

PROPOSALS TO THE FOOTBALL ASSOCIATION

IMPROVING THE REGULATION OF PROFESSIONAL FOOTBALL CLUBS

The following appendices form part of this document:

- APPENDIX A: Code of practice on the stewardship of clubs
- APPENDIX B: People seeking to become owners of football clubs
- APPENDIX C: People seeking to become directors of football clubs
- APPENDIX D: Further changes in regulations
- APPENDIX E: Proposals in relation to owners and directors tests' "disqualifying conditions"

Background

1. There is an urgent need to improve the regulation of professional and semi-professional football clubs. We believe the proposals summarised in this paper, would improve the long-term health and success of football in England. Our proposals are intended to be applied to Clubs in the Premier League, the English Football League and the National League System, steps 1-4 (i.e. the clubs to whom the FA's licensing system applies.)

2. In recent years, whilst we have seen a pleasing reduction in the number of clubs facing insolvency, we have also seen an alarming rise in the number of clubs facing issues which go to the heart of the identity and well-being of the clubs, causing significant conflict with their supporters. These conflicts have not been tackled effectively by the football authorities, due in large part to the authorities' belief that their own rules and regulations do not equip them to do so. This has seriously damaged the reputation of the authorities in the eyes of football supporters.

3. The proposals are designed to strengthen the regulatory framework to protect the clubs, their heritage, their stakeholder relationships and their assets through rules that will focus on the minority of poor performers, rather than the majority of well-managed clubs. Our proposals are designed to equip the football authorities with the powers they need to prevent the serious crises that have besmirched our national game and to deal with such issues, if they arise.

4. There are perceived conflicts of interest in the way that rules and regulations are set and administered by the leagues, where some of the decisions on the conduct of owners and directors of clubs are taken by the owners and directors of other clubs. Supporters believe that those considering how to respond to allegations may be reluctant to take the robust action required when they may, themselves, have to face such allegations in future. We are also concerned that the considerable "churn" of ownership of clubs might leave the League organisations with relatively limited experience amongst non-executive representatives.

5. Our overriding concern is to secure a system of regulation which fosters continuous improvements in club governance - commending those clubs which are well-run and supporting the improvement of those who face problems. We suggest that this would best be achieved by concentrating regulatory responsibilities within the FA. We propose a rolling process of review, intervening whenever there is evidence of problems, offering help, guidance and practical support to those who need it.

Principles

6. We are not putting forward comprehensive proposals to change every aspect of the regulation of football. Many aspects of the system work well and we know that the football authorities themselves have regulations under regular review. Our proposals are intended to enable the authorities to deal with the matters which have caused great concern to many supporters in recent years, where failure to act effectively has seriously damaged the reputation of the authorities in the eyes of supporters. Our proposals have two key principles:

The community significance of football clubs

7. Professional football clubs are not just ordinary businesses. They have a special status in their communities, built upon the loyalty of fans over generations and the important part football clubs play in the lives of millions of ordinary people. Professional football clubs are the greatest expressions of community identity in our nation. Recently, however, it seems that too many club owners have disregarded the over-riding welfare of the clubs themselves and their community significance, matters over which they, for the time being, have custody and treat their supporters' interests as subordinate to their own commercial interests. It is our firm view that reform is needed to apply better protection to certain key aspects of football clubs, which owners should be obliged to cherish and sustain, in the long term interests of the fans and the communities the clubs represent.

Avoiding conflicts of interest in regulation

8. The FA, as the governing body of the whole game, has a historic role in the governance of football, recognised by FIFA. We propose that regulatory functions exercised by competition organisers (leagues) should be under the auspices and overall control of the FA. The Football Association is the primary custodian of the game and should have clear responsibility for setting rules, regulations and standards of conduct for those running professional clubs. The professional league organisations (The Premier League, The English Football League and the National League) are primarily the organisers of competitions with a key role in developing the commercial interests of the game, subject to the overall regime set by the FA.

9. The making of rules and regulations about professional football clubs, the setting of standards for the way they are run and decisions on their application should not be taken by professional football clubs or by people who own and manage them. Regulatory decisions should be taken by people with a suitable level of independence from the regulated clubs, taking advantage of external expertise where that is necessary and helpful, avoiding any suspicion of conflicts of interest. We propose that the regulation of clubs should be the clear responsibility of the FA. Although they may wish to delegate some aspects to the Leagues, so long as conflicts of interest are avoided, the FA should be recognised as the regulator of the game. In this paper and the accompanying Appendices that is what we mean by "the regulator."

