



**It's all in
the game:**

proposals for
greater transparency
in football governance

Sam Tomlin &
Stephen Lee

CENTRE:FORUM

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The logo for CentreForum, featuring the word "CENTRE" in grey and "FORUM" in orange, separated by a stylized orange arrowhead pointing to the right.

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■ Preface

Despite the greater political interest and debate in recent years, progress on addressing the “governance deficit” in our national game has been minimal.

Sam Tomlin and Stephen Lee have produced an excellent and much needed report and their proposals for improving governance, transparency and accountability make eminent sense.

Paul Marshall
Chairman, Management Committee, CentreForum

**“My only conclusion is you have a
business guy operating the club who
knows absolutely nothing about football.
Football is like no other business.”**

Brendan Rodgers, Liverpool FC Manager
Commenting on Cardiff City FC
The Times, 20 December 2013

■ Recommendations

1) The FA should accept the Culture, Media and Sport Select Committee's proposal that the Main Board of the FA be reduced to ten members. Within the Main Board there should be provision for a maximum of two Professional Game representatives and two National Game representatives. There should be provision for a Chairman, the Chief Executive Officer of the FA with an additional four independent non-executive directors.

2) The FA Council should significantly reduce its current membership and limit the maximum potential term of office for a member to three years, with one possibility of re-election for a further three year period. It should commit to and publish an annual timetable of meetings. It should have provision within its membership for supporter based representation from at least three supporter representative bodies (ie the Football Supporters' Federation, Supporters Direct and Level Playing Field).

3) The current requirement of mandatory public disclosure of holdings of 10% or more in a club by the leagues should be included in a comprehensive new licensing regime established by the FA and should be reduced to any holding of over 1%

4) The disclosure of the ultimate beneficial owner(s) to the leagues should be extended to the general public with the rules consistently applied as part of the new FA licensing regime

5) The 'Comprehensive Three Year Future Financial Information' required by the leagues should also be part of the FA's licensing regime and should be publicly disclosed. This rule should remain until the number of club insolvencies and administrations have significantly reduced

- 6) As part of the licensing regime, clubs should be required to disclose fully the wages they pay to each of their players and manager, full details of any transfer fees paid and arrangements for payment, and fees paid to all agents whenever they use them. This information should be made public at the end of each season and/or whenever a transaction occurs
- 7) Each club should be required publicly to disclose full tax details as part of the licensing regime
- 8) Clubs should be required as part of the licensing regime to disclose publicly the number of parent or holding companies involved (in any capacity) in the club's ownership along with their location. For each holding company there should be an additional financial penalty in the form of reduced payments by the club's respective league
- 9) The FA and leagues should publish expected reduction in the number of insolvencies in the coming three seasons
- 10) The Football Association should be added to the list of organisations subject to the Freedom of Information Act as an organisation that commands significant public interest
- 11) The Sports Minister should be held accountable to the promise to legislate (with a time limited Act) if the football authorities fail to make adequate progress in implementing the recommendations demanded by the government's response to the DCMS inquiry into football governance
- 12) FA Council meetings should have their agendas published before meetings take place and the unreserved business minutes published after each meeting. Where appropriate, specifically determined formal meetings of the FA (ie meetings of the FA Council) should be open to the public and/or broadcast online

: Football and national life

Introduction

The role of football in the national psyche is unquestionable. After the government and celebrity life, there is probably no other aspect of British life which commands as many column inches. Attendances are consistently high with hundreds of thousands watching a match each week and the Treasury's tax revenue from the Premier League alone exceeding £1 billion.¹

For many people, football acquires a form of religious status, with lives built around their club and with thousands of pounds spent by supporters on this pursuit. Football, and their chosen football club matters to people so much that in 2010 it was announced that the Department for Culture, Media and Sport (DCMS) Select Committee would produce a full inquiry into the way football was governed, prompting a response from the government.

It was within this context that CentreForum produced its 2011 publication, 'Football and the Big Society'. This report confirmed football's special national status and praised many aspects of the modern game, but called for a fundamental re-evaluation of the direction of football governance and management.

