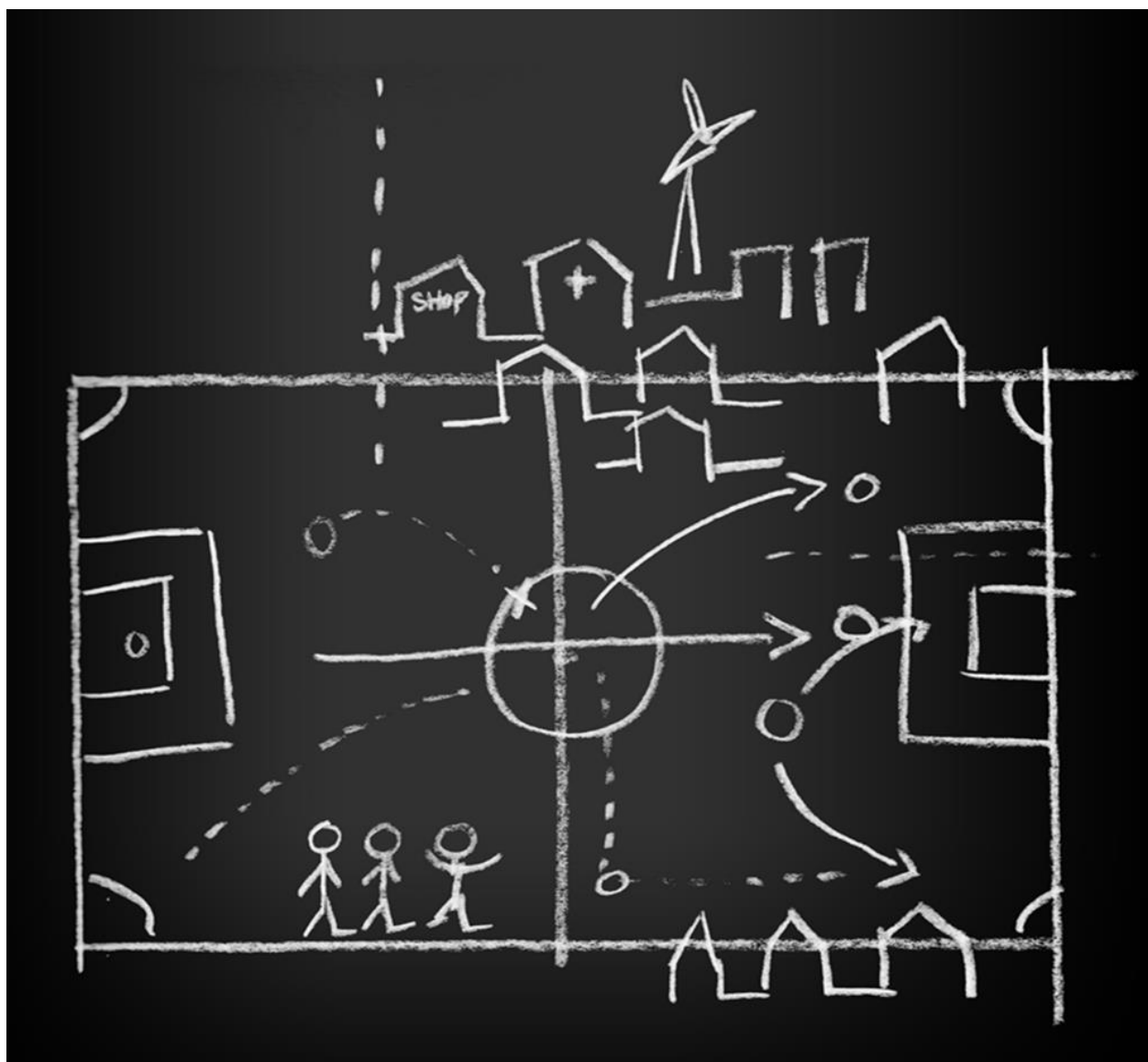


RECOMMENDATIONS FOR THE REGULATORY REFORM OF ENGLISH FOOTBALL – ABBREVIATED REPORT



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1. INTRODUCTION

This report makes a recommendation for a different regulatory structure for English football, with an independent regulatory body under the auspices of the FA overseeing a new club licensing system and improved policies and powers in critical regulatory areas (regulatory areas that are currently delegated to leagues to manage).

The recommendation is broken down and discussed in detail in the following sections.

