

196 It should be borne in mind in that regard, however, that, although such rules may appear to be legitimate, in terms of their principle, by contributing to guaranteeing observance of the principles, values and rules of the game underpinning professional football, in particular the open, meritocratic nature of the competitions concerned, and ensuring a certain form of ‘solidarity redistribution’ within football, the existence of such objectives, however laudable they may be, do not release the associations that have adopted those rules from their obligation to establish, before the national court, that the pursuit of those objectives translates into genuine, quantifiable efficiency gains, on the one hand, and that they compensate for the disadvantages caused in competition terms by the rules at issue in the main proceedings, on the other.

197 As regards the third condition referred to in paragraph 190 of the present judgment, to the effect that the conduct at issue must be indispensable or necessary, it involves an assessment and comparison of the respective impact of that conduct and of the alternative measures which might genuinely be envisaged, with a view to determining whether the efficiency gains expected from that conduct may be attained by measures which are less restrictive of competition. It may not, however, lead to a choice based on their respective desirability being made as between such conduct and such alternative measures in the event that the latter do not seem to be less restrictive of competition.

198 As regards the fourth condition referred to in paragraph 190 of the present judgment, the ascertainment of its observance in a given case involves an examination of the quantitative and qualitative aspects that characterise the functioning of competition in the sectors or markets concerned, in order to determine whether the agreement, decision by an association of undertakings or concerted practice in question gives the participating undertakings the opportunity to eliminate all actual competition for a substantial part of the products or services concerned. In particular, in situations involving a decision by an association of undertakings or agreement to which undertakings have adhered as a group, the sizeable market share held by them may constitute, among other relevant facts and as part of an overall analysis thereof, an indicator of the possibility that, in view of its content and object or effect, that decision or agreement enables the participating undertakings to eliminate all actual competition, which alone suffices as grounds to rule out the exemption provided for in Article 101(3) TFEU. Another potential aspect relates to determining whether or not such a decision or agreement, whilst closing off one form of actual competition or market access channel, allows others to continue in place (see, to that effect, judgment of 22 October 1986, *Metro v Commission*, 75/84, EU:C:1986:399, paragraphs 64, 65 and 88).

199 In order to determine whether that fourth condition is satisfied in the present case, the referring court must take into account, first of all, as observed, inter alia, in paragraphs 174 to 179 of the present judgment, the fact that there is no framework for the rules on prior approval, participation and sanctions at issue in the main proceedings providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, precise and non-discriminatory. The Court finds, moreover, that such a situation is liable to enable entities having adopted those rules to prevent any and all competition on the market for the organisation and marketing of interclub football competitions on European Union territory.

200 More generally, the examination of the different conditions referred to in paragraph 190 of the present judgment may require taking into account the particularities and specific characteristics of the sectors or markets concerned by the agreement, decision by an association of undertakings or concerted practice at issue, if those particularities and specific characteristics are decisive for the outcome of that examination (see, to that effect, judgments of 6 October 2009, *GlaxoSmithKline Services and Others v Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 103, and of 11 September 2014, *MasterCard and Others v Commission*, C-382/12 P, EU:C:2014:2201, paragraph 236).

(c) Objective justification under Article 102 TFEU

201 Consistently with what is provided for in Article 101(3) TFEU, it follows from the Court’s case-law relating to Article 102 TFEU that an undertaking holding a dominant position may show that conduct liable to come within the scope of the prohibition laid down in that article may yet be justified

(judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 40, and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 46).