Proposals

Code of Practice on the Stewardship of Football Clubs

10. The Football Authorities already have in place rules, regulations, policies and guidance for clubs on many important matters, including financial management, the recruitment and development of young players, ground safety, etc. We propose that a new Code of Practice on the Stewardship of Football Clubs is needed. The Code should set out new guidance for clubs on the matters which have caused difficulty in many clubs over recent years, such as relationships with and engagement of supporters, partnerships with other stakeholders (local authorities, police, education, businesses;) changes in names, playing colours and badges of clubs; location and improvement of ground, training facilities and academy; etc.

11. Attached in Appendix A is an outline of such a Code, listing some of the matters to be covered and including draft wording for sections covering recent matters of controversy

Owners and Directors

12. Many of the concerns about football club management have focused on the wording and application of the current Owners' and Directors' Tests. There are currently three sets of such tests for, respectively, the Premier League ("PL"), the English Football League ("EFL") and the National Leagues ("NL"). We believe that some aspects of these work well. It would be helpful to amalgamate them into a single set of regulations, retaining many of the current features. However, we feel that as the respective roles of the Owners of clubs and the Directors appointed to oversee their management are in many ways different, changes are needed to govern those differing roles.

We are aware that at its summer 2018 meeting the EFL discussed the possibility of taking action against individuals and not just clubs, which in principle we would welcome. We understand that although there have as yet been no changes to the EFL rules in this regard, the possibility of a policy on this is being actively considered by the Board. We look forward to hearing the outcome of those discussions and having the opportunity to comment upon them.

13. Also, the current tests require reporting by clubs to disclose whether any matters exist which might disqualify someone from acting as an owner or director. This deliberately places emphasis on the possible negative factors defining unacceptable aspects of club owners and directors. We believe the test or tests should continue to do that but should also focus on more positive matters which identify and encourage features which should exist within, or be developed for, those running our clubs. Thus, the tests should be extended to deal not just with reasons for disqualification but also to stimulate good practice in the running of clubs by the individuals to whom the tests apply.

People seeking to become owners of clubs

14. Before there is any change in the identity of a person with significant control of a club (i.e. owning 25% or more of its shares), that person should be required to pass a new Owner's Test. That test should be based upon the relevant parts of the existing Owners' and Directors' Test. However, we suggest some extra new requirements. People seeking to become owners of football clubs should be required to submit a business plan outlining how they will operate the business. They must demonstrate that their business plan contains satisfactory proposals for running the club sustainably, in accordance with the relevant financial rules and regulations and in accordance with the Code of Practice. They must show that they will appoint people with the skills and experience to run the club in accordance with those requirements and have satisfactory proposals for engagement with the club's supporters and other stakeholders.

15. Proposed owners should continue to be subject to requirements like those in existing regulations as to criminal records, involvement in previous insolvencies, ownership of more than one club, etc. In addition, proposed owners should be prohibited from using the shares in a club to raise funds to complete the purchase of a club. This restriction is intended to avoid repetition of recent instances where new ownership of a club has brought with it significant new debt attached to the club rather than personally incurred by the new owner.

16. The regulator should monitor actions on an ongoing basis and work with the clubs to identify steps needing to be taken to meet the regulatory requirements. There should also be some way for the regulator to secure delivery of promises on the part of the owner. That might take the form of a bond delivered to the FA by the proposed owner which would be

forfeit if key assurances were not honoured, for example in the event that there is a likely default in payment of wages, tax payments, etc.

17. Attached in Appendix B are some detailed proposals showing how this might be made to work.

People seeking to be directors of clubs

18. Owners' and directors' roles are different. Directors are appointed by owners to run and manage the day-to-day operations of the business. Whilst it is quite possible for someone to become an owner of a club without any experience or knowledge of the running of a football club, people seeking to become directors of football clubs should be required to demonstrate that they have the necessary skills and experience to run the club in accordance with the relevant financial rules and regulations and the Code of Practice and to deliver the proposals in the club's business plan. Like owners they too should still also be subject to requirements like those in existing regulations as to criminal records, involvement in previous insolvencies, running more than one club, etc.

19. In Appendix C are some detailed proposals showing how this might be made to work.

Oversight of clubs

20. The leagues already have regulations requiring certain information, mostly financial, to be submitted periodically. These allow for intervention in certain circumstances. We believe that these should be extended so that, when clubs submit their financial forecasts for each coming season, with that information they should also supply an updated business plan, showing how the club will be operated in a financially sustainable manner and in accordance with the other relevant regulations and the Code of Practice. In this context we noted that before the CMS Parliamentary Select Committee hearing on the possible sale of Wembley to Shahid Khan, Sport England indicated in evidence that they would run a stronger owners test than currently run by the football authorities for ownership of clubs, including a requirement for a robust business plan.

