**Fair Game answers to consultation questions on**

**the policy paper:**

**A Sustainable Future - Reforming Club Football Governance**

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**Foreword**

*By Niall Couper, CEO of Fair Game*

The problems within football are well-documented.

The policy paper *A sustainable future - reforming club football governance* (published on 23 February 2023 and commonly known as the “White Paper”) represents a once-in-a-lifetime opportunity to fix the game.

As the Rt Hon Lucy Frazer MP says in the foreword of the White Paper:

“Football is not just a sport. It is part of our history, our heritage, and our national way of lif … Today marks a huge step in securing its long-term future and restoring fans’ rightful place at the heart of our national game.”

We at Fair Game therefore welcome the opportunity to respond to this crucial consultation that will help shape the future of our national game for generations to come.

The White Paper, and in particular the recommended implementation of an independent regulator for English football (“IREF”), is broadly welcomed by Fair Game. However, we believe that there remains plenty of room for improvement and that there are a number of key matters that should be included in legislation when it is brought before Parliament.

Fair Game has considered the White Paper in detail and our team of experts have given our thorough response to all the consultation questions in the following pages.

However, it is notable that there are a number of recurring themes in our answers and we believe they must be addressed if football is to see meaningful change. These recurring themes include:

* The removal of vested interests in all decision-making processes;
* The IREF must have a strong legislative power to impose penalties;
* The flow of football’s finances must be within the remit of the IREF and the financial flow must:
  + Be equitable for all levels of the football pyramid; and
  + Reward well-run clubs that demonstrate good governance and sustainability.
* Clubs must be as transparent to their fans as sporting competition allows;
* The IREF must be fully transparent;
* The IREF must have clear, well-defined, and enforced procedural remits and timelines;
* The IREF must provide support to licensed clubs in the form of training and collaborative intervention;
* The issue of a “Golden Share” must be a license condition and must be overseen by the IREF; and
* The IREF must also look to the future, and as a minimum include scope to introduce regulations regarding:
  + Equality, Diversity and Inclusion; and
  + Environmental sustainability.

Should the above themes be considered and implemented in full then Fair Game believes that English football will benefit from a regulator that is competent, strong, and effective whilst also being collaborative and supportive in its approach.

The IREF will also then be off to the very best start and the introduction of the licensing regime will be smooth and professional, but also effective from day one.

The IREF and its licensed clubs will therefore achieve the White Paper's stated aims of: “…protecting the Premier League’s position as the strongest league in the world, and, in turn, safeguarding clubs across the entire football pyramid,” and setting English football “...on a more sustainable course for the future...for generations to come.”

**Part 1: Model for Regulation**

**Consultation question 1:**

**What do we need to do to ensure the proposed model of licensing is the most effective way of regulating clubs?**

The model must achieve the objectives of change - primarily to ensure that the *Threshold Conditions* of a licence are able to be regulated easily and enforced effectively. The four proposed primary conditions are spelt out in paragraph 4.3 of the White Paper:

* Appropriate resources;
* Fit and Proper custodians;
* Fan Interests; and
* Approved competitions.

**Steps needed:**

**1, Monitoring**

To achieve the conditions outlined above, the IREF must introduce a robust real-time reporting mechanism for football clubs.

This should take the form of a *State of Football Study* (as outlined in paragraph 12.11 of the White Paper), the parameters of which we cover in our answer to Question 4.

This study should operate in real-time to ensure any issues or concerns arising are identified at the earliest possible point.

The IREF must also run and implement an authoritative Code of Governance, as referred to in section 6 of the White Paper. This code must have the community and supporters at its heart, whilst allowing for entrepreneurial ownership. A draft code is currently being developed by Fair Game and the parameters of which are outlined in our answer to Question 20.

Periodic re-licensing is essential. There must be a number of automatic triggers for re-licensing, these should include:

* Any “material changes”;
* Any changes in the standards of licensing; and
* Promotion or relegation.

**2, Consistency in reporting**

To ensure the effectiveness of regulation, football must have standardised reporting. For example, an investigation by Mark Middling from Northumbria University revealed that there are currently over 30 presentations of profit and loss accounts from the clubs in the Premier League and the EFL. Failure to do so, means comparing chalk with cheese.

**3, Support to improve**

To aid the transition to standardised reporting and the ongoing effectiveness of regulations, the IREF must provide monitoring templates for all clubs to use, including worked examples and clearly defined terms.

These templates should, where possible, reflect existing good practice, for example in relation to corporate governance. This would allow for a register of directors (certified) to stand for all instances where a list of directors is required.

All of the above should be accompanied by a training programme provided by the IREF to bring all clubs up to speed.

An end of season “AGM” of the IREF, where all regulated clubs can attend, should be introduced where improvements to the regulation can be discussed.

The IREF should also consult on both its strategic (three to five year) and annual business plans.

**4, Tiering**

Football clubs, however, do vary massively in size and structure. This must be reflected in the reporting requirements to ensure the level of scrutiny is applicable for the level the club plays in. Tonbridge Angels, for example, cannot be expected to complete the same in-depth analysis as Manchester United. There is plenty of precedent for this approach, for example Sport England’s Code of Governance.

**5, Transparency**

As mentioned in paragraph 6.2 of the White Paper, clubs lack transparency on financial and operational matters, and other key decisions.

Paragraph 8.7 of the White Paper states clearly that “*fans are a uniquely important stakeholder and their involvement improves transparency and accountability”*. Paragraph 3.5 highlights accountability as one of the main principles of the White Paper. It is, therefore, essential that clubs are transparent *to supporters,* not just the regulator. By implementing better social transparency and accountability, fans can then act as a form of ‘shadow regulation’ themselves.

We recommend that each club produces a supporter-focused annual report. For an example of how this can be done, please see the concept report developed by Mark Middling of Northumbria University as presented at the Fair Game conference (17/03/2023) and implemented by Exeter City FC (a club with limited resources, who have been able to develop the report on a very limited budget and staff <https://www.exetercityfc.co.uk/news/2023/march/supporter-review/>. A concept report is also available on request).

Paragraph 6.18 recommends an annual report on corporate governance. A supporter-focused annual report such as the Exeter one would include this.

In terms of ownership structures, clubs must ensure that all individuals or companies with more than a 10% stake in the club must provide full and transparent records and details of where their funds come from. This is an essential criteria of an effective owners and directors test, (more details outlined in our answer to Question 14).

**6, Grace periods**

Change in club circumstances must be taken into account when applying the regulations and processes required in licensing.

To accommodate this, the IREF should allow grace periods these should include:

* When a club is promoted or relegated;
* When the club moves out of administration; and
* When the club moves into fan ownership.

**7, Clear and legally robust procedures**

The IREF must develop a licensing model which is outcomes-focused, setting specific conditions for a licence to be granted and the means for withdrawing that licence as a last resort.

The White Paper’s reference to regulatory principles (10.11, 10.12, Table 3 and Table 4) which places a participatory approach as default should help to reduce risk of non-compliance.

It should also deploy a range of regulatory measures which reflect the Better Regulation Principles (as set out in section 21 of the Legislative and Regulatory Reform Act 2006):

* Transparency;
* Accountability;
* Proportionality; and
* Targeting.

This will enable the IREF to target resources where there is the greatest risk of not meeting statutory duties/objectives. Moreover, an adaptive/context specific and proportionate approach will ensure that regulatory interventions achieve outcomes, whilst recognising financial and other context-specific differences within and across leagues.

The licensing model itself, however, risks brinkmanship where a club is non-compliant and could, effectively, dare the regulator into action as a last resort - withdrawal of their licence. The IREF must, therefore, have clearly defined powers for escalation of activity up to and including withdrawal of a licence. The triggers for escalation must also be clearly defined by the IREF and be transparent.

Fair Game is currently researching the effectiveness of penalties. Among the areas being considered are:

* Standard fines;
* Fines proportionate to the offence;
* Fines proportionate to club revenue;
* Points deduction; and
* Dealing with repeat offenders.