1. A new independent regulatory body – section 2
2. A new club licensing system – section 3
3. Improvements to critical regulatory areas – section 4

The recommendation is informed by case studies undertaken in respect of the following eleven clubs.

- Blackpool
- Bolton Wanderers
- Coventry City
- Hinckley United & AFC Hinckley
- Leeds United
- Manchester United
- Morecambe
- Nottingham Forest
- Reading
- West Ham United
- Wrexham

The case studies represent just a selection of examples where existing regulations are either deficient or open to abuse. Similar experiences at other clubs not the subject of case studies reinforce the argument for reform. The findings of the case studies were correct at the date of this report, 12 May 2017, but, as time passes, these clubs' circumstances are likely to evolve. However, the conclusions drawn from the case studies will remain relevant since they draw attention to deficiencies in the regulatory regime which need to be addressed.

Moreover, the report is based on the published rulebooks of each of the game's governing bodies as at 12 May 2017 and takes no account of any subsequent modifications thereto.

The case studies are not included in this abbreviated report. Any readers wishing to have sight of the full report should request this from Supporters Direct.

We recognise our recommendation represents a significant step change which may require a transitional approach. This could be achieved through immediate adoption of recommendations to critical regulatory areas in section 4, with increased power shifting gradually to the new regulatory body, culminating in the body becoming fully operational and responsible for the new club licensing system.

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This report recognises the progress made by the leagues and governing body but more radical steps are required to ensure that the regulatory regime keeps pace with the challenges facing the game for the benefit of English football and the communities within which clubs operate.

SD is fortunate to hold a unique position in the game supporting more than 150 Supporters Trusts and supporter owned clubs across the football pyramid, this has helped us to inform our recommendations and we believe make a constructive contribution to English club football. We are very grateful to the 30+ individual contributions to this report which include club Board Members, club employees, researchers and of course activists and Board Members of Supporters Trusts.

It is our hope that through partnering with SKINs and the “Fans Not Numbers” campaign we can increase the profile and ideas of football reform further, benefiting from more contributions at the roadshows around the country to improve further these recommendations.

2. A NEW INDEPENDENT REGULATORY BODY

The overarching recommendation is for the establishment of an independent, adequately resourced body under the auspices of the FA tasked with both setting and monitoring regulations. This would take significant responsibility away from the leagues as competition organisers, with changes enshrined in the FA handbook replacing the relevant regulatory sections in the league rulebooks. In consolidating these areas (many of which are identified in section 4) the outcome would be one rulebook and the leagues absolved of this responsibility.

We recognise that the FA is undergoing some governance reforms to modernise and become more independent which may have a bearing on how the proposed new regulatory body would report to the FA.

2.1. Background

Although this paper is predominantly focused on identifying weaknesses and recommending improvements it is useful to remember some of the recent commitments and incidents that highlight the need for these recommendations.

In 2011, the FA set out a number of commitments regarding the regulation of the game ¹.

- “The FA has a responsibility to make sure that the policies and rules of the game help to make it sustainable, safe and enjoyable.
- The decision-making processes and structures across English football now need to evolve to protect the values and integrity which make our professional clubs and leagues so successful.
- we will protect English football’s values and integrity collectively by identifying the big issues affecting the whole game, such as the financial stability of clubs.”

In the following year the Department of Culture Media and Sport (“DCMS”) committee to investigate domestic football governance produced a report² containing, as an appendix, a joint memorandum from David Bernstein, then chairman of the FA, Roger Burden, FA board member, Richard Scudamore, chief executive of the FAPL and Greg Clarke, chairman of the EFL, to the DCMS (29/02/12) setting out “proposals for a new governance framework through which we believe better decision making will be achieved.” The message indicated an intention to implement the proposals setting out plans for the establishment of the FA Regulatory Authority (“FARA”) and a new club licensing framework.

Although the terms of reference for what is now designated the Football Regulatory Authority (“FRA”) are incorporated in the FA Handbook, it has not to date achieved the objectives set out in the February 2012 memorandum.

The memorandum anticipated that the FA Club Licence would form the annual “registration” process of a club to take part in the English game and, inter alia, “set out an express director/owner commitment to adhere to the FA and relevant league rules and obligations and require express confirmation that Club is not in breach of any legal obligations or club to club obligations”. Clubs

¹ The FA Group Strategic Plan (2011-2015)

² Football Governance Follow-Up: Fourth Report of Session 2012-13 – Volume I (Ref HC509 – 29.01.13) Appendix 1

would also be required to adhere to the rules and regulations of any competition in which they participated, with the respective competitions retaining responsibility for compliance.