- 202 In particular, an undertaking may demonstrate, to that end, either that its conduct is objectively necessary, or that the exclusionary effect produced may be counterbalanced or even outweighed by advantages in terms of efficiency which also benefit the consumer (judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 41, and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraphs 46 and 86).
- 203 As regards the first part of that possibility, it follows from paragraph 147 of the present judgment that the establishment, by FIFA and UEFA, of discretionary rules on prior approval of international interclub football competitions, control of participation by clubs and players in those competitions and sanctions, precisely because of their discretionary nature, can in no way be regarded as being objectively justified by technical or commercial necessities, unlike what could be the case if there was a framework for those rules providing for substantive criteria and detailed procedural rules meeting the requirements of transparency, clarity, precision, neutrality and proportionality which are imperative in this field. Accordingly, objectively speaking, those rules, controls and sanctions have the aim of reserving the organisation of any such competition to those entities, entailing the risk of eliminating any and all competition from third-party undertakings, meaning that such conduct constitutes an abuse of a dominant position prohibited by Article 102 TFEU, one not justified, moreover, by an objective necessity.
- 204 As regards the second part of that possibility, it is for the dominant undertaking to demonstrate, first, that its conduct can allow efficiency gains to be achieved by establishing the actual existence and extent of those gains; second, that such efficiency gains counteract the likely harmful effects of that conduct on competition and consumer welfare on the market(s) concerned; third, that that conduct is necessary for the achievement of those gains in efficiency; and, fourth, that it does not eliminate effective competition, by removing all or most existing sources of actual or potential competition (see, to that effect, judgment of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 42).
- 205 In the same way as for the exemption provided for in Article 101(3) TFEU, that justification requires that the undertaking relying thereon shows, using convincing arguments and evidence, that all of the conditions required for that exemption are satisfied.
- 206 In the present case, it will be for the referring court to rule on whether the rules at issue in the main proceedings satisfy all of the conditions enabling them to be regarded as justified under Article 102 TFEU, after having allowed the parties to discharge their burden of proof, as observed in paragraph 191 of the present judgment.
- 207 That being so, it should be noted, regarding the fourth of those conditions, which are applicable both in the context of Article 101(3) TFEU and that of Article 102 TFEU, that, given the nature of those rules – which make the organisation and marketing of any interclub football competition on European Union territory subject to prior approval by FIFA and UEFA, without that power being subject to appropriate substantive criteria and detailed procedural rules – and the dominant, even monopolistic, position which, as observed by the referring court, is held by those two entities on the market concerned, the Court finds that those rules afford those entities the opportunity to prevent any and all competition on that market, as observed in paragraph 199 of the present judgment.
- 208 It should also be borne in mind that non-observance of one of the four cumulative conditions referred to in paragraphs 190 and 204 of the present judgment suffices to rule out the possibility that rules such as those at issue in the main proceedings may come within the exemption provided for in Article 101(3) TFEU or be held to be justified under Article 102 TFEU.
- 209 In the light of all the foregoing, the answer to the fifth question is that Article 101(3) and Article 102 TFEU must be interpreted as meaning that rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, may

benefit from an exemption to the application of Article 101(1) TFEU or be considered justified under Article 102 TFEU only if it is demonstrated, through convincing arguments and evidence, that all of the conditions required for those purposes are satisfied.

5. *Consideration of the fourth question: the interpretation of Articles 101 and 102 TFEU in situations involving rules on rights related to sporting competitions*

210 By its fourth question, the referring court asks, in essence, whether Articles 101 and 102 TFEU must be interpreted as precluding rules laid down by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, which designate those associations as being the original owners of all of the rights emanating from competitions coming under their ‘jurisdiction’, including rights related to a competition organised by a third-party undertaking, and which also confer on those associations an exclusive power to market those rights.

211 It should be noted in that regard that, in their written observations and oral pleadings before the Court, FIFA and UEFA insisted that the Swiss private law rules referred to by the referring court – more specifically Article 67(1) and Article 68(1) of the FIFA Statutes – must be construed, inasmuch as they cover rights emanating from competitions, matches and other events coming under the ‘jurisdiction’ of FIFA and UEFA, as applying not to all of the competitions coming within the territorial jurisdiction and respective powers of those two entities but only to those competitions which, from among them, are organised by those entities, to the exclusion of those which might be organised by third-party entities or undertakings. According to their own interpretation of those rules, FIFA and UEFA may in no way claim to be the owners of the rights emanating from competitions organised by such third-party entities or undertakings.