Fair Game believes that where possible the fans should not suffer as a result of mismanagement by their club’s owners and directors.

**8, Incentives to deliver culture change**

Penalties for misdemeanours in football have been in place for decades and yet the same issues of mismanagement and financial unsustainability remain. The IREF must also encourage and incentivise culture change to effectively regulate clubs.

Incentives already exist in several other regulators, notably the FCA who set out mitigating and aggravating factors considered when the FCA is deciding the penalty to be applied to a firm that is in breach (see 6.5A.3 of the FCA Handbook).

The IREF’s *State of Football Survey* must replicate the concept of Fair Game’s Sustainability Index and be used as the mechanism to distribute broadcast revenues. By rewarding well-run clubs this would encourage culture change, and set an example for clubs to follow, reducing the risk-reward ‘gamble’ which is pervasive across leagues.

However, such redistribution cannot lie in the hands of the football authorities (as explained in Fair Game’s answer to Question 25). This means the IREF must also have powers to control football’s financial flow.

The parachute payments, which create significant imbalance throughout the pyramid, must be abolished.

**9, Future-proofing**

Fair Game supports the overarching licensing model and the four threshold conditions for licensing professional football clubs in the top five tiers of football in England.

However, it needs to be future proofed and the following should be included in the IREF's remit:

* National League North and National League South;
* Equality, Diversity and Inclusion measures;
* Environmental standards; and
* Distribution of funds as a result of a solidarity transfer levy as mooted in the Fan-Led Review recommendations.

To aid in the above, the corporate governance proposals outlined in Appropriate Financial Resources section of the White Paper should be split into two separate threshold conditions. An additional, stand alone, threshold condition ought to focus on equality, diversity and inclusion and environment. This would give these themes the weight they deserve.

**10**, **Shadow Boards**

The removal of Shadow Boards is disappointing. This was a novel idea that would allow for fans to be an integral part of the process, and would again put them at the heart of the regulations, as mentioned in the White Paper’s principles as per Rt Hon Lucy Frazer MP’s introduction and paragraph 19.5. This decision should be reversed.

Should the proposal for Shadow Boards be taken forward, it would be essential that all members of a shadow board should also be subject to the rigour of a new and revamped owners and directors test. An accreditation scheme should also be explored.

**Consultation question 2:**

**Do you have any concerns with the escalating model for enforcement, ideally using a participative approach to regulate the industry, with the teeth to enforce compliance if necessary?**

The four-step approach is spelt out clearly in section 10 of the White Paper (The Regulatory Model) in figure 5.

1, Monitoring and supervision;

2, Advocacy;

3, Enforcement; and

4, Disqualification.

While the four steps are good in principle, there are several areas that still need to be addressed to strengthen the approach.

As part of the licence, clubs must agree to a level of scrutiny, transparency, and the principle of candour with the regulator. Many of the problems within football escalate quickly; so too must the regulator’s ability to step in, be agile, act appropriately, and in a timely manner.

Naturally, those clubs that are well-run should be subject to less scrutiny. The parameters of “well-run” must be defined by the IREF, based on a risk assessment of each club in the context of their respective league or competition.

**Monitoring and supervision**

The *State of Football Survey* must be introduced and implemented as soon as possible. This should operate in real-time and be run by the IREF. Fair Game outlines what should be included in the survey in Question 4.

The IREF must oversee and develop a strong and appropriately-tiered Corporate Governance Code. Details of what the code should cover are outlined in our answer to Question 20.

Support and guidance for the implementation of both of these must be provided by IREF. Clubs should be encouraged to approach IREF in times of trouble (in line with the duty of candour), knowing that genuine problems will not necessarily result in sanctions, but they will be supported to improve.

**Advocacy and enforcement**

An “advocacy-first” and “participative approach” is a good first step. However, the IREF must be able to move quickly if “advocacy” fails - this is recognised in part 4 of the White Paper.

Therefore, the IREF must spell out clearly how long this first step should be. The rules and regulations must be very clear and transparent on when, how and why the IREF will move to step three and four of the approach outlined in the White Paper.

**Sanctions**

Paragraph 10.6 – “Sanctions would only kick in if clubs repeatedly or egregiously failed to meet their obligations”. This needs to be clear as to what “repeatedly or egregiously” means, for example, how many times can a club break the rules before each increasing sanction kicks in?

To remove conflict of interest the power of sanctions (as pointed out in Paragraph 10.4 of the White Paper) must remain totally within the control of the IREF. This must also include the power to impose points’ deduction.

The sanctions available to the regulator as spelt out in Paragraph 10.6 are generally good, however, there is room for improvement:

* Thought should be given to clubs working in the spirit of the rules, not just the letter of the law, so clubs that try to ‘beat the system’ should receive harsher punishment than those who genuine try to work to the ‘spirit’ of the rules;
* The overall effectiveness of financial sanctions needs further analysis (Fair Game is undertaking research to look into this area as mentioned above); and
* The IREF must be in control of financial flow within the game and distribute according to how well a club performs on the *State of Football Survey*. This incentive will help reduce the number of clubs in each of the steps outlined in the four-step approach outlined in the White Paper.

Paragraph 10.9 of the White Paper is welcome - taking the punishment away from the fans and onto the owners and individuals responsible for the misdemeanours. However, this must be extended and, as part of a licence, clubs must specify individuals to take on financial liability incurred.

**Consultation question 3:**

**Regulatory cooperation - Is the proposed approach to managing the interactions with existing and emerging regulators/regulation, the most effective one? What practical considerations should we consider regarding the interaction with existing rules applied by league organisers?**

Fair Game agrees that IREF should work with existing bodies to ensure that the best and most coherent governing environment is made possible. Therefore, we recommend as much consistency as possible between the IREF and EPL, EFL and FA governance rules. It is, therefore, crucial that the IREF is appropriately resourced and nimble enough to keep abreast with all thinking and development of such other rules and regulations as continuous liaison and collaboration with all relevant bodies would be crucial to the IREF’s success.

However, it is imperative that the IREF be the prevailing and overriding standard. As such, we are very wary of delegated regulatory responsibility as described in Paragraphs 10.20 and 10.21 of the White Paper. The IREF should retain close oversight of all of its functions and responsibilities; delegation should be handled with care as it may have the effect of fettering the IREF’s regulatory responsibilities.

**The Golden Share**

The IREF must also ensure that other industry voices do not crowd out supporter voices, or other voices of reason in the IREF’s thinking.

For this reason, we believe that giving responsibility to the league and to the FA for Golden Share related matters (paragraph 8.15 of the White Paper) is a bad decision and, therefore, the IREF must reinstate a mandatory Golden Share principle as recommended in the Fan-Led Review of October 2021.

The FA has until recently kept out of league (and most clubs’) governance issues, preferring to concentrate on the England team and grass roots development. It has been criticised for its poor approach to industry governance and regulation by many including King (2022), Evans (2022), Michie and Oughton (2005), and for being opposed to the regulator (Lawton, 2022).

FA Rule M (in respect of shirt colours and badge) and Rule A3.12 (in respect of club name) are enforceable only by the FA. The rights of a Golden Share would be enforceable by the Golden shareholder. Therefore, if the FA Rules are relied upon then fan groups are relying on the FA to enforce them on their behalf. A Golden Share would give fans the right to hold their own club to account directly and would engender true fan participation.

Fair Game, therefore, feels that this decision is remiss and must be reversed. A Golden Share in statute would solidify the status of fans as the most important stakeholders (nee, social owners) and put them firmly at the heart of regulation, as is the aim of the White Paper (Rt Hon Lucy Frazer MP’s Introduction and paragraph 19.7).

The Executive Summary and Section 8 further state:

“*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.*”

A Golden Share would make fans a **literal** stakeholder and is inline with the stated ethos of the White Paper.

A Golden Share would prevent the FA from changing its rules on the issues. It would also reduce the need for fan shareholder ownership to have a legal right to influence club board decisions. Rather than being reduced, we feel it should be expanded to include, for example, supporter groups to demand an audit / re/audit of a club’s affairs, where there are legitimate reasons to do so.