The purpose of this follow up report is in part to review the policy landscape since our 2011 report, examining the progress made with regard to the recommendations contained within it. And it is also to explore the vital role the concept of transparency can and should play in the further development of football governance and its potential to promote greater sustainability and accountability, which are still desperately needed in the

¹ Based on PAYE paid by players. Football authorities' response to the Secretary of State for Culture, Media and Sport and the Minister for Sport and the Olympics, 29th February 2012, p.15

management of the English game.

Within this report we argue that current commitments to transparency and accountability fall short of what is required for a well governed game. Legitimate stakeholders, including supporters who are in a unique position as coproducers of the commercial value of the game, are systematically barred from access to the 'regulatory space' where decisions in the game are made.

Greater transparency is not only the most appropriate way to govern the game, but it is also what is needed to promote pressure for change in what many believe is fast becoming a cash rich, yet dysfunctional industry.

We begin therefore with an analysis of the distinctive nature of football clubs and the game itself.

a) Football as a distinctive form of activity

In their modern form, football clubs are excellent examples of institutions which need to be able to hold both commercial and non-commercial strategic outcomes together if they are to maximize their impact and purpose.

In relation to the first of these two challenges football clubs have concentrated heavily on their commercial development in the past three decades. Since the 1980s and early 1990s, the commercial management of clubs has rapidly advanced, facilitating an enormous expansion of stadia, player wages and revenues to owners. Indeed, revenues generated by the Premier League in 1991-92 at £170m, have risen to £2.3bn in 2011-12.²

But football clubs also have uniquely social aspects as well. Going back to their origins as vessels through which communities formed collective social identities, the concept of a football 'club' is firmly rooted in its social function to a far greater extent than to its commercial efficiency.

Of course, the two are often linked. Commercial decisions have a major impact on the involvement and engagement with key stakeholders at clubs, for example by altering ticket prices. Cheapest tickets at Manchester United and Arsenal rose

² Turn on, tune in, turnover, Annual Review of Football Finance - Highlights, Deloitte, 2013, p.2

by 700% and 920% respectively between 1989-90 and 2010-11 while statutory inflation was just 77% in the same period.³ These price increases might make sound commercial sense in relation to increased gate receipts, but they also directly contribute to pricing poorer supporters out of attendance at the club of their choice.

At the same time, many of the assets that have supported the commercial development of football clubs owe their roots to non-commercial sources of support. An example of this would be when a local council provides funding for a new stadium.⁴

The distinctive social function of football clubs has led to frequent assertions that, in part at least, they should be regarded as 'community assets'. Walters & Chadwick (2009) develop the important social aspects of football clubs further, recognising that often they were formed initially to represent geographical locations and act as focal points for community identity.

They conclude that the "historic role of the football club in the community still exists, with notions of tradition and social solidarity having continued relevance to the nature of the contemporary relationship between a football club and the community in which it is located."⁵

In delivering these community or social functions, clubs provide economic value for local businesses (eg £330m in gross value added to Greater Manchester's economy in 2010-11⁶), community cohesion and charitable outcomes for schools and for the wider community. They can also, however, create negative value for communities in the case of hooliganism or unpaid debts.⁷

Local councils have also judged clubs to be a vital social benefit to communities, as seen through the designation of a growing number of stadia as 'Assets of Community Value' under the

3 The Premier League has priced out fans, young and old, David Conn, the Guardian, 16th Aug 2011: <http://www.theguardian.com/sport/david-conn-inside-sport-blog/2011/aug/16/premier-league-football-ticket-prices>

4 E.g. Manchester City Council provided £22m from 1998 to build Manchester City's new City of Manchester Stadium (now the Etihad Stadium)

5 *Corporate citizenship in football: delivering strategic benefits through stakeholder engagement*, Walters & Chadwick in 'Management Decision Vol. 47 No. 1', 2009, p.54

6 Analysing the value of football to Greater Manchester, Short Report, Cambridge Econometrics and the Sport Industry Research Centre at Sheffield Hallam University, 2013, p.4

7 For example in Portsmouth's first administration in 2010, a number of community organisations were left as unpaid creditors while all players were paid unpaid wages in full. St John's ambulance was one example, being owed £2,702 which it never saw.