21. Also, when clubs submit their audited accounts for each completed financial year, they should submit a factual report, describing how they have complied with the Code of Practice during the relevant year. There should be a formal annual statement signed by the person with significant control and the directors as to the identity of the person with significant control and directors, including any shadow directors.

22. Although some of these matters are already subject to annual reporting, the nature and format of the information is often opaque at best and kept confidential at worst, even where commercial confidentiality is not threatened. We believe that a system of greater transparency is needed. There should be as much transparency as possible subject only to the need for commercial confidentiality. This will be essential to ensure that supporters and other stakeholders can have confidence in the regulatory process.

Further changes in regulations

23. In addition to the changes to the regulatory regime proposed above, we believe that there are certain other important matters needing attention. These include the protection of club assets; a new net assets test each year; consideration of restrictions on the amount of sums withdrawn from club accounts by owners and directors; and restrictions on the type, scale and terms of loans taken out.

24. There should be an absolute prohibition on:

- (a) offering club property as security unless in connection with a capital expenditure project e.g. construction of new stand. Consents granted should be publicised; and
- (b) moving a club out of the area with which it is by name or history traditionally associated.

25. Attached in Appendix D are some detailed proposals on these, and other detailed matters.

26. Also, we have considered the matters which lead to disqualification of owners and directors under the existing tests. Attached in Appendix E are some detailed proposals on these matters.

Structural and procedural changes needed to implement proposals

27. We are aware that many of the changes we propose may require amendments to the decision-making structures and processes within the football authorities. We have not presented any suggestions on what such new arrangements might look like in practice. We believe that it is better to concentrate for now on the principles and the nature of new regulations needed. The necessary structure and procedural changes can be addressed at a later stage, on a “form follows function” basis. We know there are a range of options and factors to consider such as a satisfactory appeals process..

28. Clearly, the administration of these recommended changes would have resource implications. In our view, the current arrangements, which lack satisfactory means of challenging poor management practice, already impose costs on the football authorities. Within the FA, the regulatory body will need to be suitably staffed, with financial resources agreed with stakeholders and funded by the clubs on a proportional basis along with such other sources of income as may be identified and agreed.

29. The regulatory body would be responsible for the production of detailed regulations and compliance documentation to demonstrate to clubs how the regulator may be satisfied that the club is being run in accordance with the regulations (which should be objective, rather than prescriptive).

30. The FA should examine other well-established regulatory organisations to identify and adopt best practice. We suggest that two useful examples to consider are the Civil Aviation Authority and the Dutch FA.

Conclusion

31. In our view, if the measures proposed in this paper and the attached Appendices are put into force, and if they are then robustly implemented, we will see a significant reduction in the number of cases where crises at football clubs bring the whole game into disrepute. Without such measures, the supporters of the clubs affected will continue to be victims of poor corporate governance in football and the reputation of those overseeing it will suffer further damage.

APPENDIX A

CODE OF PRACTICE ON THE STEWARDSHIP OF FOOTBALL CLUBS

Background

1. In recent years there has been an overall improvement in standards of financial management amongst senior football clubs in England, there having been very few recent club insolvencies. In addition, a number of clubs have introduced new measures to develop and sustain positive relationships with their supporters and others. However, sadly that is not the full story. There are still some clubs where financial concerns exist. In addition, in a significant number of high-profile instances, relationships between clubs' owners/directors and their supporters have come under severe strain. Such clubs have seriously alienated their supporters and other key stakeholders by their behaviour and their approach to club management.

2. Such breakdowns have had many local variations in nature and substance but they have tended to share one common feature: club owners and directors who regard football clubs just as any other business and as a piece of property to deal with as they wish. This attitude overlooks key aspects of football clubs in our nation. They are of huge significance to the lives of many people. They are of great value to the communities in which they are based. They are the greatest expression of community identity in cities, towns and smaller settlements. As an institution, each major football club is a community asset for the area it serves, akin to other privately owned assets of great public value which have high levels of legal protection, such as listed buildings, conservation areas and national parks.

3. This Code of Practice is an addition to the current regulatory regime which applies to the senior levels of football in England - by which we mean the clubs in the Premier League, the English Football League and the top four tiers and the National League system. This is not intended to mean that clubs below those levels have less significance or importance to their supporters and their communities. It simply reflects a view about the need for and practicality of new administrative tasks being placed upon smaller clubs' management.

4. The Code spells out a new obligation upon the owners and directors of such clubs to exercise stewardship over their clubs in such a way as to safeguard, sustain and enhance the value of clubs to the communities they serve and the supporters upon whom they all depend. Not all of its requirements are new to all clubs. For example, following the Government's Expert Working Group on Supporter Ownership & Engagement in June 2016, the EFL introduced new regulations requiring club leaders to engage with their supporters in a structured and regular manner.