Additionally, the White Paper (paragraph 8.15) argues against the Golden Share on a number of grounds.

The first is that requiring all clubs to amend their articles of association would be burdensome. We disagree. Amending the articles of association will, in most cases, be simple. Articles are generally amended by a special resolution of 75% of the shareholders. Most Clubs are 75% owned by one person (or a close consortium) and so achieving that threshold of 75% would not be hard. Fair Game has produced a template motion that can be used by all clubs to alter their articles of association.

The EFL only this summer (2022) required all of its member clubs to change their articles of association. As far as we are aware, all 72 managed to do so.

In the (extremely) unlikely case where it truly proves impossible to change the articles then the IREF could take a practical view and allow a club to implement alternative protections.

Paragraph 8.15 also implies that establishing a CBS would also be burdensome. Firstly, it need not be a CBS, however, most Supporters’ Trusts are established as CBS’s, so in many cases, they already exist. If one does not, many clubs have an alternative fan group that can take the Golden Share. It would be for each club to decide, in consultation with fans and the IREF.

Paragraph 8.15 also talks of a deterrence of investment, however in paragraph 19.5 of the White Paper, it states:

“*Football clubs are vital community assets that long outlive any owners, directors, players, or managers.*”

Therefore, the only people that the IREF should want to invest in football clubs are people who have no problem or issue with a CBS or a fans' group holding a Golden Share, and so holding them to account. If a Golden Share is a deterrent to investment then fans may see such prospective investor as a risk they are not willing to take.

Finally, paragraph 8.16 of the White Paper states: “FA’s rules are simpler and give fans protection which is just as effective as a ‘Golden Share’.” They are simpler, yes, but they do not give the same protection as a Golden Share.

Any Golden Share provision should encompass all aspects covered in the Fan-Led review of Football Governance from October 2021. In particular, relocation beyond a set distance and/or sale of stadium, the club joining a new league, club badge, first team home colours, and club name.

**Consultation question 4:**

**Regulatory cooperation and monitoring - Are there any existing processes and/or sources of information that the regulator should align with or make use of for the purposes of its ongoing monitoring of clubs?**

The ongoing monitoring of clubs should follow the proposed *State of Football Study* run by the Shadow Regulator (paragraph 12.11). The study should operate in real time and cover the key elements of *Threshold Conditions* of the licence (set out in paragraph 4.3: Licence conditions and licensing in practise):

* Appropriate resources;
* Fit and Proper custodians;
* Fan Interests; and
* Approved competitions.

Additionally, the study and monitoring should include other areas outlined in the White Paper, notably:

* Club Sustainability;
* Corporate Governance;
* Owners and Directors Test;
* Commitment to cultural heritage; and
* Fan Engagement.

However, the potential Regulator would be remiss to not future-proof itself against growing areas of concerns. Fair Game believes the following three further areas should be covered:

* Environmental standards;
* Equality, Diversity and Inclusion standards; and
* Community Impact.

In addition to the above, the Regulator should have the ability to include additional metrics into its risk assessments for monitoring and reporting, subject to suitable consultation with stakeholders.

Fair Game’s Sustainability Index already covers many of these areas and continues to evolve. Fair Game’s Sustainability Index can provide the Shadow Regulator with sufficient information and data points to begin developing its own risk assessment for each club. It would be a sound basis for the *State of Football Study* and could be adapted to include important new areas. The *Study* should be developed and be subject to constant improvement.

Monitoring and reporting should also align with other bodies’ existing regulatory reporting, subject to suitable data sharing and privacy standards, notably the Companies Act 2006 (and related legislation) and Companies House (CH). All clubs and their advisors will be well used to this system. Relevant items such as ownership, accounts, directors and officers are all recorded through the Companies House portal. If the IREF can align with CH and company law then clubs will find it easier to comply and will suffer less from “dual” regulation. For example when a new director is appointed it should be possible to file the AP01 on CH and for that to automatically notify the IREF of the new director.

The regulator should adopt the Sustainability Index in its *State of Football Survey* to measure each club’s performance and use it as a guide to distribute broadcasting revenue throughout the pyramid.

The Sustainability index currently includes the following metrics:

* Fan Engagement Index;
* Responsiball;
* Football Leadership Diversity Code;
* Sports Positive League; and
* Companies House accounts.
* Board makeup

Fair Game is now developing processes to add in:

* Social impact measures;
* Race representation measures;
* Gender measures;
* Good governance measures; and
* Real-time financial reporting.
* Environmental impact measures

**Consultation question 5:**

**Have we captured all the right procedural safeguards that should be embedded into the regulator’s design and system (including the proposed regulatory principles)?**

Overall, the White Paper is an impressive step forward in introducing regulatory safeguards and should be applauded for doing so. However there is room for improvement.

**1, Buffers and Guarantees**

* As outlined in section 5 on financial regulation, it is clear many football clubs have poor financial plans and frequently operate without “buffers” in place to ensure against the unexpected - this is in contrast to common practice in almost every other sector. It is therefore laudable that the White Paper is looking to insist on buffers being in place.
* This is already in place at some exemplar clubs such as Exeter City who maintain a £1m cash buffer to protect against financial shocks – Exeter turnover around £4m - £5m, so if a club of this size, run on a break even basis, can achieve a £1m buffer, then all clubs can do the same. At Exeter, this equates to around 20% of revenue and we would advocate for IREF insisting on similar levels for all clubs.
* However, we are concerned about the approach to ‘owner guarantees’. If the owner were to unexpectedly experience personal financial difficulty or pass away, the guarantees become worthless. Therefore, **we recommend removing owner guarantees and replacing them with an increased cash buffer for any spend that would push the club beyond a break even basis**, effectively meaning that owners would need to add money to a form of escrow account that could be drawn down against specific future costs. An example would be if a club wanted to buy a star player beyond their immediate budget, we would recommend that the amount of wages that takes the club beyond its forecasted break-even position be placed in escrow at the beginning of the contract, and released when they fall due, for the entirety of the players contract.

**2, Financial Planning**

* Football clubs must be compelled to plan for a range of standardised scenarios - including relegation or withdrawal of owner funding. Fair Game supports the proposal in paragraph 5.11 - scenario planning or contingency planning. We believe that this will result in six scenario plans – promotion, staying in the same league, and relegation; with all three forecasted for if the owner stays and if the owner leaves. (However, should owner guarantees be replaced with cash buffers in an escrow style upfront, as discussed immediately above, the need for the ‘if the owner leaves’ scenario would be redundant).
* We support paragraph 5.11 also in that clubs should “demonstrate clear 'wind-back' plans with actions they could enact to return the club to a financially sustainable state.”
* The key here is that “The Regulator would need to be content that these plans are realistic, sufficient and stress tested”. If the IREF was not satisfied with the plans, the IREF should have the power to ask the club to revise their plans and if still unsatisfied the Regulator should be able to impose its appropriate plans on the club as a last resort. A fixed timescale for this action should be made clear by the IREF.
* In paragraph 5.15, the White Paper states: “If a club encounters substantial deviation from its plans or financial circumstances it would need to inform the Regulator”. Figure 4 outlines how this would operate in practice. Fair Game believes this is too light-touch. Football clubs should operate **real-time financial reporting** to the regulator, which can be benchmarked against approved plans, allowing red flags to be flashed up at the earliest opportunity.