Localism Act 2011.

Football club facilities are often used by communities for activities other than football (ie for music concerts or conference venues), and this is often facilitated through public as well as private investment.

It is then undeniably the case that modern day football clubs play an important commercial and social role within the communities within which they are set.

As a report by Supporters Direct (2010) into the social impact of football concluded, “the rhetoric about football clubs being ‘central to local communities’ is not mistaken”,⁸ and as we ourselves asserted in our 2011 report, “for many communities, the football club is the most important institution in their town or city”.⁹

Consequently, the clubs and their owners face significant responsibilities back to those communities that have helped to nurture their development, which continue to actively support their commercial success and which feel an important ownership and unique affiliation to ‘their’ club.

In response, the owners of football clubs operating at all levels across the professional and amateur games (and with a variety of forms of ownership) have begun to recognise their important communal and social responsibilities, developing a complex range of local relationships with local institutions and initiating a stakeholder approach to their governance and management.

b) Football club owners versus community and national assets

Whilst football club owners clearly own the legal entitlement to their club they can never aspire to sole ownership of the community and national asset components of their club or the national game. Rather, they and the FA (with respect to the wellbeing of football as a national game), are better regarded in as stewards of these important community and national assets.

Stewardship, stemming from ‘stewardship theory’, is now a

⁸ The Social and Community Value of Football, Summary Report, Supporters Direct, 2010, p.12
⁹ Football and the Big Society, Marshall and Tomlin, CentreForum, 2011, p.7

recognised and accepted approach to corporate governance that focuses on the duties and responsibilities of directors beyond immediate commercial gain.¹⁰

Acting as stewards, owners of football clubs and the FA incur additional responsibilities above and beyond the acquisition of mere private commercial gain. They have a responsibility to treat all legitimate stakeholders with respect and with equity – to enable and facilitate their voice being heard and where appropriate, acted upon. They have a clear responsibility to promote the long term viability and the good of the game itself by acting prudently within the community and national interest.

There is no official definition of a national or local asset, but broadly speaking it can be described as being of vital importance to the identity, economy or culture of a significant number of people within a nation or a prescribed locality.

'Assets of Community Value' in the Localism Act have been described along similar lines: "Every town, village or neighbourhood is home to buildings or amenities that play a vital role in local life. They might include community centres, libraries, swimming pools, village shops, markets or pubs. Local life would not be the same without them".¹¹

Football clubs, as we have established above, meet these definitions in a local context, and collectively it would be hard to deny football the designation of a national asset. As Margaret Groeneveld (2009) has argued, "defining the professional game as a public service needs only to consider football's place as part of cultural heritage, national identity and the scale of its economic impact as part of a set of existing (arguably essential) elements in the national social fabric."¹²

There is a broad societal consensus that national assets need a degree of protection and sufficient stewarding to ensure they remain the assets they are said to be. The Localism Act enshrines this consensus in law, providing community groups

10 *The ethics of corporate governance*, Nordberg, D., in 'Journal of General Management, Vol. 33 No. 4 Summer 2008'

11 A plain English guide to the Localism Act, Department for Communities and Local Government, 2011, p.8

12 European Sport Governance, Citizens, and the State, Finding a (co-)productive balance for the twenty-first century, Margaret Groeneveld, 2009 (Public Management Review ISSN 1471-9037), p.427

the opportunity to nominate 'Assets of Community Value' important to national and local identity, so that they are protected from closure or sale for private use.

For football as a whole, the responsibility for protecting the national and community asset that football undoubtedly is, falls to the sport's governing body, the Football Association (FA).

From its establishment in 1863, the FA did much to create laws to protect clubs from commercial exploitation. In particular, one rule, later codified as 'Rule 34', ensured that whilst most clubs started as limited companies, there were restrictions on clubs' operations. This meant that in practice directors could not receive dividends or any income from the club and the club's assets would be passed onto community or sports organisations in the event of insolvency.

However, when Tottenham Hotspur created a holding company (plc) enabling directors to take dividends and salaries in 1983 this rule began to be eroded and was finally quietly removed later in the 1980's, in many ways paving the way for the modern game today.