5. The following are the proposed new requirements of the Code of Practice.

Stewardship

6. The value of a club to its supporters, its stakeholders and its community is based on the following matters:

7. The club's **sustainable future** as an organisation, playing professional football and entertaining its supporters, giving pride to its community.

8. The **local base**, for playing, training and recruiting young players, as the focus of the club, within the community from which it draws much of its support and which is reflected in its name.

9. The role of the **home ground** as the physical expression of the club's identity, the place which is associated with the club's traditions, its history and the memories of its supporters.

10. The **key assets** of the club and how they are maintained and improved each year.
11. Other aspects of the **history and traditions** of the club including its name, its badge, its playing colours and similar matters.
12. The **relationship** with its supporters, respecting their role in the life of the club and the importance of the club in their lives.
13. The way in which the club works in partnership with its **stakeholders**.
14. Clubs which show respect and care for all the above matters can be said to exercise sound stewardship of the club's community value. Those who fail to do that need help, encouragement and support. Only where there is disregard for such support and where stewardship is not improved as a result, should sanctions be considered to remedy the failures.

Planning for the exercise of good stewardship

15. This Code of Practice seeks to bring about a high and improving overall standard of good stewardship and to raise the standards of those who fall short. It seeks to do so not by adding a significant extra administrative burden but by building on existing practises. All well run clubs will already have a business plan which spells out their aims and objectives for the coming period. They already have to submit financial forecasts to the football authorities for their expenditure and income, showing how they will comply with regulations on financial matters. This Code envisages that the new stewardship requirements will be covered by simple extensions to those existing processes.
16. Upon the proposed purchase of a club by a new owner or owners and each year, before the start of a new playing season, the club's proposed or existing owners and directors must submit a business plan to the FA which explains how they will comply with the duties of stewardship in relation to the club. The plan must show:
 17. How the owners and directors will work to **secure a sustainable future** for the club.
 18. How they will **safeguard and develop the ground and other facilities** for the long-term benefit of the club.
 19. What steps they will take to **protect and enhance the club's heritage** as expressed in its name, its badge, its colours, its local traditions and its role in the local community.
 20. How they will **engage with their supporters** to develop and maintain a relationship of trust and partnership, based on mutual honesty and openness, employing democratic processes and meaningful consultation over issues of interest and concern.
 21. What they will do to **develop and maintain good working relationships with all stakeholders**, including the football authorities, other clubs, local authorities, the police, educational and health bodies, businesses and suppliers of goods and services and the media.
 22. How they will promote all aspects of **equality and diversity** in the way they operate as a business, at their stadium and other premises, in their conduct and promotion of the game and in their dealings with players, employees, supporters, the local community and other stakeholders.
 23. What steps they will take to **safeguard the health, well-being and safety** of all their employees, suppliers, supporters and other customers.

Demonstrating effective stewardship

24. Some of the matters covered by this Code of Practice are of such significance that they require special protection. Thus, by regulation, clubs should be required to demonstrate evidence of majority support amongst supporters for certain proposals which might damage the community value of the club. This 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 ground. Other regulations are required to govern changes in ownership and the use as security for borrowing of club's home grounds, training and academy facilities and other capital assets.

25. Periodically, each club's owners and directors must supply to the FA details of the steps they have taken to exercise good stewardship of the club, in relation to the above matters. Those details should include practical examples of steps taken and brief evaluation of its effectiveness. Clubs should share the details with recognised supporter organisations and invite their comments, which should be included in the information sent to the FA. These details should be published on the club's website.

26. The details sent to the FA should also be examined by a person with an appropriate level of independence from the club's owners and directors, such as their auditor, so that the facts claimed can be verified against evidence.

APPENDIX B

PEOPLE SEEKING TO BECOME OWNERS OF FOOTBALL CLUBS

Who are the owners of football clubs?

1. The current rules of the PL, the EFL and the FA (which apply to NL clubs) do not currently define the “owner” of a football club. Instead, in identical words, they refer to the “Person having Control of the Club.” “Control” is defined in the three sets of regulations, amounting, in brief, to:

- a) the power to appoint and/or remove all or a majority of voting members of the Club’s board; and/or
- b) holding the beneficial interest in at least 30% of the voting rights at general meetings of the club.

2. In addition, the regulations define Directors of clubs as including “shadow directors” - i.e. people who can give directions or instructions to the club’s directors and people exercising powers that are usually associated with Directors.