**3, Transparency**

* For the IREF, its procedures, processes and safeguards must be public and be published as part of the IREF Handbook (see FCA Handbook - [DEPP Decision Procedure and Penalties Manual](https://www.handbook.fca.org.uk/handbook/DEPP/)).
* For clubs, the White Paper keeps clubs’ operations and finances largely behind a curtain. Even though the regulator will have access, it may still leave supporters suspicious (potentially also of the relationship between the regulator and football clubs/leagues) - in the words of Hermalin (2014, p. 342) “We are suspicious of what goes on behind closed doors”. Therefore, again, we feel that supporter transparency is missing.
* In developing our recommendation in Section 1 that each club produces a supporter-focused annual report, we considered critical accounting theory. This is a useful area to consider when discussing the democratisation of power (Brown, 2009), which is essentially what the White Paper is aiming to do for supporters; it advises that developing stakeholder oriented reporting processes not only improves governance processes, but can have a radical impact on an organisations accountability (Andon et al., 2015; Brown, 2009, 2017; Dillard & Vinnari, 2019; Dillard & Yuthas, 2013; Gallhofer et al., 2015; Thomasson, 2009), a key principle in the White Paper as highlighted in paragraph 3.15
* When producing a supporter-focused report, it should not only be transparent, but be accessible and readily understood by key stakeholders (Barth & Schipper, 2008; Fung, 2014; Parris et al., 2016). In this context, this means the majority of supporters.
* Clubs are often part of a bigger group of companies. However, it is often difficult to follow the club-company, up through the parent company(ies) group and all the way to the ultimate parent. Sometimes there is no trail all the way to the ultimate owner. For this reason, the IREF must insist all clubs publish a ‘group structure’ diagram to allow all stakeholders to see all companies within the group and be able to assess the riskiness and appropriateness of those companies.

**4, Third Parties**

* Paragraph 5.30 states that the Regulator is to appoint trusted third parties in worst-case scenarios. Fair Game wholly supports this move. The regulator should consider whether CAS could be the final court of appeal for disputes between clubs and the IREF, and whether the IREF will have a legal or judicial link to FIFA or UEFA, and would those entities’ tribunals be useful as a court of appeal at some stage?

**5, Equality, Diversity and Inclusion (EDI)**

* It is surprising that the White Paper does not include EDI and gender diversity in procedural safeguards – part of good governance has been found to be a diverse board in terms of gender (Buse et al., 2016; Philippou et al., 2022) and race (Bufarwa et al., 2020; Buse et al., 2016), as well as a diversified skill sets as hinted towards in paragraph 6.13. All should be recognised as part of the procedural safeguards.

**The proposed regulatory Principles:**

We discuss these further in our response to question 20, but an overview is that we recommend expanding the five principles in paragraph 3.5 with the 11 guiding principles that we developed in consultation with Sport England, the EFL Trust and others:

1. Effective Board;
2. Integrity;
3. Long Term Sustainability;
4. Respect for the the heritage and culture of the club;
5. Communication and Transparency;
6. Accountability;
7. Engagement;
8. People;
9. Equality, Diversity and Inclusion;
10. Continuous Improvement; and
11. The Spirit of the rules.

**Consultation question 6:**

**Transition - Do you agree with the proposed approach, and is there anything else we should consider to aid a smooth transition to the new regulator and regulatory system?**

**We agree**

* Fair Game is generally happy with the approach suggested in the White Paper.
* All parties must understand that the Regulator will take time to set up and embed. It will not get everything right the first time, and regular revision of the IREF’s role, structure, policies and procedures will be key to its success.

**Shadow Regulator**

* As discussed further in our response to question 28, Fair Game is in a strong position to act as or actively aid a shadow regulator, utilising and formalising our network of experts from the world of football, academia, regulatory policy, governance and finance.

**Tiered approach to, and timing of, transition**

* In alignment with the tiering of licences and other aspects, the regulator may wish to consider a tiered approach to transition. Many Premier League clubs have large legal and compliance budgets, in-house legal teams, therefore they should be expected to comply quickly. League 2 and National League clubs should be given extra support and time in transition in order to comply.
* We recommend laying out the time scales of implementation more precisely.

**Part 2: Financial Regulation**

**Consultation question 7:**

**What are your views on the proposed model for financial regulation? Is there anything we should consider adding to the model to strengthen club finances?**

Overall, we believe that the approach of the White Paper to financial regulation set out in Section 5 is very good. It provides a clear and correct analysis of the necessity for financial regulation and of the most appropriate form for that to take. Fair Game is happy and ready to work with the regulator to advise on specific metrics.

It is positive that the regulation focuses on cash just as much as profit – as Alan Miltz said: “Revenue is vanity, profit is sanity, but cash is king”. It is a lack of cash that sends clubs (and other companies) into administration/liquidation, not a lack of profit.

**Cash buffers**

* The cash buffer is an excellent addition, as per out comments in response to question 6. “Resilience” must be at the forefront of financial regulation. This will protect against shocks, which come in two forms - those out of the control of clubs (Exogenous shocks, such as the Covid pandemic and the collapse of the ITV digital deal), and those that are under the control of the club (Mismanagement, such as overspending in the expectation of (unrealised) performance). In both cases, a liquidity buffer is essential. Analysis of club accounts by Richard Evans and others at Birkbeck University identifies that the cash generated from operations (including player sales) needs to provide at least 80% of the total cash spend for the club each season. This does not guarantee that clubs will not fail financially but it will significantly reduce the risk without being too restrictive on the operations of the club. Note that this implicitly restricts wage increases without the adverse effect of ossifying the leagues.

**Players' wages**

* The hidden costs that need to be protected against are player wages. These are effectively operational commitments, so do not show in annual accounts in any way, shape or form. Large future operational commitments of this nature should be a) reported, and b) for any commitments that push the club beyond a break-even position, these funds should be provided upfront and ring fenced, as also discussed in our response to question 5 (Buffers and Guarantees section).
* Clubs should abide by UEFA recommendations of player wages to revenue.

**Owner guarantees**

* We are concerned about the approach to ‘owner guarantees’, as discussed in our response to question 6, and feel that these should be replaced with increased buffers if a clubs’ costs go beyond a break-even point (see also our response to question 5).

**Common relief fund**

* Each owner of a club should be required to pay a contribution into a centrally administered relief fund. Upon entering financial distress, a club could apply for a grant (or loan, but a grant would be preferable) to be paid out from this fund. Think of it like a Sinking Fund.

**Football Creditors' Rule**

* The White Paper states in paragraph 2.15 on Supply Chains: “Clubs indirectly support economic activity and employment in supply chains that depend on them. When a football club enters administration, there is no guarantee that creditors in the club’s supply chain will recoup what is owed to them.”
* The problems of the Football Creditors’ Rule are outlined in paragraph 2.16 of the White Paper. Fair Game believes the Rule should be abolished. This is because the rule means that players or managers joining clubs do not have to give any consideration as to whether their pay puts excessive strain on the club’s finances, and also how financially sustainable the club is. Abolition of the rule would make financially unsustainable clubs significantly less attractive. Indeed, consideration should be given to making football creditors the last creditors to be paid.

**Real-time reporting**

* The regulator must implement as close to real-time reporting as possible, as also discussed in our response to question 5.

**Transparency**

* The regulator must implement a supporter focused report to address transparency to supporters as discussed in our responses to questions 2 and 5.

**Distribution based on good behaviour**

* Distribution must be taken away from the league and introduce a model that rewards good behaviour, such as the Fair Game Sustainability Index (see our response to question 25 for more detail).

**Audit**

* We also believe that all clubs should be audited, to ensure maximum safeguarding in multiple ways (regulator and external audit).
* Currently around 14 clubs in the EFL are not audited each season.
* Despite many issues with audit and some high-profile scandals, it remains the standardised way for companies to be financially scrutinised.
* We believe if the club structure is set up in a fair manner, the cost of audit should be below £10,000 per annum, which should be ring fenced in the league distributions to ensure all clubs have the money to pay for it.

**Consultation question 8:**

**What information should be included in financial plans? (financial plans, scenario plans etc).**

We agree with paragraph 5.8 that financial plans should demonstrate “good financial practices” with:

* **Scenario planning** (para 5.11). We estimate six scenarios should be considered - promotion, staying in the same league, and relegation, with all three forecasted for if the owner stays and if they leave as discussed in our response to question 5.
* **Multi-year forecasting** (paras 5.12 and 5.13)
* **Monitoring and reporting** (paras 5.14 and 5.15) in addition to reporting “appropriate financial resources” (para 5.18)
* **Debt** - how and when will it be repaid
* **Solid plan for owner withdrawal** essential.