212 In those circumstances, whilst observing, as did the applicant in the main proceedings at the oral hearing held before the Court, that the rules at issue in the main proceedings could be construed otherwise, given the different meanings that can be attributed to the term ‘jurisdiction’, and that those rules would benefit from being modified so as to eliminate any possible ambiguity in that regard, the Court will respond to the present question by taking the interpretation referred to in the preceding paragraph as a premiss and by taking account of the link of complementarity between the rules at issue and the rules on prior approval, participation and sanctions which form the subject matter of the preceding questions. As a result, this answer is without prejudice to that which might be provided to the separate question whether Articles 101 and 102 TFEU preclude rules by which an entity such as FIFA designates itself or designates an entity such as UEFA as being the original owners of all rights emanating from competitions which, whilst coming within their territorial jurisdiction and respective powers, are organised by third-party entities or undertakings.

(a) *The holding of rights related to sporting competitions*

213 Under Article 345 TFEU, the EU and FEU Treaties are in no way to prejudice the rules in Member States governing the system of property ownership.

214 It follows that, in terms of their very principle, Articles 101 and 102 TFEU cannot be held to preclude rules such as Articles 67 and 68 of the FIFA Statutes inasmuch as those rules designate that entity and UEFA as the original owners of all rights emanating from professional interclub football competitions organised by them on European Union territory with the crucial backing of the professional football clubs and players participating in those competitions.

215 On the contrary, the interpretation of Articles 101 and 102 TFEU by the Court and the application of those articles by the referring court must be premised on the fact that the rules governing the system of property ownership of rights to which such rules are applicable may vary from one Member State to another and that it is therefore primarily in the light of the applicable law governing property ownership and intellectual property that the question of the meaning to be attributed to the concept of ‘original owner’, referred to by those rules, must be examined, as observed, in essence, by many of the governments that have intervened before the Court. Thus, certain of them stated that, in so far as they are concerned and in order to be compatible with the provisions of their applicable domestic law governing property ownership and intellectual property, that concept must be examined as a voluntary

assignment' or a 'forced assignment' of rights by professional football clubs to national football associations, at the time of their affiliation to them, accompanied by a subsequent assignment of those same rights to FIFA and UEFA, at the time of those associations' affiliation to the latter.

216 The present case does not however concern that question, the examination of which would also require account to be taken of Article 17 of the Charter of Fundamental Rights of the European Union, which is a rule of law intended to confer rights on individuals by enshrining the right of property ownership and intellectual property, although without conferring an absolute or unconditional nature on those rights (see, to that effect, judgment of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 56), as the Court has held previously in relation to the rights specifically at issue in the present case (judgments of 18 July 2013, *FIFA v Commission*, C-204/11 P, EU:C:2013:477, paragraph 110, and of 18 July 2013, *UEFA v Commission*, C-201/11 P, EU:C:2013:519, paragraph 102).

(b) *The exploitation of rights related to sporting competitions*

217 As regards the question whether Article 101(1) and Article 102 TFEU preclude the rules referred to by the referring court inasmuch as they relate not to the original ownership of rights emanating from professional interclub football competitions organised by FIFA and UEFA, but to the commercial exploitation of those rights, it follows, first, from paragraphs 115, 117, 118, 139 and 140 of the present judgment that such rules may be regarded as being both a '[decision by an association] of undertakings' within the meaning of Article 101(1) TFEU and, at the same time, conduct by an 'undertaking' in a 'dominant position', resulting from the exercise of a regulatory power, and hence from the exercise of a means which is different to those which govern competition on the merits as between undertakings.

218 Next, Article 101(1)(b) and Article 102(b) TFEU expressly prohibit decisions by associations of undertakings and abuse consisting in preventing and restricting competition by limiting or controlling, among other parameters of competition, production and markets, to the prejudice of consumers.