3. The importance of the latter is that it brings within the scope of the Owners’ and Directors’ Tests, for example, people who may lead, or have relevant responsibility within, a financial institution which owns the majority shares in a club but who do not themselves do so and may therefore not meet the definition of a Person having Control.

4. For the sake of simplicity (and brevity) in this paper, we use the term “owner” to cover those people within the above definitions.

5. It is unclear why Control relates to at least 30% of voting rights. In UK company law, from April 2016, the Small Business, Enterprise, and Employment Act 2015 introduced the term “People with Significant Control” (PSC) a term used to identify key people within a company. They are those who own or control 25% of voting rights/shares. There is an obligation under the Act to register the names, date of birth, home and work addresses, manner of control and other details of each PSC with the government via Companies House.

6. We would suggest that the Football Authorities’ regulations should be brought into line with UK company law by reducing the relevant percentage from 30% to 25%.

The roles of the “Owner” and Director compared

7. The precise role of the owner of a UK football club varies according to the ownership structure. Some clubs are wholly or mainly owned by individuals. Others are owned by larger companies or other financial institutions. Some are owned by a consortium of individuals or companies. Others, particularly fan-owned clubs, are owned through a trust following a community share issue. It is unusual for a football club to be owned by a large number of separate shareholders, for example as a “public company” traded on a Stock Exchange. Whichever model of ownership applies, the owners tend to take the major decisions affecting the club - prior decisions on purchase and later decisions on sale; major investments; financial restructuring and dividends; appointment and dismissal of directors.

8. The board of directors are in charge of the management of the business, making the strategic and operational decisions of the company and ensuring that the company meets its statutory and regulatory obligations. An individual director participates in board meetings to enable the board to reach these

decisions and make sure that the company's obligations are fulfilled. The directors are effectively the agents of the company, appointed by the shareholders/owners to manage its day-to-day affairs.

9. These roles bring us to the conclusion that, whilst much of the current Owners' and Directors' Tests should continue to apply to both categories of people, there are some important distinctions which require new separate requirements if the football authorities are to be able to assert satisfactory control over their conduct.

10. This section concentrates on our proposals relating to new requirements to be placed upon people seeking to become owners of football clubs and, through ongoing review of their conduct, such owners wishing to continue in that role.

Proposed acquisition of a football club

11. The acquisition of a football club can come about in a number of ways, typically through a sale by agreement or following an insolvency event. The existing rules require a club to give notice of any acquisition of at least 10% of a club's shares. Such an interest is defined as "significant" and specific restrictions apply to it, over and above the Owners' and Directors' Test.

12. In addition, if a person proposes to become the owner of a club - the meaning of which term is defined above - the club must give 10 working days notice of that along with details of the person. The football authorities then have 5 working days within which to confirm whether or not the person may become the owner or whether he/she is disqualified. The regulations define a list of disqualifying conditions. There is no current discretion to disqualify a proposed owner for any other reason. We agree that such tests should continue to apply and comment upon the detail of the disqualifying conditions in Appendix E.

13. Our most significant recommendation for change envisages the regulator having to conduct a form of due diligence prior to any acquisition of control of a club, to satisfy itself that the regulations as they apply to clubs and the proposed Code of Practice on Stewardship will be complied with.

Submission of business plan

14. We understand that the current practices of the football authorities vary as they consider each proposed acquisition. To some degree, that will continue to be necessary because of differences in scale and complexity. However, we propose that a single, core process should be applied in all cases. All clubs will have a business plan and prior to acquisition, prospective new owners will prepare such a document, to outline their objectives for the business and how it should be run.

15. We propose that new regulations should require each person seeking to become an owner to produce to the regulator a business plan for the club. As a minimum, this should include details of the following:

- a) the new owner's aims and objectives for the club;
- b) projected income and expenditure, showing how the relevant financial regulations, including those on Financial Fair Play, will be complied with;
- c) a summary of the capital assets of the club, with detail of any proposals for investment, disposal or acquisition of such;

d) an explanation of how the club will comply with the football regulations applying to the club; and

e) details of how the club will comply with the requirements of the Code of Practice for the Stewardship of Football Clubs.

Assessment of Business Plan

16. The business plan, excluding any necessarily confidential details, should be published on the club's website before or at the same time as it is submitted to the regulator. Supporters' organisations should be entitled to submit comments upon the plan to the regulator and supply information in support of such comments. The regulator should assess the business plan along with any comments and associated information from supporters' organisations, in order to ascertain whether it contains satisfactory proposals for the running of the club in accordance with the relevant regulations and the Code of Practice. If they are so satisfied and, in the absence of any disqualifying condition(s) applying to the proposed owner, they shall confirm to the club that the acquisition may proceed.