How and where then is the effective stewardship of the social importance of modern day professional football clubs protected and promoted in the contemporary context?

Case study: German football and recognising the importance of community assets

On the 150th anniversary of the English Football Association, the Champions League Final was held at Wembley to commemorate the occasion. The fact that it was contested by two German clubs without vastly wealthy owners and managed by two German managers who fielded a significant number of German players did not go unnoticed.

While there were some dissenting voices, much praise was given to the German model of governance which has ensured that insolvency of clubs is more or less unknown. German football boasts the largest attendances across Europe. Underpinning this success are two

main elements: the centrality of clubs as community institutions and a strong commitment to transparent governance.

From the outset, German football enshrined in law that clubs should belong to the community in the form of supporters, initially existing as members' organisations or *eingetragener verein*. To increase commercial and competitive potential, in 1998 clubs were permitted to incorporate their professional football sections into external limited daughter companies, separated from the 'parent club'. However, under DFB (the German FA) rules, the parent club (ie members' association) of any such subsidiary company must retain at least 50% of the voting rights plus one additional vote.¹³

The result of this is that German clubs are much less likely to be bought or sold by an Abramovich (Chelsea) or Sheikh Mansour (Manchester City) as if they were an extension of a global billionaires' empire as they could never control the voting rights over such clubs. Billionaires are unlikely to invest heavily in entities that they cannot control.

This protection for German clubs is also supported by a strong licensing system. Clubs need to apply for a license each year in order to compete in DFB competitions. At the beginning of and during each season, clubs must provide detailed financial data¹⁴ to show they are in the black, which according to former German Football League (DFL) chairman Christian Müller, ensures 'an openness and transparency to the business aspect of the game that is without parallel across Europe.'¹⁵

Some figures within German football have tried to move towards a more English model of governance. At Hannover, for example, chairman Martin Kind has tried to abolish the 50+1 rule. However they have not succeeded

13 www.supporters-direct.org/?news-article=the-german-model-explained-governance-regulation-and-financial-performance

14 It must be noted that all German clubs' financial affairs are not always made publicly available online. But they must be disclosed to their members who can hold them to account, especially when they have majority voting rights. The DFL (Deutsche Fußball Liga which runs the Bundesliga and 2. Bundesliga) also has the right to obtain information from third parties – for example a club's auditors or bankers

15 Culture, Media and Sport Committee - Seventh Report , Football Governance, 2011, para 143

and have been outvoted, in part thanks to supporters who organise to preserve the democratic nature of the German game.¹⁶

What the German model reflects, but the British model does not, is that at their heart football clubs are more than objects to be bought or sold on the market like other businesses. This does not need to affect commercial success as many German teams have shown, suggesting it is possible to protect both the commercial and community aspects of the club at the same time.¹⁷ Clubs are intrinsically woven into the life of local, national and international communities, and help people express their personal identity and sense of belonging, something the German model actively protects and promotes.

c) The distinctive position of supporters

Within the German model of governance identified above, football clubs are explicitly recognised as being of intrinsic value to their communities. This is reflected directly in the system of regulation designed to govern their activities.

In English football we need a greater appreciation of the distinctive position of supporters in relation to clubs. If clubs provide both economic and social value to communities, the group which is impacted the most is certainly the club's supporters - around 700,000 of whom attend a professional match in the top 4 English divisions each week, with tens of thousands more attending non-league fixtures.¹⁸

In one sense supporters are the most important stakeholders within any football club, because clubs matter more to them than to any other group. This was clearly acknowledged by the DCMS Select Committee when it asserted in its 2011 review

16 Last time Premier-League type ideas were introduced by President of Hannover 96 Martin Kind, they were voted down by 35 votes to 1

17 German teams come 4th (Bayern Munich), 11th (Dortmund), 14th (Shalke) and 18th (Hamburg) in the Deloitte Football Money League (2013) – top 20 clubs in Europe - with regard to overall revenue. With regard to commercial revenue, however, they come 1st (Bayern), 7th (Dortmund), 9th (Shalke) and 13th (Hamburg) – within the 20 clubs in the Deloitte Football Money League.