219 As observed, inter alia, by certain of the governments who submitted observations to the Court and the Commission, the very purpose of the rules at issue in the main proceedings is, as evidenced by an examination of their content, to substitute, imperatively and completely, an arrangement for the exclusive and collective exploitation of all of the rights emanating from the professional interclub football competitions organised by FIFA and UEFA, in whatever form they may be, for any other mode of exploitation that might, in the absence of those rules, be freely chosen by the professional football clubs participating in matches organised as part of those competitions, be that mode of exploitation individual, bilateral or even multilateral.

220 Indeed, rules such as those laid down in Articles 67 and 68 of the FIFA Statutes reserve, in very clear and precise terms, the exclusive power for FIFA to determine, through regulatory provisions, the conditions of exploitation and use of those rights, by it or a third party. They also reserve to FIFA and UEFA an exclusive power to authorise the broadcast of matches and events including those involving interclub football competitions, whether on audiovisual or other platforms, without any restrictions as to content, time, place and technical aspects.

221 Moreover, those rules make subject to such powers, in equally unambiguous terms, all of those rights, be they financial rights, audiovisual and radio recording, reproduction and broadcasting rights, multimedia rights, marketing and promotion rights or intellectual property rights.

222 In so doing, those rules enable FIFA and UEFA to control in its entirety the supply of rights related to interclub competitions organised by them and, consequently, to prevent any and all competition between professional football clubs as regards the rights related to matches in which they participate. It is apparent from the case file before the Court that that mode of competitive functioning of the market is not at all theoretical but, on the contrary, very real and specific and that it existed, by way of example, until 2015 in Spain, as regards the audiovisual rights related to the competitions organised by the relevant national football association.

223 Lastly, as regards the economic and legal context of which the rules at issue in the main proceedings form a part, it should be noted, first, that the various rights emanating from professional interclub

football competitions constitute the principal source of revenue that can be derived from those competitions, inter alia by FIFA and UEFA, as the organisers of those competitions, as well as by the professional football clubs, without whose participation those competitions could not take place. Those rights are thus at the heart of the economic activity to which those competitions give rise, and their sale is, accordingly, intrinsically linked to the organisation of such competitions.

224 To that extent, the monopoly conferred by the rules at issue in the main proceedings on the entity that prescribed them, namely FIFA, and on UEFA, as regards the exploitation and marketing of those rights, dovetails with the absolute control that those entities have over the organisation and marketing of the competitions, by virtue of the rules which are the subject matter of the first three questions from the referring court, and corroborates the legal, economic and practical scope of those rules.

225 Second, irrespective of the economic activity to which they give rise, the rights at issue in the main proceedings constitute, in themselves, an essential element in the system of undistorted competition which the EU and FEU Treaties are intended to establish and maintain, as the Court has held previously in relation to trade mark rights held by professional football clubs (see, to that effect, judgment of 12 November 2002, *Arsenal Football Club*, C-206/01, EU:C:2002:651, paragraphs 47 and 48). Indeed, they are rights, which are legally protected and have their own economic value, to exploit commercially in various ways a pre-existing product or service, in this case a match or series of matches in which a given club faces one or more other clubs.

226 Hence, these rights are a parameter of competition which the rules at issue in the main proceedings remove from the control of the professional football clubs that participate in the interclub competitions organised by FIFA and UEFA.

227 Third, unlike the organisation of interclub football competitions, which is a ‘horizontal’ economic activity involving only those entities or undertakings which are currently or potentially organisers of them, the marketing of the various rights related to those competitions is ‘vertical’ inasmuch as it involves, on the supply side, those same entities or undertakings and, on the demand side, undertakings wishing to purchase those rights, either in order to sell them on to television broadcasters and other media service providers (trade) or to broadcast the matches themselves through various electronic communications networks or various media, such as linear television or on-demand streaming, radio, internet, mobile devices and other emerging media. Those various broadcasters are themselves liable to sell space or time to undertakings which are active in other economic sectors, for the purpose of advertising or sponsorship, in order to enable them to place their products or services during the broadcast of the competitions.