To date, no club licensing framework has been established and there is no reference to it in the FA Handbook. Although it must be acknowledged that the criteria for the club licence set out in the February 2012 memorandum were only of limited scope, such an initiative, if based on a broader range of criteria, would address many of the deficiencies in the existing regime, as highlighted in this report.

2.2. Recommendation

To achieve objectivity, it is essential that the regulatory body for the game should be demonstrably independent, in particular free from any suspicion of acting out of self-interest. When so many of the regulations are set by the major leagues, dependent on the approval of their member clubs, it is inevitable that self-interest will prevail. Moreover, the EFL Articles of Association confer greater influence on Championship clubs: for a rule change to be approved, not only must a majority of the 72 member clubs vote in favour but a majority of the 24 Championship clubs must also vote in favour of the proposal.

There are a number of recent examples where the power and influence of the FAPL clubs is influencing the regulatory system for example when the EFL announced in December 2016³

“Championship clubs voted to change their FFP rules in November 2014 as part of wide-ranging negotiations with the top-flight about future solidarity arrangements that has contractually linked the finances of the EFL and Premier League for the first time since the formation of the latter in 1992.”

The inevitable conclusion is that solidarity payments might not have been forthcoming had the EFL clubs not agreed to these changes.

Another example is the change to Financial Fair Play tax (FFPT) with penalties to Championship clubs being paid to charity, rather than being redistributed to clubs which operated within the rules, as originally envisaged⁴. This was influenced by the FAPL and represents a missed opportunity to reward good practice.

Further evidence of the importance of the regulatory authorities needing to be seen to be independent emerged recently with regard to Bolton Wanderers, presently the subject of a registration embargo⁵. The club’s chairman, Ken Anderson, appeared to question the motives of members of the league board when challenging its decision to enforce the embargo by rejecting the club’s request to sign a certain player:

“I wasn’t too happy. There were certain people at other clubs who probably didn’t want us to bring in other players. The words they used were ‘conflict of interest’ but I’d go something stronger and say they may have had a vested interest in him not joining us.”

³ <http://www.efl.com/news/article/2016/efl-financial-fair-play-sky-bet-championship-3492432.aspx>

⁴ <https://www.theguardian.com/football/2014/feb/26/financial-fair-play-championship-clubs-threat-football-league>

⁵ [http://www.theboltonnews.co.uk/sport/wanderers/15137282.Whites need EFL 39 favour 39 to bring in midfield addition/](http://www.theboltonnews.co.uk/sport/wanderers/15137282.Whites%20need%20EFL%2039%20favour%2039%20to%20bring%20in%20midfield%20addition/)

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Finally, there is a sense that the EFL especially lacks the conviction to enforce its regulations rigorously. In April 2017, following a good deal of media attention surrounding the affairs of Leyton Orient (failure to pay its players and staff, a winding up order from HMRC for £0.25m and a volatile owner who was banned for 6 matches for kicking his manager and who is wanted to face charges of fraud and money laundering in Albania) which have culminated in the club's relegation from League 2, the EFL issued a statement⁶ seeking to justify their stance.

The statement observed "that the [ODT] governs the eligibility of who is able to own a club - it does not also ensure that those individuals have the capability to manage it properly. The role of the EFL is one of a competition organiser and the management of clubs is a matter for their Directors, as long as their conduct is not in breach of any of our Regulations."

It is easy to sympathise with the frustration of the club's supporters at such an anodyne statement about the conduct of the owner despite such conduct undermining the credibility and integrity of both the club and the league. However, rather than being interpreted as an abrogation by the league of its responsibilities it might instead be seen as recognition by the league that its existing regulations do not confer on it the ability to respond effectively.

The FA has gone on record as recognising the need for better governance of the game and we recommend that can be achieved through an independent regulatory authority, under the auspices of the FA which would ensure objectivity and integrity in setting regulations and enforcing compliance.

It would also ensure consistency of policies at all levels of the game with regard to issues such as ownership, financial fair play, insolvency and a consistent approach to sanctions where necessary. It is accepted that clubs at different levels will face different challenges. However, clubs move within and between leagues and so, while the system should remain consistent, areas and policies within it must be tailored for clubs at different levels of the game.

It is quite probable that such a radical initiative would be opposed by the leagues and so the arguments in favour of and the commitment to change will have to be persuasive.