17. If they are not fully satisfied they may either:

a) confirm that the acquisition may proceed but subject to required changes and/or conditions on which they must be satisfied within a specified period; or

b) indicate that the acquisition may not proceed.

18. The timescales for submissions of the business plan, assessment of it and delivery of a decision will need to be considered. They are likely to require more time than the 10 and 5 working days specified at present.

Review by the regulator

19. We propose that this assessment of clubs' business plans should be subject to ongoing review by the regulator. Doing this on a rolling basis will reduce resource requirements. Updated business plans should be submitted whenever the club's financial forecasts are amended and sent to the regulator under the existing arrangements. At the same time, any changes in the ownership of the club, past or proposed, should be disclosed and the absence of any such should be certified.

20. Similar powers to those envisaged upon acquisition should be held by the regulator to deal with annual business plans upon review. In the case of serious failures, following the unsuccessful imposition of required changes and/or conditions, sanctions could include fines and penalties upon owners (and, see below, directors) and/or compulsory sale of the owner's interest in the club, by auction or other means to secure its market value.

APPENDIX C

PEOPLE SEEKING TO BECOME DIRECTORS OF FOOTBALL CLUBS

Who are the Directors of football clubs?

1. The regulations which set out the Owners' and Directors' Tests of the PL, the EFL and the FA (for the NL) are in many respects wholly or substantially identical. However their definitions of "Director" differ markedly but seem to be intended to cover the same people. The regulations do not even use the same terms - the PL refer to "Director;" the EFL refer to "Relevant Person;" and the FA to "Officer." We have not carried out any further detailed textual analysis of the respective definitions but we suggest that they be harmonised.

2. In this Appendix we will use the simplest of the three - that of the PL, which defines "Director" as people occupying that position and required to be registered as such under the Companies Act, including "shadow directors" - i.e. people who give directions and instructions to directors despite themselves not being appointed as such and the owner (explained in Appendix B.)

The role of directors

3. As a reminder, the board of directors are in charge of the management of the business, making the strategic and operational decisions of the company and ensuring that the company meets its statutory and regulatory obligations. An individual director participates in board meetings to enable the board to reach those decisions and make sure that the company's obligations are fulfilled. The directors are effectively the agents of the company, appointed by the shareholders/owners to manage its day-to-day affairs.

Proposed appointment of Directors

4. Under the current regulations, clubs are required to give notice prior to the appointment of new directors, including shadow directors. We agree that should continue and the disqualifying conditions (subject to suggested changes outlined in Appendix E) should continue to apply.

5. However, our key recommendation for change is that, as we suggest for the proposed acquisition of a club, prior to the appointment of club directors, the football regulator should carry out a form of due diligence. For owners, that due diligence relates to the nature and content of the proposed owner's plan for the Club. As the directors will be responsible for delivering that plan, prior to their appointment, we propose that new regulations should require each person seeking to become a director to produce to the regulator evidence of the skills and experience which will enable him/her to run the club in accordance with the club regulations and the Code of Practice for the Stewardship of Football Clubs. There are already requirements for managers of teams at certain levels of the game to hold specified coaching qualifications. Supporters would be reassured if an appropriate level of skills and experienced were required for those managing the business affairs of clubs.

6. That evidence should include, as a minimum:

- a) details of their relevant professional qualifications, if any;
- b) details of their previous involvement, if any, in business management or administration or as a company director;
- c) details of their previous involvement, if any, in football, as a player, coach, director, business manager, administrator or any other relevant capacity;
- d) an outline of the skills and experience which would enable them to discharge the responsibilities of director of a football club and to ensure compliance with the relevant regulations and the Code of Practice;

e) for those clubs who appoint supporter directors, evidence of their involvement in the running of supporters' organisations would be taken into account along with the other matters listed above.

Assessment of proposed directors

7. The regulator should assess any proposed directors in order to ascertain whether they have the necessary skills and experience to be responsible for the running of the club in accordance with the relevant regulations and the Code of Practice. If they are so satisfied and, in the absence of any disqualifying condition(s) applying to the proposed owner, they shall confirm to the club that the appointment may proceed.

8. If they are not fully satisfied they may either:

a) confirm that the appointment may proceed but subject to required changes and/or conditions (such as the supply of additional information and/or relevant training) on which they must be satisfied within a specified period; or

b) indicate that the appointment may not proceed.

9. The timescales for submissions of the details of each proposed director, assessment of it and delivery of a decision will need to be considered. They are likely to require more time than the 10 and 5 working days specified at present.