228 Hence, given their content, what they objectively aim to achieve in terms of competition and the economic and legal context of which they form a part, rules such as those at issue in the main proceedings are liable not only to prevent any and all competition between the professional football clubs affiliated to the national football associations which are FIFA and UEFA members in the marketing of the various rights related to the matches in which they participate, but also to affect the functioning of competition, to the detriment of third-party undertakings operating across a range of media markets situated downstream from that marketing, to the detriment of consumers and television viewers.

229 In particular, such rules are liable to enable both entities on which they confer a monopoly in this area, consisting in total control over supply, to charge excessive, and therefore abusive, prices (see, to that effect, judgments of 14 February 1978, *United Brands and United Brands Continentaal v Commission*, 27/76, EU:C:1978:22, paragraph 250, and of 11 December 2008, *Kanal 5 and TV 4*, C-52/07, EU:C:2008:703, paragraphs 28 and 29), faced with which actual or potential buyers of rights prima facie have only limited negotiating power, given the fundamental and inescapable place held by professional interclub football competitions and matches as products with drawing power able to attract and to retain the loyalty of a large audience throughout the year, in the range of programmes and broadcasts that broadcasters may offer their customers and, more generally, television viewers. Moreover, by obliging all actual or potential buyers of rights to purchase from two vendors, each offering a range of products exclusive of any alternative offering and enjoying a strong image and reputation, they are liable to incentivise those actual or potential buyers to standardise their conduct on

the market and their offerings to their own customers, thereby leading to a narrowing of choice and less innovation, to the detriment of consumers and television viewers.

230 For all of the foregoing reasons, inasmuch as they substitute, imperatively and completely, an arrangement for the exclusive exploitation of all of the rights emanating from the professional interclub football competitions organised by FIFA and UEFA for any other mode of exploitation that might, in their absence, be freely chosen, rules such as those at issue in the main proceedings may be regarded as having as their ‘object’ the prevention or restriction of competition on the different markets concerned within the meaning of Article 101(1) TFEU, and as constituting ‘abuse’ of a dominant position within the meaning of Article 102 TFEU, unless it can be proven that they are justified. That holds all the more true when such rules are combined with rules on prior approval, participation and sanctions, such as those that were the subject matter of the preceding questions.

(c) *Whether there is justification*

231 As regards the question whether such rules are liable to fulfil all of the conditions referred to in paragraphs 190 and 204 of the present judgment, which must be fulfilled for there to be an exemption under Article 101(3) TFEU and to be considered justified under Article 102 TFEU, it should be noted that it will be for the referring court to rule on this question, after having allowed the parties to the main proceedings to discharge their respective burdens of proof.

232 That said, it should be noted, first, that before the Court, the defendants in the main proceedings, a number of governments and the Commission have argued that those rules enable efficiency gains to be made by helping to improve both production and distribution. By allowing actual or potential buyers to negotiate for the purchase of rights with two exclusive vendors prior to each of the international or European competitions organised by those vendors, the rules bring down their transaction costs significantly and reduce the uncertainty they would face if they had to negotiate on a case-by-case basis with the participating clubs, who would be liable to have divergent respective positions and interests in relation to the marketing of those rights. Moreover and especially, they also allow actual and potential buyers to have access, on defined terms and with consistent application at international or European level, to rights which are infinitely more attractive than what would be proposed to them jointly by clubs participating in one or another match, given that those rights benefit from FIFA’s and UEFA’s brand reputation and cover the entirety of a competition organised by them, or at least a complete set of matches scheduled at various stages of that competition (qualification matches, group stage and final stage).

233 It will, however, be for the national court to determine, in the light of the arguments and evidence to be adduced by the parties to the main proceedings, the extent of those efficiency gains and, in the event that their actual existence and extent have been established, to rule on whether any such efficiency gains would be such as to compensate for the disadvantages in terms of competition resulting from the rules at issue in the main proceedings.