The FAPL has devoted considerable resources to an enhanced regulatory regime and will argue, with some justification, that it has achieved great progress in the governance of the competition and member clubs. However, a continuing commitment to regulatory reform is difficult to reconcile either with the league's overriding commercial objectives or with its own constitution which requires rule changes to be approved by a 14:6 vote by clubs in favour. In such circumstances, it is inevitable that the self-interest of member clubs will have a bearing on the vote.

There might also be misgivings from the VNL who have been proactive in introducing many commendable reforms, elements of which might usefully be adopted by the higher leagues. VNL clubs might be concerned that a unified system would result in the interests of the larger clubs prevailing over their own.

Funding might be achieved by a levy on all central broadcast and commercial revenue raised by the FAPL, EFL and VNL prior to distribution to clubs. A percentage levy would seem to be most equitable. Such a change might assist the EFL and VNL if relieved of the burden of monitoring compliance with limited resources.

⁶ <http://www.efl.com/news/article/2016/efl-statement-leyton-orient-3691375.aspx>

A long-term objective of introducing club licensing, based on more extensive criteria than those proposed by the FA, FAPL and EFL in the February 2012 memorandum, should also be pursued (see section 3 below).

3. A NEW CLUB LICENSING SYSTEM

An annual club licensing system, administered by the new independent regulatory body would address many of the deficiencies in the current regime identified in this report.

3.1. Features of a domestic licensing system

Possible features of a domestic club licensing regime might include the following.

3.1.1. Ownership

The key features for ownership would be an enhanced ODT, incorporating the recommendations set out in section 4.2. The annual declarations already submitted by clubs and club officials would be submitted to and approved by the new authority.

3.1.2. Governance

Governance obligations would expand on existing requirements such as clubs' customer charters and supporter liaison including the new structured dialogue commitments for supporters and club leaders.

The annual process might include clubs being required to demonstrate compliance with a range of legal and regulatory obligations.

3.1.3. Financial viability

This would be the most radical change but, if many of the recommendations set out in section 4 were adopted (for example in relation to solvency, debt and security), the process would be more straightforward and effective.

The process would incorporate many elements of the leagues' existing financial compliance obligations, including the following.

- Annual accounts;
- Absence of modified audit opinion;
- No arrears of football creditors;
- No arrears of wages, PAYE or VAT;
- Budgets to end of following season.

In addition to submissions before the start of a season there would have to be mid-season confirmation of ongoing compliance.

Important new features would include tests of solvency which, as a starting point, would require a club's balance sheet to show a positive net assets position both at the start and end of the period under review.

The German system (section 3.2.3) grants the licensor considerable discretion in what he approves. Qualified approval would require the club to submit further information for detailed scrutiny and

might be similar to the process of clubs presently in default of FAPL or EFL criteria having to “adhere to a budget”. However, the process would be being dealt with by an independent body which would be encouraged to impose rigorous standards to ensure that clubs in danger of breaching criteria were brought quickly into line.

Sanctions for non-compliance would need to be meaningful including points deduction, withholding of central funds or, in extreme circumstances, refusal to grant a licence to play in the upcoming season and therefore expulsion from the competition. The licensing systems in place in many of the major European leagues already provide for relegation as a sanction for non compliance with licensing criteria.

These areas could in due course be broadened out to include ground grading and other matters.

3.2. Background to club licensing

Examples of club licensing already exist in many other areas of the game.

3.2.1. UEFA club licensing

UEFA first introduced a licensing system for all clubs wishing to participate in their competitions in 2004 and the consequence has been increased professionalism and greater transparency in how associations and clubs operate⁷.

Nowadays over 1,500 clubs in Europe undergo club licensing on an annual basis and, although there is no obligation to apply the system domestically, 51 of UEFA’s 54 member associations also apply some kind of club licensing and regulatory controls for participation in domestic competitions. In 2010, Financial Fair Play was adopted and integrated into the licensing regulations.

UEFA has delegated managing the licensing system to national associations, many of whom have adopted UEFA criteria in their own regulations. The UEFA regulations are regularly updated and clubs are now assessed against 38 separate criteria in five distinct areas:

- **Sporting:** primarily encouraging investment in youth development programmes which include an emphasis on non-football education, medical care and fair play on and off the pitch.
- **Infrastructure:** clubs’ stadia must meet minimum UEFA standards while clubs must also have suitable training facilities.
- **Personnel and administrative:** clubs must employ suitably qualified and experienced specialists to run operations efficiently and ensure players are trained by qualified coaches and supported by appropriately skilled medical staff.
- **Legal:** there must be complete transparency in terms of the overall legal group structure within which the club operates.
- **Financial:** the criteria aim to improve the quality of financial management, increase transparency and credibility, protect creditors and provide a basis for fair competition.