Emphasis must also be on cash ahead of profit. As discussed in our responses to question 7, ‘revenue is vanity, profit is sanity, but cash is king’. It is a lack of cash that sends clubs (and other companies) into administration/liquidation, not a lack of profit.

Not plans *per se*, but we recommend a number of tests / constraints to plans, inline with our response to question 8:

**Primary measure:**

* Cash generated from operations (including player sales) needs to provide at least 80% of the total cash spend for the club each season.

**Other potential measures:**

* A minimum acid test ratio - this is a key liquidity measure.
* A net debt measure that a club cannot exceed unless agreed in advance by the regulator and a proper repayment plan put in place.
* A wage:turnover ratio in line with UEFA regulation and Deloitte recommendations.

As mentioned in our answer to question 1, support and standardised templates should be provided by the IREF for all of the above.

**Consultation question 9:**

**To monitor ongoing compliance and a club’s financial situation, what: (a) information sources or processes already used could this system utilise; (b) additional information sources might this need; (c) information should be shared between authorities and the regulator; (d) should be the frequency of information gathering?**

We believe that Figure 4 provides a good illustration of how this should work.

Information in the public domain is minimal for many clubs, especially ones that fall under the small company distinction (and may not be audited, see also our response to question 7).

Basic data should be sourced direct from clubs in as close to real-time reporting as possible (see also our response to question 5) as and compared for audit purposes to:

* Annual company reports filed with Companies House;
* London Gazette; and
* Relevant stock exchange (where relevant).

Submissions to the regulator should include a *minimum* of:

* Detailed forecasted profit and loss statement;
* Detailed forecasted balance sheet;
* Detailed forecasted cash flow forecast;
* Detailed forecasted notes to accounts:
  + Income;
  + Debt (amount outstanding, provider, terms, interest rate, specific reason for the debt, location in financial accounts, repayment plan); and
  + Equity.
* Any other information as required by the regulator.

Details on governance should also be supplied for:

* Decision making practices;
* Group structure;
* Risks & mitigations equity and control;
* Identities and roles of directors; and
* Related party transactions (with a wide as possible definition of ‘related party’).

A reconciliation of profit/loss to FFP / SCMP results would be useful.

**Frequency**

We believe that the regulator should operate as close to real-time monitoring as possible (see also our response to question 7, and immediately above). This will allow the regulator to identify financial warning signs as early as possible.

**Consultation question 10:**

**How should the regulator help to protect the core (saleable) value of the club: Do you agree the regulator should take a view on the level of overall debt in a) a club and b) a league overall? What are your views around regulatory oversight and/or intervention in stadium sale?**

Protection of this manner falls under three areas: financial protection, asset protection and reputational protection.

In terms of financial protection, two key themes emerge:

1. FInancial Planning (addressed in our response to questions 5 and 7); and
2. Debt.

**Debt**

* Debt needs to be considered carefully. There are many different types of debt - direct debt to owners through loans, debt to other companies owned by the same owner, debt to third parties such as banks or other financial institutions (such as venture capitalists). Each of these carries different levels of risk. There should be a requirement for clubs to notify IREF of all debt - this should include a summary of major terms and an explanation of how the club intends to service or repay the debt (see also our response to question 9). This should be included in the general financial reporting and business plan of the club.
* The debt of individual clubs is of more concern than of the league overall.

**Asset protection - stadiums (and training grounds)**

* The majority of the balance sheet value of a football club is in its stadium, and often its training ground. Therefore, these key assets (and any other key assets defined as being ‘materially significant to hosting a football match’) should be protected by the regulator.
* Although we would always recommend that a club owns its stadium (and training ground and other key assets) due to the security this affords clubs, we appreciate that a) many clubs currently do not, and b) there may be circumstances in which it could be financially beneficial for a club to not own its stadium (for example if the stadium is owned by a local authority, and rented to the club for low rent, long term, as is the case for West Ham United).
* The regulator must implement protection measures for both instances.
* In the instance of a club owning its stadium (and/or training ground and other key assets), we recommend that the regulator implement rules of tight control regarding the sale of the stadium (and/or training ground and other key assets). We would generally recommend against the sale of these assets. The exception would be:
  + If the situation was particularly favourable;
  + The financial benefit is wholly kept with in the club;
  + A long-term agreement (suggest minimum 25 years) favourable lease/rent will be paid and that the financial plans of the clubs show that this lease/rent is comfortably affordable by the club; and
  + The sale does not lead to a move from the club's locality.
* Additionally, we recommend that all stadiums and training grounds become ACVs (Assets of Community Value). Although this does not guarantee sale of the stadium to preferred parties (such as a supporters’ organisation), it shows the commitment of club owners to the club and offers first line protection against any undercover sale of a stadium. It raises a red flag by bringing the intention to sell to public attention, which we believe is an important first step of protection. It also includes a delay period in which fans can raise awareness and support for their cause. Experiences of fans at Bolton Wanderers support this recommendation.
* In the case that clubs do not own their stadium, we recommend that clubs seek favourable, long-term lease/rent agreement (recommended minimum 25 years).
* The regulator must have a mechanism to support clubs in sealing favourable deals and settling disputes with landlords.
* We believe that these recommendations must form part of the licensing agreement and stadiums be included in the ‘crown jewels’ of a Golden Share arrangement as discussed further in question 3. This will ensure that there is fan consultation and veto of fans for not just the sale of stadium, but moves and significant changes as well. This would also be included under the stakeholder consultation as per paragraph 11.5 of the White Paper.

**Reputational protection**

* Clubs, and especially their boards, must consider the reputation of the organisation in protecting the value of the asset. A scandal, such as the racism scandal at Yorkshire Cricket Club can significantly and adversely affect the value of an organisation as it deters potential investors from being associated with the organisation.
* For this reason, it is surprising that EDI (Equality, Diversity and Inclusion) has been considered out of the scope of the regulator in the White Paper. We believe it should have powers to intervene if issues of this nature should arise at a club.

**Consultation question 11:**

**Should the regulator directly intervene when a club is in severe financial distress ahead of administration. What steps should the regulator take?**

In short, yes. This is the whole point of the regulator - to stop clubs getting to a position where administration is necessary. By this point fans have likely already been put through the mill.

We supportthe advocacy-first approach, and support is always better than enforcement. Clubs need to feel that they can approach the regulator for support without the fear of punishment in the first instance and those clubs that show willingness to improve should be supported to do so. If this is not the case, clubs may to try and hide financial distress for fear of punishment.

Clubs must have a licence obligation to consult and include the IREF at an early stage and during every step of distress.

The aim must be to produce a robust plan, including the monitoring appropriate metrics, a cash buffer equivalent to 20% of annual revenue (in line with that kept by Exeter City).

As a metric, we primarily recommend that for all clubs, cash generated from operations (including player sales) needs to provide at least 80% of the total cash spend for the club each season.

The regulator must introduce a real-time *State of Football Survey* inline with the Fair Game Sustainability Index, including the acid test ratio, net debt and a wage to revenue ratio of a minimum of 70% in line with UEFA and Deloitte guidance.

For clubs who do not show improvement within a given transparent (short) timescale set by IREF or agree to medium or longer term corrective recommendations:

* The regulator should have power to control clubs finances directly – take control of a clubs bank account and day to day financial operation, for example.
* In severe cases, owners should be removed from ownership and directors removed from directorships in these scenarios.

IREF should be included in discussions about the appointment of appropriate administrators, and have an approved list of administrators.

Common relief fund - see above but if this was implemented then IREF’s should have the power to pay for funds from here if the club does not have the funds.

IREF should not seek to override existing Insolvency law.

**Consultation question 12:**

**Are there any areas of the financial regulation proposal that could be burdensome for clubs? If yes, why could they be burdensome and how could this be managed?**

Any compliance to governance rules will be burdensome, but we don’t feel that anything proposed in the White Paper or our recommendations in this consultation document are overly so. In our opinion the White Paper takes a cautious approach to the administration required and could thus go further.