234 Second, the defendants in the main proceedings, a number of governments and the Commission have argued that a fair share of the profit that appears to result from the efficiency gains achieved through the rules at issue in the main proceedings is reserved for users. Thus, a large share of the profit derived from the centralised sale of the various rights related to the interclub football competitions organised by FIFA and UEFA is allocated to financing or projects intended to ensure some form of ‘solidarity redistribution’ within football, to the benefit not only of professional football clubs participating in those competitions, but also those not participating, amateur clubs, professional players, women’s football, young players and other categories of stakeholders in football. Similarly, improvements in production and distribution resulting from the centralised sale and the ‘solidarity redistribution’ of the profit generated thereby ultimately benefit supporters, consumers, that is to say, television viewers, and, more broadly, all EU citizens involved in amateur football.

235 Those arguments appear *prima facie* to be convincing, given the essential characteristics of the interclub football competitions organised at world or European level. Indeed, the proper functioning, sustainability and success of those competitions depend on maintaining a balance and on preserving a certain equality of opportunity as between the participating professional football clubs, given the interdependence that binds them together, as follows from paragraph 143 of the present judgment.

Moreover, there is a trickle-down effect from those competitions into smaller professional football clubs and amateur football clubs which, whilst not participating therein, invest at local level in the recruitment and training of young, talented players, some of whom will turn professional and aspire to join a participating club (see, to that effect, judgment of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 41 to 45). Lastly, the solidarity role of football, as long as it is genuine, serves to bolster its educational and social function within the European Union.

236 Even so, the profit generated by centralised sales of the rights related to interclub football competitions for each category of user – including not only professional and amateur clubs and other stakeholders in football, but also spectators and television viewers – must be proven to be real and concrete.

237 It will thus, ultimately, be for the referring court to determine, in the light of the evidence, particularly accounting and financial, to be adduced by the parties to the main proceedings, whether the arguments in question, irrespective of whether they relate to ‘horizontal’ solidarity as between clubs participating in those competitions or ‘vertical’ solidarity with the various other stakeholders in football, are in fact substantiated having regard to the rules at issue in the main proceedings.

238 Third, it will also be for the referring court to determine, in the light of the evidence to be adduced by the parties to the main proceedings, whether the rules at issue in the main proceedings are indispensable for achieving the efficiency gains referred to above and for ensuring the ‘solidarity redistribution’ of a fair share of the profit generated thereby to all users, be they professional or amateur football stakeholders, spectators or television viewers.

239 As regards, fourth, the question whether the rules at issue allow effective competition to remain for a substantial part of the products or services concerned, it should be noted that, whilst those rules eliminate all competition on the supply side, they do not, on the other hand, seem by themselves to eliminate competition on the demand side. Indeed, whilst they are liable to impose on actual or potential buyers a higher price to acquire rights, thereby reducing the number of buyers who are in a position to do so, or even incentivise them to group together, they also allow them to access a more attractive product in terms of content and image, for which there is fierce competition given the privileged position it occupies in the range of programmes and broadcasts that may be offered to customers and, more broadly, television viewers.

240 Be that as it may, the referring court can appraise the actual existence and importance of that competition only by taking into account the actual legal and economic conditions in which FIFA establishes a framework for the exploitation and proceeds to market the various competition-related rights (audiovisual, multimedia, marketing and other) on the basis of Articles 67 and 68 of its statutes. Where there is no competition between vendors and thus no ‘inter-product’ competition, that competition can be ensured, inter alia, through the use of an auction, selection or bidding procedure that is open, transparent and non-discriminatory and leads to impartial decision-making, thereby enabling actual or potential buyers to engage in effective, undistorted competition ‘for the products’. It may also depend on the duration for which those rights are being offered, whether they are exclusive or non-exclusive, their geographical scope, the number (batches) and type (qualification, group stage, knockout round) of matches which may be broadcast, as well as all of the legal, technical and financial conditions under which those rights may be acquired. Beyond those legal parameters, competition may also depend on the number of actual or potential buyers, their respective market positions and the links that may exist both between them and with other stakeholders in football, such as professional football clubs, other undertakings or FIFA and UEFA themselves.