⁷ UEFA: Club Licensing Ten Years On

In order to ensure the credibility of the system UEFA arranges for extensive compliance audits over the course of a season to verify that licences have been correctly awarded. In the first ten years of the new regulations, an average of 34 clubs and 8 licensing bodies (the national associations) were audited annually.

To demonstrate the effectiveness of the system, of the 7,190 licence applications in the first twelve years of the new regulations, 1,275 were rejected, albeit not all of the clubs applying would have qualified for UEFA competition on sporting merit anyway. In that period, 46 clubs were not admitted to UEFA competitions due to licensing reasons. Moreover, in the four seasons since FFP was adopted in 2011/12, 44 clubs have been sanctioned due to non-compliance.

3.2.2. Domestic club licensing within Europe

In 2015, UEFA reported on the progress of licensing for its own competitions as discussed in section 3.2.1 above⁸. It noted that, of the 54 member associations within UEFA, 49 had a system of domestic club licensing. 7 associations had a single licensing system, effectively adopting the UEFA model for domestic purposes, while 42 had a dual licensing system. The report observes that a dual licensing system had much to commend it since it offered greater flexibility in establishing the criteria and deadlines relevant to each country.

Of those 49 associations, 15 applied their licensing system to the top division only, a further 23 to their second division and a further 11 to the top three divisions. Having a separate domestic licensing system would probably be most appropriate for countries extending the system to lower league clubs for whom qualification for UEFA competition would be a remote prospect.

England and Spain are two of the five non-compliant associations (the others being Montenegro, Gibraltar and Andorra) but the UEFA report does acknowledge that English and Spanish clubs were “nevertheless subject to significant rules and regulations akin to club licensing”.

It goes without saying that the other major nations (Germany, Italy, France, Netherlands, Portugal, Russia) all operate their own domestic licence systems.

3.2.3. Club licensing in Germany

The German licensing system awards a single licence for UEFA competition and the top three divisions of domestic football. It has been in operation for over 50 years and achieves high levels of compliance with no clubs failing to meet the criteria in the last five years. It has been reported that Germany has had no club insolvencies in the period since the licensing system’s inception⁹.

The financial criteria include assessing liquidity for the current and forthcoming season based on forecasts which are subject to audit but an important criterion, which features in neither the UEFA licensing system nor the various FFP regulations in England, is the requirement for positive net assets on a club’s balance sheet.

Licensing applications are also subject to verification by the club’s auditors rather than being self-certified.

⁸ UEFA: Club Licensing Ten Years On

⁹ Christian Muller: Submission to the parliamentary committee looking into the governance of football (DCMS)

3.2.4. *The FA Women's Super League*

The FA Women's Super League has operated a licensing system since 2014, covering four main areas.

- financial and business management,
- commercial sustainability and marketing,
- facilities, and
- players, support staff and youth development.

Clubs were invited to apply for four year licences from the 2014 season based on a range of criteria. With effect from 2018/19, it was announced that clubs would need to meet licence criteria on an annual basis.

The announcement on 21 April that Notts County Ladies FC, who had participated in WSL1, had been placed in liquidation, has called into question the viability of professional women's football and the effectiveness of the licensing system. In practical terms the most obvious deficiency in the licensing system was the decision to grant the original licenses for a four year period and the proposed transition to annual licensing from 2018/19 might have resulted in Notts County Ladies' financial difficulties coming to light at an earlier stage. However, if the FA wants its licensing system to be regarded as credible, much will depend on how rigorously the new annual monitoring system is enforced.

3.2.5. *Club licensing for steps 1-4 of the National League System*

With effect from the 2016/17 season, the FA has introduced club licensing for clubs at steps 1-4 of the National League System. Steps 1-4 comprise the Vanarama League, Isthmian League, Northern Premier League and Southern League – approximately 280 clubs. The regulations were approved in January 2016 and are set out in the FA Handbook for 2016/17.

The FA has delegated the operation and monitoring of the licence to each of the leagues.

Relevant information must be submitted by 14 March for the forthcoming season and the licence is awarded for one year only. There are 6 criteria.