However, the regulator must provide financial support for clubs to complete the monitoring.

Finally, a tiering system would be appropriate, for example, Tonbridge Angels should not expect the same level of scrutiny as Manchester United.

**Consultation question 13:**

**Does the proposed model have all the necessary powers and levers to ensure regulation can be effectively delivered?**

In short, no.

There are a substantial number of tools and levers, and of reserved rights of intervention. Crucial to all this working well will be how effectively they are used.

Much will depend on the culture the IREF adopts: “How are we going to do things round here?” and the will with which it operates: “We know what is expected of us and we will deliver it, and the leadership that it brings to transform football governance.”

All of the above (and resources!) will be crucial when, as is inevitable if it does its job effectively, there are major issues and challenges with leagues and individual clubs over time. We regularly see that clubs are, or like to think they are, world leaders in “getting round it”. Given this, it is important to keep the “powers and levers” as flexible and possibly even as non – specific as can be.

Paragraph 10.8 of the White Paper includes penalties. However, we feel that these should also be accompanied by incentives. An example would be our Sustainability Index that would be used distribute finances to clubs who show the best behaviour.

The sustainability index can also be used as pseudo name and shame model and a red flag for clubs who are not performing well.

**Co-Regulation**

We would strongly recommend the IREF adopting the principles and practice of the co- regulation approach that already operates in the housing sector for Housing Association and Local Authorities via the Regulator of Social Housing (RSH).

This is an approach of which government is supportive and which operates effectively. Financial failure is extremely rare in the sector.

Briefly, the approach is built on standards and codes etc being clearly specified in advance, as is envisaged in the White Paper. There is an ongoing inspection regime which is proportionate, appropriate and risk – based, covering an awful lot of ground, including quarterly financial returns.

The approach matches well with the “Advocacy first” thinking set out in the White Paper and with the acknowledged preference from many clubs for as much self-regulation as is effective.

As with other regulatory approaches (e.g. the FCA) it is crystal clear that the ultimate responsibility for abiding by the agreed codes, regulations and, say, “Threshold Conditions” rests very firmly with Boards. This includes the absolute requirement to self – report to the Regulator when any breach occurs, or indeed any suspicion of a potential breach. Crucially, and very much in line with much of the “reserve power” thinking in the White Paper, the sanctions for failing to self report issues that are discovered later in the process, can, and almost certainly will, be higher than if they had been reported by the Board to the Regulator in the first instance.

Whatever tools any regulator possesses, establishing the right effective and appropriate culture in the sector is crucial to long term success. Co-regulation should be used to get us there.

Also, as discussed further in our response to question 25, IREF must have the control of financial distribution.

Finally, there needs to be more transparency to supporters in the form of a supporter focused report, as discussed in our responses to questions 1 and 5.

**Part 3: Owners’ and Directors’ Tests**

**Consultation question 14:**

**What are your views on the proposed model for Owners’ and Directors’ tests? Is there anything we should add or consider to strengthen the test to ensure suitable custodians?**

Fair Game consider the White Paper’s proposals quite robust in regards to financial proprietary, however, less so for the proposals around owners and directors. Owners and directors are role models and should be held to a higher level of scrutiny.

Fair Game is currently undertaking a detailed and thorough review of Owners and Directors’ Test, below are our initial thoughts.

**Different tests**

The roles of owners, directors and indeed senior managers at a club are different and nuanced as such due consideration should be given to creating different tests for each.

**Transparency**

The proposals should include more rigour on transparency of the individuals. For example, we would like to see brief biographies provided to fans on all owners and directors. We also believe there should be a description of the responsibilities of the members of the board, owners, directors in statute and title, and details of any committees of the board of directors and their responsibilities.

**Ethics and integrity**

The test should include more rigour on ethics and integrity. The fitness and propriety test (paragraph 7.15) should include a review of past criminal convictions and civil lawsuits to get an idea of the character of the individual**.** An ethics element should be included in the Owners and Directors Test.

**Re-testing**

We recommend automatic retesting of all funds within a reasonable timeframe that is not overly burdensome. We suggest once every three years.

**State ownership of clubs**

The test should look closely at state control of clubs - in particular a closed definition of what this is.

For example, Sheikh Mansour purports to (indirectly) own Manchester City as a “private individual”.

However, he is simultaneously the deputy PM of the UAE, [Minister of Presidential Affairs](https://en.wikipedia.org/wiki/Government_of_the_United_Arab_Emirates), and is the brother of the President of the UAE. It is naive to assume that his interest in Man City is private only - as though he has bought a property that he rents out.

Also, see Newcastle United’s “legal assurance” of the separation from the Saudi State. AML definitions of Politically Exposed Persons may be useful here. Items such as the Newcastle “Legal Assurance” must be delivered and explained to IREF. They must be public documents.

Fair Game believe that state ownership of clubs should be banned. State-controlled clubs are fundamentally unsustainable, given:

* The political goals behind their ownership structures;
* The fact that such goals may often support the pursuit of unsustainable activities (e.g. human rights, climate, conflict, gender discrimination); and
* The fact that ownership structures, investment plans and relations with the community are entirely dependent on unaccountable actors who may for political reasons change their intentions rapidly.

Linking to state ownership, but not exclusively so, considerations hold be given to the track record of human rights violations by owners and their known associations.

**Past insolvency at football clubs**

The EFL O&D test currently only prohibits a person from being an owner or director if they have been involved with **two** Clubs that have each been subject to or suffered unconnected Insolvency Events - clearly this should be **one club on one single occasion.**

**Multi-club ownership**

Limits must be put in place on the number of clubs an owner or director can have an interest in. In the UK it must be **one**. Within UEFA it is three - and all must be in different jurisdictions.

This area needs more thinking and should be done in consultation with UEFA and FIFA.

**Shadow Boards**

The owners and directors test should also apply to the Shadow Board.

**Consultation question 15:**

**During an acquisition, what should the financial plans require owners to evidence? Should this be consistent across all owners / acquirers?**

Every perspective owner must have full transparency of their funding and to back their proposed investment.

Tiering should apply to the amounts and figures as someone purchasing Grimsby should not have to provide evidence of the same level of funding as the prospective purchaser of Man Utd. These two clubs will have very different capital requirements, debt, and other costs issues. Running them sustainability requires a different level of owner commitment.

However, we see no reason why there would need to be tiered levels regarding transparent explanations of the source of wealth. A prospective owner can gather £100 or £100m in equally illegal or immoral ways. There should be standard source of wealth and anti-money laundering requirements across all tiers.

As mentioned in our response to question 5, we are concerned about the approach to ‘owner guarantees’. If the owner were to unexpectedly experience personal financial difficulty, the guarantees become worthless. Therefore, we recommend an increased cash buffer for any spend that would push the club beyond a break-even basis, as described in our response to question 5.

**Consultation question 16:**

**What do you think should be the statutory deadline for determining the outcome of an owner’s or director’s test by the Regulator?**

Ideally, a one-month process should be sufficient for most clubs. This even applies to international purchasers, as the weight of evidence must lie with any prospective owner.

There should be a prescription around the number of times a prospective owner or director can submit evidence. This should be set by the IREF. After that should be a presumption of failure, which can be appealed.

**Consultation question 17:**

**Who should be in the scope of the directors tests e.g. Senior executives, advisors?**

**What percentage of shareholding should trigger the ODT and why?**

Overall, the White Paper covers this very well. We agree that there should be different tests for owners, directors and senior executives. ALL directors, including statutory directors listed at companies house AND directors in title only. Any other senior manager in a role that can influence the finances, governance or reputation of the clubs (such as media) should also be subject to tests.

We believe an appropriate ownership percentage is 10%. This is a common threshold for demanding a poll vote on resolutions, prevent meetings being held at short notice. (At 5% a general meeting can be called, but any motions will likely be shot down).