241 In the light of all of the foregoing, the answer to the fourth question is that Articles 101 and 102 TFEU must be interpreted as:

- not precluding rules laid down by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, inasmuch as they designate those associations as being the original owners of all of the rights emanating from competitions coming under their ‘jurisdiction’, where those rules apply only to competitions organised by those associations, to the exclusion of those which might be organised by third-party entities or undertakings;

- precluding such rules in so far as they confer on those same associations an exclusive power relating to the marketing of the rights at issue, unless it is demonstrated, through convincing arguments and evidence, that all the conditions required in order for those rules to benefit, under Article 101(3) TFEU, from an exemption to the application of Article 101(1) TFEU and be considered justified under Article 102 TFEU are satisfied.

C. Consideration the sixth question: freedoms of movement

242 By its sixth question, the referring court asks, in essence, whether Articles 45, 49, 56 and 63 TFEU must be interpreted as precluding rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, where there is no framework for those rules providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate.

1. Identification of the relevant freedom of movement

243 Where a national court makes a reference to the Court about the interpretation of various provisions of the FEU Treaty relating to freedoms of movement, with a view to ruling on a measure pertaining to several of those freedoms at the same time, and it appears, in view of its object, that that measure relates predominantly to one of those freedoms and secondarily to the others, the Court will in principle examine the measure in relation to only the predominant freedom concerned (see, to that effect, judgments of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 47, and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 50 and 51).

244 In the present case, the referring court asks the Court about the interpretation of provisions of the FEU Treaty pertaining to the freedom of movement of workers, freedom of establishment, freedom to provide services and freedom of movement of capital. However, the rules on which that court has been called on to rule in the dispute in the main proceedings have as their predominant object to make the organisation and marketing of any new interclub football competition on European Union territory subject to prior approval by FIFA and UEFA, and thus to make any undertaking wishing to carry on such an economic activity in any Member State whatsoever dependent on the grant of such approval. Although it is true that those rules on prior approval are accompanied by rules controlling the participation of professional football clubs and players in those competitions, for the purposes of the answer to be given to the present question, the latter may be considered as secondary to the former, inasmuch as they are ancillary thereto.

245 Thus, the FIFA and UEFA rules at issue in the main proceedings may be regarded as relating predominantly to the freedom to provide services, which includes all services which are not offered on a stable and continuous basis from an establishment in the Member State of destination (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 53).

246 In those circumstances, the Court will limit its examination to Article 56 TFEU.

2. The existence of an obstacle to freedom to provide services

247 Article 56 TFEU, which enshrines the freedom to provide services for the benefit of both providers and recipients of such services, precludes any national measures, even those which are applicable without distinction, which restrict the exercise of that freedom by prohibiting, impeding or rendering less attractive the activity of those providers in those Member States other than the one where they are established (see, to that effect, judgments of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 51, and of 3 March 2020, *Google Ireland*, C-482/18, EU:C:2020:141, paragraphs 25 and 26).

248 This is the case of the rules at issue in the main proceedings. Indeed, since, according to the statements of the referring court, there is no framework providing for substantive criteria and detailed rules

suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, those rules enable FIFA and UEFA to exercise discretionary control over the possibility for any third-party undertaking to organise and market interclub football competitions on European Union territory, the possibility for any professional football club to participate in those competitions as well as, by way of corollary, the possibility for any other undertaking to provide services related to the organisation or marketing of those competitions, as observed, in essence, by the Advocate General in points 175 and 176 of his Opinion.

249 In so doing, those rules tend not only to impede or make less attractive the various economic activities concerned, but to prevent them outright, by limiting access for any newcomer (see, by analogy, judgments of 10 March 2009, *Hartlauer*, C-169/07, EU:C:2009:141, paragraph 34, and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 62).