- a) Legal. Confirmation of the legal entity that is the club.
- b) Ownership and control. A club must provide written confirmation of its ownership and control together with supporting evidence.
- c) Integrity. A club must confirm that it met the requirements of the ODT. Within this same section there is provision for a club who breaches rule 2.18 (as VNL rule 2.18: "if the finances of a particular club fall below the standards appropriate to membership of the competition...") to be expelled from the competition.
- d) Finance. Requirements include submission of annual accounts, filing of accounts with Companies House (incorporated clubs only), no arrears of payments to football creditors or HMRC, evidence of compliance with the VNL's Budget Monitoring Scheme (step 1 clubs only – see section 5.6.3) and confirmation that the club has not been subject to an insolvency event.

- e) Grounds and security of tenure.
- f) Reporting of changes. Failure to report any changes in circumstances could result in sanctions including suspension, withdrawal of the club's licence, registration embargo, fines or a points deduction.

The requirements represent a light touch approach and reflect the understanding that many of these clubs, especially at steps 3 and 4, will be small entities. However, it is nonetheless welcome and demonstrates the FA's commitment to improved governance.

4. IMPROVEMENTS TO KEY REGULATORY AREAS

The majority of the recommendations summarised below are improvements to existing regulations that currently can be found in the relevant league rulebook or league policy. The justification and evidence for these recommendations has been drawn from the case studies into the eleven clubs referred to in section 1.

As a reminder, we are proposing not only to improve these areas but also to transfer responsibility for their enforcement to the new independent regulatory body assisted by the club license system.

4.1. Ownership structures

The level of opacity in disclosure of actual ownership of clubs is unsatisfactory. Solutions might include the following:

- Prohibition on ownership by corporate, trust or other entities, either UK or overseas based. All club shareholdings would have to be in a personal capacity. It is accepted that this may constrain effective tax planning by owners but ownership of English football clubs confers privileges on the parties concerned which should outweigh tax planning considerations.
- Enhanced disclosure obligations regarding ultimate ownership on club websites. As an alternative to the above, disclosure needs to be expanded to include the identity (and % shareholdings) of all intermediate holding companies. Consideration should be given to requiring full disclosure of up to date accounts (prepared to an acceptable standard) for each such company, even where the relevant jurisdiction may not require such disclosure. Complete transparency should be a condition of ownership.
- Prohibition on shares in football club being pledged as security for borrowings by an owner. This could be enforced in the UK but, although it would be difficult to prevent an owner securing a loan in another country, an owner found to have breached such a rule should face onerous sanctions.

Any rule changes would need to recognise that conditions such as those recommended would constrain the rights usually enjoyed by a shareholder under UK company law and would therefore need careful drafting.

4.2. Owners' & Directors' Test

The evidence of the case studies demonstrates that the existing ODT is not sufficiently effective. A number of changes are therefore recommended.

- An absolute prohibition on being an owner or director in the event of any of the following.
 - * Any previous criminal convictions, spent or unspent, albeit still subject to the current 12 month prison sentence to avoid encompassing minor offences;
 - * Any current or previous disqualification from acting as a company director;
 - * Any current or previous personal bankruptcy event;
 - * Any previous involvement with a corporate insolvency in sport, while acting as a director;

- * No time limit for any previous insolvencies;
 - * Any material or persistent breaches of specified league or FA rules, for example financial compliance regulations.
- Any involvement with previous corporate insolvencies outside of sport should be identified and explained, and require the satisfaction of the regulating body.
 - The foregoing should be subject to a formal right of appeal but the default position should be as proposed above and it would be for the club/individual to make representations to the appeal body to justify why the prohibition should be relaxed in specific circumstances. The appeal body would develop guidelines and set precedents over time.
 - The test should be broadened to include shadow directors and, for example in the case of Coventry City, might include senior officials of SISU, the entity managing the investment funds which own the club.
 - It is also recommended that there should be greater transparency as to who has been subject to ODTs and the outcome and the decisions of the appeal body, supported by reasons as appropriate.

4.3. Stewardship

It is recommended that there should be a new obligation for owners and directors to observe basic standards of good stewardship for clubs.

Essential criteria would include compliance with all of the existing and additional proposed governance and financial regulations as well as the new structured dialogue initiatives relating to supporter engagement. There should also be an obligation to safeguard and protect the identity and existence of their club and to promote good relations with, and a positive contribution to, the local community.

Clubs should be required to demonstrate evidence of majority support amongst fans for certain proposals which might damage the community value of the club which could apply to matters such as the name of the club, the colours of the team, the club badge and the location of the home ground¹⁰.