Review

10. We have recommended a rolling review of clubs' business plans, taking account of performance against aims and objectives. We suggest a similar process for directors. With their regular submission of financial projections and updated business plan, the club should confirm who are the club's directors and give detail of any proposed changes. Only proposed new directors would automatically be subject to the assessment outlined above. However, review of the suitability existing directors may be included at the discretion of the regulator if circumstances require it.

11. Similar powers to those envisaged upon appointment of new directors should be held by the regulator to deal with any concerns arising upon the annual review of business plans. In the case of failures, the regulator should be empowered to require action to be taken in respect of club directors responsible for those failures to comply with regulations or the Code of Practice. Such sanctions could include requirements to undergo training, to bring-in additional professional support, fines and penalties upon directors and/or the dismissal of those directors.

Shadow Directors

12. It is, in our view, important to maintain the current requirement for shadow directors to undergo and pass the Owners' and Directors' Test. As an individual may be in a strong position of power and influence over a club - being, for example, a leader of or person with relevant responsibility within a financial institution which owns a club on behalf of investors but not themselves the owner - they may have even more day to day control over the business than the appointed directors. Thus, in addition to the continued application to shadow directors of the Owners' and Directors' Tests' disqualifying conditions, shadow directors should also be subject to the due diligence process we propose, so that their skills and experience can be assessed and, if necessary, they can be held responsible for failures.

13. In addition, the current arrangements for application of the Owners' and Directors' Test are not sufficiently transparent to enable supporters and stakeholders to understand clearly who are the people who own and manage the business of their club. We propose that the regulator should publish details of the name and role of every person to whom the test and our proposals for due diligence are applied, indicating the outcome of that.

APPENDIX D

FURTHER CHANGES IN REGULATIONS

1. 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.

Ownership structures

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

3. Enhanced disclosure obligations regarding ultimate ownership on club websites. 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. These requirements should extend to those in beneficial ownership of at least 1% of a club's shares.

4. Prohibition on shares in a football club being pledged as security for borrowings by an owner. This could be enforced in the UK. 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.

5. 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.

Funding of clubs

6. There are numerous examples of clubs borrowing significant sums from, and charging their assets to, obscure lenders based overseas, in places such as the Cayman Islands, Bahrain, Hong Kong and other "offshore" locations. The lack of transparency of such arrangements and the complex legal consequences of lending from a foreign jurisdiction can cause serious difficulties. The regulator should be empowered to ask questions when such funding arrangements are proposed by clubs.

7. The powers available to the Leagues when they have concerns about the source and/or sufficiency of funds being provided by a new owner on a takeover are inadequate, other than following an insolvency event. A number of potential solutions might be considered.

8. A particular concern is that current FFP regulations' focus on profitability (or limiting the scale of losses) rather than debt and solvency. Recommendations are made to address this later.

9. The PL 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 certain clubs at usurious rates of interest as well as the non UK lenders at other clubs.

10. The NL proposal to require loans to be unsecured, unless in relation to capital expenditure projects, has much to commend it.

11. 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.

12. PL and Championship FFP regulations refer to the concept of “Secure Funding”, to be evidenced to either league when a club’s forecasts indicate it 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. This 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.

Club stadiums and other property

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

14. 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.

15. 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 regulator 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).

16. 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 a freehold title to its former stadium in exchange for a leasehold interest in a new stadium paying rent, say, to the club owner or a third party.

17. Moreover, as suggested elsewhere and as mooted by the NL, 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.

Extraction of money from game

18. There have been some high profile instances where club owners and their associates have withdrawn large sums from clubs, for no justifiable reason - e.g. performance-related.

19. A range of options might be considered and we believe it would be healthy for the game to come together to agree a position.

20. 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. We do not intend that this should apply to playing and coaching staff, expenditure on whom is already covered by FFP rules.

21. Any amounts so withdrawn should be publicised in “real time”.

22. There should be an absolute prohibition on loans being made by a club to connected companies or related parties. Restrictions should be placed on the types of loans clubs can take, covering levels of interest rates. Loans from sources other than owners and directors should come from credible and financially registered sources. Interest rates should not be excessive.

23. 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.

24. 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 there would be less opportunity for owners to withdraw funds.

Financial Fair Play

25. Existing rules in the PL 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. Thus clubs can comply with the rules whilst, at the same time, leaving the clubs with huge debts. A range of measures would be required to address this and might require a transitional period.

26. 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.

27. 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.

28. These initiatives would be introduced alongside recommendations for limiting borrowings and requiring additional funding to be by way of equity.

29. Rules applying to National League clubs should also include a requirement for a positive net assets test. Those rules should be modified to include retrospective verification of budget figures by reference to annual accounts.