250 It follows that those rules constitute an obstacle to the freedom to provide services enshrined in Article 56 TFEU.

3. *Whether there is justification*

251 Measures of non-State origin may be permitted even though they impede a freedom of movement enshrined in the FEU Treaty, if it is proven, first, that their adoption is justified by a legitimate objective in the public interest which is other than of a purely economic nature and, second, that they observe the principle of proportionality, which entails that they are suitable for ensuring the achievement of that objective and do not go beyond what is necessary for that purpose (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 104, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 48). As regards, more specifically, the condition relating to the suitability of such measures, it should be borne in mind that they can be held to be suitable for ensuring achievement of the aim relied on only if they genuinely reflect a concern to attain it in a consistent and systematic manner (see, to that effect, judgments of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 61, and of 6 October 2020, *Commission v Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 178).

252 Similarly to situations involving a measure of State origin, it is for the party who introduced the measure of non-State origin at issue to demonstrate that those two cumulative conditions are met (see, by analogy, judgments of 21 January 2016, *Commission v Cyprus*, C-515/14, EU:C:2016:30, paragraph 54, and of 18 June 2020, *Commission v Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 77).

253 In the present case, in view of the aspects discussed in paragraphs 142 to 144 and 196 of the present judgment, the Court finds that the adoption of rules on prior approval of interclub football competitions and on the participation of professional football clubs and players in those competitions may be justified, in terms of its very principle, by public interest objectives consisting in ensuring, prior to the organisation of such competitions, that they will be organised in observance of the principles, values and rules of the game underpinning professional football, in particular the values of openness, merit and solidarity, but also that those competitions will, in a substantively homogeneous and temporally coordinated manner, integrate into the ‘organised system’ of national, European and international competitions characterising that sport.

254 Nevertheless, those objectives are not capable of justifying the adoption of such rules where they do not include substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, precise and non-discriminatory, as follows from paragraphs 147, 175, 176 and 199 of the present judgment.

255 Indeed, in order for a prior approval scheme like the one introduced by those rules to be held to be justified, it must, in any event, be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the discretion conferred thereby on the body empowered to grant or refuse that prior approval, so that that power is not used arbitrarily (see, to that effect, judgments of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 35, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 65).

256 In the present case, in the light of the statements of the referring court referred to in paragraph 248 of the present judgment, the rules at issue in the main proceedings do not appear to be capable of being justified by a legitimate objective in the public interest.

257 In the light of all the foregoing, the answer to the sixth question is that Article 56 TFEU must be interpreted as precluding rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, where there is no framework for those rules providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate.

Costs

258 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. Article 102 TFEU

must be interpreted as meaning that the adoption and implementation of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes abuse of a dominant position.

2. Article 101(1) TFEU

must be interpreted as meaning that the adoption and implementation, directly or through their member national football associations, of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes a decision by an association of undertakings having as its object the prevention of competition.

3. Article 101(3) and Article 102 TFEU

must be interpreted as meaning that rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, may benefit from an exemption to the application of Article 101(1) TFEU or be considered justified under Article 102 TFEU only

if it is demonstrated, through convincing arguments and evidence, that all of the conditions required for those purposes are satisfied.

4. Articles 101 and 102 TFEU must be interpreted as

- not precluding rules laid down by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, inasmuch as they designate those associations as being the original owners of all of the rights emanating from competitions coming under their ‘jurisdiction’, where those rules apply only to competitions organised by those associations, to the exclusion of those which might be organised by third-party entities or undertakings;**
- precluding such rules in so far as they confer on those same associations an exclusive power relating to the marketing of the rights at issue, unless it is demonstrated, through convincing arguments and evidence, that all the conditions required in order for those rules to benefit, under Article 101(3) TFEU, from an exemption to the application of Article 101(1) TFEU and be considered justified under Article 102 TFEU are satisfied.**

5. Article 56 TFEU

must be interpreted as precluding rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, where there is no framework for those rules providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate.

[Signatures]

* Language of the case: Spanish.