Current regulations imposing social media sanctions on players and managers for bringing the game into disrepute could be extended to other personnel, including owners and directors.

Compliance might not be easily measurable but non-compliance would be more evident.

Clubs could be asked to submit an annual statement on their website as to how they are meeting the stewardship obligations, with an accredited Supporters Trust (or other supporters' organisation where no accredited Supporters Trust exists) asked to comment and respond.

¹⁰ Consolidating the 'heritage' commitments from the Government's Expert Working Group on football supporter ownership and involvement

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The regulatory body could rate clubs by reference to a range of criteria and require clubs with poor ratings to address their failings. Clubs with poor ratings could be put “on report” and failure to take remedial action in a given timescale could result in financial or other sanctions against the owners.

Support would be given to share best practice and a new platform created for clubs to capture and promote their commitment to their respective communities.

4.4. Funding of clubs

There remains a high level of club debt (£2.4bn for FAPL clubs and £1.2bn for Championship clubs in 2014/15 ¹¹), albeit including an element of soft loans from owners and related parties. The various case studies set out in the appendices disclose examples of clubs borrowing significant sums from, and charging their assets to, obscure lenders based in Cayman Islands (Coventry City and Reading), Bahrain (Leeds United), Hong Kong (Reading) and other remote locations. Unlike traditional UK lenders who might be circumspect about enforcing their security in an institution such as an illustrious football club, it is feared that overseas based lenders might have no such qualms. The destabilising effect on a club is immediately evident.

Some of the case studies highlighted the inadequate powers available to the FAPL and EFL when it has concerns about the source of sufficiency of funds being provided by a new owner on a takeover, other than following an insolvency event.

A number of potential solutions might be considered.

- A particular concern is current FFP regulations’ focus on profitability (or limiting the scale of losses) rather than debt and solvency, and recommendations are made to address this in section 4.7.
- The FAPL (from 2018) and EFL are to be commended for introducing regulations which will only permit the assignment of central broadcast distributions or future transfer fee instalments to FCA regulated lenders and there would be merit in extending these regulations to all loans. This would exclude entities such as those presently lending to Bolton at usurious rates of interest as well as the non UK lenders at Coventry, Leeds, Nottingham Forest (possibly), Reading and others.
- The VNL proposal to require loans to be unsecured, unless in relation to capital expenditure projects, has much to commend it.
- As a minimum, owners (or related parties to owners) should not be permitted to hold security over a club’s assets. This would also make it harder for owners to transfer a stadium or training facility away from club ownership with a view to redevelopment.
- FAPL and Championship FFP regulations refer to the concept of “Secure Funding”, to be evidenced to either league when clubs’ forecasts indicate they might breach FFP regulations. As defined, this may not be a loan but can be either equity investment or an irrevocable commitment to a future equity investment evidenced by a binding personal guarantee from the club’s owner or letter of credit from a financial institution, all subject to approval from the regulatory body. The requirement could be extended to other circumstances (i.e. demonstrating source and sufficiency of funding on a takeover) and not just a breach of FFP loss thresholds.

¹¹ Deloitte Annual Review of Football Finances 2016

4.5. Club stadia and other property

FA and league rules in relation to grounds allow too much scope for speculation on the development potential of club property, in particular their stadia, and need to be made more restrictive.

- Regulations should be modified so that formal consent is required from the regulator not only for a club to relocate its ground but also for any “proposed change in its circumstances relating to the occupation of its ground”. Changes in circumstances should include the sale, transfer or assignment of any material part of the site and should also include any proposal to pledge the ground as security. Consent would be conditional, inter alia, on the club being fully compliant with best practice on stewardship as recommended elsewhere.
- The requirement for consent might be extended to all the club’s property assets, for example including training grounds and academy facilities. These occasionally do have redevelopment potential and, before any consent is granted, the league or FA should be satisfied that the club has made appropriate commitments to replace the facility and that any surplus will be retained within the club and not distributed to the owner(s).
- A club would have to have the same rights of occupancy for the new facility as it had for the old: for example it would be unacceptable for it to be foregoing freehold title to its former stadium in exchange for a leasehold interest in a new stadium paying rent, say, to the club owner.
- Moreover, as suggested elsewhere and as mooted by the VNL, there might be an absolute prohibition on offering club property as security unless in connection with a capital expenditure project, for example the construction of a new stand. The terms of any consents granted under these requirements should be publicised.

4.6. Extraction of money from game

A range of options might be considered.