Insolvency

30. 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.

31. The rules should bar any owner/director involved in any previous personal or corporate insolvency.

32. NL 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.

33. Consideration should be given to the formal subordination in an insolvency of all soft loans from owners or related parties. The NL is understood to be considering a diluted form of this proposal.

34. 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.

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

Sanctions

36. 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.

37. 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.

38. 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.

39. 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 to result in fines, suspension or, ultimately, disqualification as a director.

40. Finally, the NL initiatives of a bond to be deposited with the league or the threat 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, it is likely that such a deterrent would rarely if ever need to be invoked.

APPENDIX E

PROPOSALS IN RELATION TO OWNERS AND DIRECTORS TESTS' "DISQUALIFYING CONDITIONS"

Background

1. There are three different Owners' and Directors' Tests applying to football clubs - approved by the PL, EFL and FA (for NL clubs.) Each test is differently worded. Whilst some of the differences are purely stylistic or reflect varying approaches to drafting, there are some important differences in the matters covered.

2. We have compared the way in which the tests define the "disqualifying conditions." These are the matters set out in each test which, when found to apply to an owner or director (including shadow directors) will lead to their disqualification. In this Appendix, we set out:

a) some suggested improvements to the tests by harmonising the definitions; and

b) some other suggested improvements in the matters covered.

Harmonising the tests

Criminal matters

3. All three tests include certain criminal matters as disqualifying conditions. Each test includes two broad kinds of offences - those which have resulted in an unsuspended sentence of at least 12 months imprisonment and those involving dishonesty and a list of other specific matters, regardless of the sentence imposed. There are several important differences in the way the three tests deal with such matters:

4. The PL test says, that offences involving dishonesty will be disqualifying conditions "and, for the avoidance of doubt, irrespective of the actual sentence involved". The EFL test does not include those clarifying words. Also the FA test does not include those words. However, that test does not include a wider disqualifying condition relating to offences which have resulted in an unsuspended sentence of at least 12 months imprisonment. The FA test only applies to offences of dishonesty and other listed matters.

5. The EFL and FA tests list, in the same words, a number of types of offence, including those involving dishonesty. The PL list includes most of the same matters but does not include the following, which are in the EFL and FA version: "corruption, perverting the course of justice and serious breaches of the Companies Acts".

6. The FA test requires owners and directors to certify that they are not currently subject to any criminal proceedings in relation to the listed offences. The PL and EFL tests do not.

7. The PL and EFL tests apply to convictions for offences throughout the world. The FA test only applies to offences in England and Wales.

Bribes, gifts and rewards

8. The FA test has a disqualifying condition where a person has breached or admitted breaching the FA's rules relating to bribes, gifts and rewards. The PL and EFL tests do not seem to include such provisions.

Director of expelled football club

9. Also, the FA test disqualifies anyone who has been an director of a football club expelled from a list of leagues, including the PL, EFL, NL and others. The PL and EFL tests do not include such provisions.

Involvement in another club

10. All three tests disqualify people who have involvement in another club. The PL and EFL tests only apply to other clubs in the PL and EFL. The FA test covers “another football club against which the club may play fixtures in a competition sanctioned by The Association”. Thus directors of PL and EFL clubs may also be involved with a club lower in the football pyramid against whom the PL or EFL club may play FA Cup matches.

11. We recommend that a single test should apply to all three sets of clubs including all the matters mentioned in paragraphs 3 - 10 above.

Other suggested improvements

12. The conditions relating to criminal convictions are all subject to the Rehabilitation of Offenders Act, which defines certain past convictions as “spent” after a period of time has elapsed (which varies according to the nature of the offence and the sentence). However, it is understood that the football authorities may be reluctant to apply the test to unspent convictions and to people on the Sex Offenders Register where the relevant conviction or the person’s entry on to the Register pre-dated the relevant football regulations. We suggest that words be added to make clear that such previous offences may be regraded as disqualifying conditions.

13. All three tests include various insolvency and bankruptcy matters as disqualifying conditions. They include the previous involvement in two or more insolvency events at football clubs (i.e. either two at the same club or one each at two clubs.) In addition, the tests apply to people currently subject to various bankruptcy orders but not to people previously subject to such. Thus people who have been responsible for serious insolvency matters at football clubs are not prevented from “having another go” at a new club or indeed the same club. Supporters have difficulty trusting such people with their club after they have led it or another club into bankruptcy.

14. We suggest that all previous involvement in insolvency at a football club should be declared to the regulator and explained. The regulator should be empowered to disqualify such people if they are not satisfied with the explanation given. Of course, like all other decisions under the tests, such a disqualification would be subject to a right of appeal.