The White Paper could expand on paragraph 10.9 to determine anyone who exercises or influences “control” of the club in terms of the existing EFL definitions and Regulation 1 for definition of “control”. Definition of “influences” would need to be carefully considered.

**Consultation question 18:**

**What level of oversight will be needed to ensure ongoing compliance with the tests? How can the regulator best balance ongoing review and minimising burden?**

For financial reporting, we recommend real-time reporting (see also our response to question 5).

For other reporting, such as governance, one option is to adopt a “confirmation statement” basis of reporting. Here a club would submit all relevant and required information at the point it is registered and licensed.

Then at regular periods (annual, quarterly, monthly - whatever suits the data in question) the club submits a statement either confirming that there are no changes to its data/information, or if there have been changes in the foregoing period, it sets them out.

This saves a great burden on clubs as if there are no changes they do not provide all information again, but merely say “no change”. It has been implemented well by Company law/ Companies House in respect of annual returns moving to become confirmation statements.

The regulator must replicate Ofsted’s model of increased frequency of reassessment for clubs causing concern.

Any examples of misinformation or failure to report must be dealt with severely by the IREF.

**Consultation question 19:**

**What steps should be taken if an owner or director is removed thus leaving the club in a potentially unstable position. What safeguards should a Regulator have in place?**

The decision of the White Paper (section 7) to include the ‘disqualification’ of owners directors is absolutely to be applauded. However, it needs to be clarified if this means removal of owners from ownership and directors from directorships.

In situations of this nature, we recommend that the IREF have a ‘task force’ to take a temporary custodial role to manage clubs in this situation, who will oversee the club until such time that a new owner can be found.

In this situation, the task force’s main duties would be to achieve financial stability in order to make the club as attractive as possible to appropriate new owners.

The task force should work with appropriate fan groups, at the highest level of the club, in the running of the clubs to ensure the fan voice is heard in the boardroom under these conditions.

If the regulator will not have this sort of resource, then a third party should be appointed, similarly to an administrator.

**Part 4: Corporate Governance**

**Consultation question 20:**

**What do you think are the key principles/issues the Regulator should include when designing the Football Club Corporate Governance Code?**

Fair Game has developed 11 guiding principles, and will shortly be publishing in full a draft Code of Football Governance.

**Our 11 guiding principles are:**

1. **Effective board** – Clubs should be led by an effective board of multiple minds that reach collective decisions democratically. Boards should not be dominated by a single, or few, voice(s).
2. **Integrity** – Boards should develop a culture of integrity and honesty that should form the bedrock of the trust from fans and other stakeholders. This will underpin all other guiding principles.
3. **Long term sustainability** – Boards should ensure that their decisions are made in the best, long-term interest of their club and supporters. Boards decisions should not be based on short term gambles. The board may be entrepreneurial, but at the same time cautious of protecting the club.
4. **Respect of club heritage and culture** – Boards should make decisions that are in line with their clubs’ heritage and culture. As community assets, upholding the traditions and club and community is paramount to the community identity that the club stands for.
5. **Engagement** – Club boards should base decisions on evidenced dialogue with fans – the clubs key stakeholders. Where possible and practical, fans should be consulted on all major decisions.
6. **Transparency and communication** – Decision making process, finances and other operational activity (as sporting competition allows) should be fully transparent to supporters in an easy to understand way. Active and effective communication should be practised on these matters. Full, annual supporter reports should be made available to fans that include a review of governance, financial, sporting and social factors. These should be supplemented by regular updates via supporter meeting during the season.
7. **Accountability** – Boards should be held responsible for their decisions by their fans and other stakeholders. Boards should be prepared to answer fans’ and other stakeholders’ questions, and in situations of misconduct be liable for sanctions in line with the regulators’ rules.
8. **People** – Companies rely on people to prosper and grow. This is especially true for football clubs whose fans are pivotal in their existence, alongside employees and other stakeholders.
9. **EDI** – Boards should operate and appoint in a way that is consistent with an ‘equity for all’ approach, embedding an ethos of diversity in board make up, club staff and matters relating to the fanbase.
10. **Continuous improvement** – Nothing stands still. Boards should look to be continuously improving their systems, procedures and decision-making practices to ensure they are constantly learning from experience and implementing resultant best practice.
11. **Spirit of the rules** – Boards and their clubs should operate in a manner that follows the spirit of the rules, and not look for loopholes.

**Our draft Code of Governance for English Football Clubs:**

Our draft Code of Governance for Football Clubs has been developed from the Corporate Governance Code with attention to the Sport England Code, the EFL Trust Code, and the Social Housing Federation Codes. Governance regulation across industries share commonalities, therefore these were excellent places to start, to be developed with specifics for the football industry.

The UK Corporate Governance Code was chosen as the basis of our draft Code of Football Governance as it is developed for commercial sectors, and therefore we felt this would make it more readily accepted by club owners. However, as it covers multiple industries, it does not cover specific principles. There we have overlaid it with the 11 principles above.

**Consultation question 21:**

**What are the factors to consider when assessing which requirements should apply to which club? Is a tiering system appropriate or would something else work better?**

A tiering system, as described in paragraph 6.14 is an appropriate system, due to the different resources of clubs at different levels.

* Tiers need to be clear and predictable.
* A two-tier approach would be ideal. This could be based on revenue, which is a good indicator of clubs’ size and also the amount of resources that the club is stewarding. We recommend a cut off similar to that of small companies in the Companies Act - £10.2m. This seems low, but covers the bigger teams in league one, and none in league two. Bear in mind that only EPL clubs earn over £100m and the average in the Championship is only around £27m (excl. parachute payments this falls to appx. £18m).
* Consideration for additional tiers should be given further down the pyramid, notably if the IREF remit is extended to include National League North and National League South.
* One issue may be with clubs whose revenue from season to season fluctuates around (some seasons above, some seasons below) the £10.2m cut off. In this scenario, we would recommend that any clubs that earns over £10.2m revenue goes into the higher tier, and stay there until they have had three consecutive seasons earning below £10.2m revenue (similar to the principles of the entry and exit thresholds of VAT registration). An example club would be Rotherham United.

**Part 5: Fan Engagement and Club Heritage**

**Consultation question 22:**

**What factors should the Regulator consider when assessing a proposal to sell and/ or relocate a stadium? Which factors should be given the most weight in that assessment?**

Fair Game appreciates that for some clubs a move to a new stadium may be a better option than redeveloping their existing stadium for a variety of reasons.

However, in line with Rt Hon Lucy Frazer MP’s introduction and paragraph 19.5 of the White Paper that aims to put fans at the heart of football, consideration must be paid to fans, whose love of the club extends to the love of the ‘place’, in a typological manner (for research in this area, see Bale (2000)).

We recommend that clubs be allowed to move only under “bona fide” reasons and the satisfaction of certain conditions (to be determined by each club, its relevant representative fans group and IREF). Brentford FC’s articles of association give a good description of possible “bona fide” reasons.

Any relocation of a stadium must be done in consultation with appropriate fan groups. Ideally this would be an IREF approved fan group, but may also include:

* Season-ticket holders; and
* FSA-sanctioned Supporters Group.

This should also be in consultation with other relevant stakeholders such as local communities and the local authority (or councils if the move crosses a boundary between two councils).

Clubs must be required, as part of the licence conditions, to prepare and provide to the IREF a “fan consultation policy”. This should include an express section detailing how they will consult fans about a proposed stadium move (as well as other heritage assets).

The primary factor to be considered is location. Secondary is any financial burden on the club (for example debt financing). Arsenal’s move from Highbury to the Emirates as a good example of a well-managed move - both physically and financially.

Every club should define its locality in its articles of association, and must not be permitted to move outside that area.

However, in extenuating circumstances, clubs should be allowed to play in alternative stadiums on a temporary basis. For example Carlisle’s stadium is prone to flooding - they must therefore be allowed to play matches at other grounds at short notice - this should be a bona fide reason that does not require IREF approval. Temporary relocations should also be considered - timeframe of “temporary” would need to be defined by the IREF.