- It is unlikely that historical FA rules barring directors earning salaries and limiting dividends could ever be reintroduced, but there would be merit in attempting to impose realistic caps on what could be withdrawn from clubs in terms of salaries, fees, dividends or interest. A suitable level of transparency would be required.
- There should be an absolute prohibition on loans being made by a club to connected companies or related parties.
- Complete transparency would be called for, with all financial dealings with related parties fully disclosed on club websites in real time and not retrospectively on publication of a club’s historical financial results.
- There would also need to be strict anti-avoidance provisions, with meaningful sanctions, to address the risk of disguised withdrawals through related parties or failure to make full disclosure. If appropriate rules were introduced alongside those recommended elsewhere regarding ownership and funding (sections 4.1 and 4.4) there would be less opportunity for owners to withdraw funds.

4.7. Financial Fair Play

Existing rules in the FAPL and EFL (both Championship FFP and Leagues One and Two Salary Cost Management Protocol) focus on short term profitability, or limited losses, rather than debt or solvency. A range of measures would be required to address this and might require a transitional period.

- Alongside the existing rules there should be a fundamental requirement for solvency, measured as positive net assets on a club's current and forecast balance sheet. For the purpose of this exercise, accounting adjustments such as revaluation of property assets would be disregarded.
- Moreover, clubs should be required to submit an integrated cash flow reconciling forecast trading profit/loss with the projected cash position at the end of the period under review. Any borrowing requirement highlighted by this forecast would need to be covered by agreed borrowing facilities or "secure funding". A projected balance sheet at the end of the period under review should also be submitted.
- These initiatives would be introduced alongside recommendations for limiting borrowings and requiring additional funding to be by way of equity (see section 4.4).
- VNL rules should also include a requirement for a positive net assets test.
- The VNL rules should be modified to include retrospective verification of budget figures by reference to annual accounts.

Section 3 proposes that certain of these initiatives form part of an annual club licensing process.

4.8. Insolvency

The following recommendations would ensure a balance between the equitable treatment of creditors and an absolute prohibition on owners benefiting from an insolvency by shedding liabilities while retaining control of the club or its assets.

- The ODT should be revisited to bar any owner/director involved in any previous personal or corporate insolvency. This would immediately have blocked the transaction whereby Coventry City was transferred to a new company controlled by the same ultimate parties and a transfer of assets out of Hinckley United in 2013.
- VNL regulations should be aligned with the EFL's, at least for clubs relegated while the subject of an insolvency event. The removal of the need for a CVA would limit the voting influence of former owners with soft loans.
- Consideration should be given to the formal subordination in an insolvency of all soft loans from owners or related parties. The VNL is understood to be considering a diluted form of this proposal.
- Governing bodies' insolvency policies should be published in full so that clubs and their creditors are fully aware of the implications of a club insolvency.

- Proposals to tighten regulations on loans and granting security over club assets, if implemented, would reduce the incidence of club insolvencies. Again, the VNL is considering barring the granting of security, other than in respect of capital expenditure projects.

4.9. Sanctions

Adoption of many of the recommendations made in the foregoing sections would almost certainly limit the frequency of sanctions being imposed. However, the following changes are recommended.

- The criteria for both the registration embargo and the budgets to which clubs in breach of financial regulations must adhere should be more closely defined. These should include a prohibition on payment of any transfer fees or agent's fees, a limit on squad size (arguably more stringent than the current 24) and capping the wages for any replacement players at a modest level. The controls should be extended to support staff costs where any staff turnover should require a reduction in wage cost above a certain threshold. If the consequence is that clubs need to rely on academy players and struggle competitively that is a price to be paid for previous overspending.
- Further sanctions should be considered against club owners for persistent non-compliance. Existing rules already allow for this but they are rarely applied. A modification of the rules to make it clear that repeat offences will result in escalating sanctions to include fines or the withholding of central distributions would ensure that clubs would be aware of the impact of any transgressions.
- Sanctions should also be considered against club owners and directors. Again, the rules already exist and should be modified to allow for repeated non-compliance (Bolton or Nottingham Forest for example) to result in fines, suspension or, ultimately, disqualification as a director.
- Finally, the VNL initiative of a bond to be deposited with the league or the threat, under its rule 2.18, to exclude from membership clubs in a poor financial condition would give the EFL, especially, real power to enforce improvement in a club's financial stability. Alongside the recommended changes above and the club licensing initiative proposed in section 3, it is likely that such a deterrent would rarely if ever need to be invoked.