**Consultation question 23:**

**At what point should a club notify the Regulator it is selling and/or relocating its stadium (triggering an assessment)?**

At the earliest stage possible (i.e. planning stage, before a sales takes place) failure to do so should prohibit a move or result in other sanctions.

As a backstop date the club *must* notify the IREF upon the execution of any Heads of Terms, non-disclosure agreement, exclusivity agreement or any equivalent document relating to a proposed stadium move.

For these purposes, we recommend the extra protection of stadiums (and training grounds) becoming Assets of Community Value (ACVs) as discussed further in our response to question 10).

**Consultation question 24:**

**How should the Regulator assess whether a club is meeting a ‘representative’ group of fans, and how should that be defined?**

As stated in paragraph 8.8 of the White Paper, there is no one-size fits all for fan representation. The approved ‘representative’ group of fans should be defined by the club and FSA and approved by the Independent Regulator - and this should be reviewed regularly.

The Regulator could provide worked examples to clubs of what it considers to be ‘representative’. Multiple worked examples may be required in order to provide guidance to clubs of different sizes.

For example, a club should ensure that it meets with a broad cross-section of its fanbase in terms of age, seating within the stadium (in respect of season-ticket holders), location - fans living away from a club’s location are as important as local fans. Minimum standards should be set. It should be clear that it is not sufficient, for example, for a club with a 50,000 seater stadium to consult just 500 fans from a single-interest-focussed supporters group. A club can then propose its definition of “representative” and the Regulator can assess that with reference to the club’s size, location, and prominence.

The IREF should consult and confirm with the nominated “representative” fans group to ensure that it is suitable to be such a group. This should be very light touch and user-friendly as most of the group will be very inexperienced when it comes to regulation, many individuals will not be lawyers, accountants etc and so the IREF must consider its audience very carefully.

The IREF should seek feedback from appropriate fan groups and should look for them to corroborate, or otherwise, the version of events reported by clubs. This would not only prove an acid test for what clubs have reported, but also promote a good relationship between clubs and fans representatives as clubs will want to have the fans say good things about them.

**Part 6: Financial Distribution**

**Consultation question 25:**

**Do you agree with the proposed model to ensure fairer financial flows? Is there a more effective model to drive a solution on financial flows in the game than the mediation and arbitration model proposed?**

No. A fair financial flow in football cannot be drawn up by the Premier League and the EFL.

The Premier League has shown little interest in the lower echelons of the football pyramid.

The EFL's articles of association stipulate that money given to them must be split 80% to the Championship, 12% to the League One and 8% to League Two. The articles of association can only be changed by a vote from a majority of club members. However, the voting is weighted with 50% of votes going to the Championship.

The current financial culture within the game is broken. In 2020, 52% of the clubs in our top four divisions – that is before the pandemic – were technically insolvent. That is clearly unsustainable. If you strip out the Premier League that figure rises to 61%.

In line with the English Football League, Fair Game believes the percentage allocated from the Premier League’s broadcast rights (£2,340m according to Deloitte in 2020) should return to pre-Sky levels of 25%, equating to a sum of £585m.

If this split was achieved, and then combined with the introduction of a 10% Solidarity Transfer Levy (estimated to bring in £160m), this would equate to a maximum available to be distributed throughout the pyramid of £745m.

To protect the ecosystem of football and to remove vested interests, this money must be distributed by the IREF.

There are a number of organisations that are currently almost entirely dependent on the Premier League for their funding. To ensure proper independence these organisations should be funded by the IREF, with 10% allocated to these organisations. These organisations include:

* The PFA;
* The LMA;
* The FSA;
* Kick It Out; and
* Level Playing Field.

This would leave a total of £670.5m to be reallocated - 15% should be split as baseline funding and the remaining 75% split according to scores from the *State of Football Survey* (the make-up of which we outline in our answers to Question 4). This would ensure that the distribution would reward well-run clubs. In short, financial flow should be a reward for good behaviour.

**The Financial Split**

At present the financial flow is split as follows

* 80% to Championships clubs (most of which goes in parachute payments to clubs relegated from the Premier League)
* 12% to League One clubs
* 8% to League Two clubs

However, the attendance split of these clubs are:

* 60% Championship
* 25% League One
* 15% League Two

The voting

* 50% Championship
* 33% League One
* 17% League Two

However, there are also issues around the cliff-edges between divisions and also funding to the National League and the Women’s Game. Financial experts from Liverpool University, Birkbeck University, Sheffield Hallam University, Northumbria University and the University of Portsmouth (including Kieran Maguire, Rob Wilson, Dan Plumley, Christina Philippou, Richard Evans and Mark Middling) have analysed in the depth and have settled on a new proposed divisional split of:

* 46% Championship (24 teams)
* 24% League One (24 teams)
* 14% League Two (24 teams)
* 8% National League (24 teams)
* 4% National League North (22 teams)
* 4% National League South (22 teams)

Currently of the £585m, around 16% goes to the EFL. Of that 16% approximately:

* 11.5% goes on Parachute Payments
* 3.2% goes to Championship clubs not in receipt of parachute payments
* 0.7% goes to League One clubs
* 0.5% goes to League Two

Parachute payments damage the competitive balance not only in the Championship but also within the rest of the football pyramid and should be phased out within three years.

The consequences of backing Fair Game’s financial proposals would see a Championship club not in receipt of parachute payments get an uplift of £5.29m, a League One club £4.545m and a League Two club £2.372m.

*Note: The figures above are calculated on the assumption that every club achieves top marks in the Sustainability Index, which includes a metric on wages as % of revenue and other financial sustainability measures.*

**Consultation question 26:**

**What is an appropriate time frame from the Regulator assessing there is a financial problem, to a decision being made? How periodic should reviews of financial health of the game be?**

We do not recommend a particular time frame, as each problem would be different. But the IREF should seek to implement as swift as possible actions to ensure that problems do not continue.

There should be real time financial reporting to allow action to be taken at the earliest stage. This should include transfer embargoes and wage caps.

The IREF must have consultants and advisors in order to assist clubs that cannot run their affairs sustainability. Rather than simple punishment the IREF should seek to support struggling clubs. This approach is inline with the “advocacy first” and “participatory” regulatory principles as outlined above.

**Part 7: Regulator Operational Design Model**

**Consultation question 27:**

**Do you have views on where the Regulator should be housed? If you think this should be in an existing body or that a new body should be used, can you please provide details of which one and why.**

New body. There is no alternative. All the existing bodies have either proved themselves not fit for purpose, full of vested interests or both (see also comments in our response to question 3). Housing it within the FA would not be appropriate. The new body should be a fully independent regulator.

The IREF must have the power to second people from other regulators to fill any skill gaps identified.

Initially the IREF could be housed physically in the same office as the Financial Conduct Authority in London, the Gambling Commision in Birmingham, or perhaps the General Medical Council in Manchester. Legally and statutorily it would be separate from all of these bodies but physically housing it with one of these well established and respected regulatory bodies could help to support IREF as it establishes itself, notably with backroom functions such as IT and Human Resources.

**Part 8: White Paper Proposals**

**Consultation question 28:**

**Please provide any further comments on the key tenets of the proposed regulatory framework and reforms.**

The regulator must cover the National League North and National League South as well as the top five tiers.

The omission of Equality, Diversity and Inclusion must be rectified.

All aspects of regulation included should be clear upfront and predictable so that clubs know what they are working to. Anything else would create confusion or unknown non-compliance.

The shadow regulator’s remit includes:

* State of Football Study;
* Determine the details of the regulatory framework;
* Engagement work - prepare clubs and leagues for regulation and the transition to new rules;
* Preparatory work - provisional work for licensing assessments and Owners' and Directors' Tests; and
* Operational work - practical set up of the Regulator so that it is ready to be operational on day one of the new statutory system.

Fair Game is well placed to either be or actively aid a Shadow Regulator. Fair Game is familiar with all of these priority issues and have a team in place (and can recruit further) to ensure the transition is coordinated and smooth.

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