18 CentreForum calculations based on 2012/13 average attendance figures

into football governance 'it is clear that football is not like most business sectors...the relationship between supporter and club is characterised by a degree of 'customer' loyalty that most companies could not come close to achieving.'¹⁹

As well as this, however, supporters are also vital to the game as 'co-producers' of key facets of the economic and commercial value accruing to clubs and retained in a material sense by their owners. Co-production occurs in at least three distinct, yet linked ways that have each been critical to the commercial advances and success of the largest professional clubs over the past three decades.

First, supporters have traditionally provided the most important source of income at matches and through the sale of club backed merchandise – without supporters paying for tickets, most clubs would not have been able to survive in the pre-satellite-television era. Many would not survive long today.

As the modern day commercialisation of football began to take off, investment in new state of the art stadia fuelled the process: seats needed to be filled and it was a growing number of supporters that filled them.

Second, the advent of multiple web based marketing channels, staggeringly lucrative satellite television deals and the global reach now afforded individual clubs through the development of their own interactive web based media channels, has transformed the commercial value and revenues achieved by the larger clubs. Many are now truly global brands with a global supporter base prepared to support and finance 'their' club beyond others.

Supporters have also been a hugely important source of co-production to the football clubs in another sense that continues, uniquely, to add value to the commercial standing of the game.

A match watched by no supporters is no match at all.

It is the attendance and engagement (both physical and virtual) that supporters deliver to the game that creates in no small part the atmosphere and the passion that makes the game a sporting

19 Culture, Media and Sport Committee - Seventh Report, Football Governance, 2011, para 2

and entertainment spectacle. Through their attendance and active participation in matches, supporters deliver the game and their club a critical element of commercial value which would be impossible to replace if taken away.

Without packed stadia and the noise and passion of supporters it is unlikely the game would be nearly as popular, as fervent or compulsive as it is. Arguably, far fewer people would pay to watch matches on television without the 'spectacle' delivered in no small part by the live supporter involvement.²⁰ Premier League sponsors Barclays recognise this fact. In 2013 they launched an advertising campaign called 'Thank you' aimed explicitly at supporters with the tagline: 'You are football'.

It is undoubtedly the case that supporters contribute significantly to the financial and cultural wellbeing of the owners of these clubs and of the game itself. In response, one might expect some form of recompense for supporters in the form of inclusion within ownership, or the opportunity for engagement in the governance and direction at club, league or national/regional game levels.

It is not that fans have not indicated that there is a real demand for this level of inclusion. As Cooper and Johnston (2012) have asserted, 'If there is any field where there is a huge desire for information, control and "accountability", it is the field of football. Unlike any other field, the fans' desire is almost overwhelming.'²¹

Yet the current situation in English football, unlike the German case example cited earlier, provides neither of these opportunities as a given right for English football club supporters.

Unless one happens to support one of the few clubs with high levels of supporter ownership, there is precious little supporters can do to affect the way their community institutions operate, or, at a broader level, the governance structures in which they are required to operate.

Finally, the absence of engaged and empowered supporters

20 The Premier League has recognised this, actively seeking to promote the attendance of away supporters with the intention of protecting and enhancing the quality of the atmosphere at matches.

21 *Vulgate accountability: insights from the field of football*, Cooper & Johnston, 2012 in *Accounting, Auditing & Accountability Journal* Vol. 25 No. 4, 2012, p.602

represents a significant lost opportunity in communities and society more generally. Supporters Direct's (2010) report on the social value of football found clubs which promoted strong supporter engagement and where involvement made real impact (as opposed to the veneer of liaising and then ignoring) reported a number of enhanced social outcomes including promotion of democracy, 'creating mutual empathy' and keeping the club linked to the community.²²

At a time of growing malaise with the political and democratic system,²³ people should be encouraged to participate in democracy in their everyday lives. Echoing arguments initially developed by Alexis De Tocqueville in the 19th century, practical and influential engagement by citizens in institutions they care about, like football clubs, provides significant social and societal benefit.²⁴

The fact that there are over 220,000 paying members of FC Bayern Munich able to influence decisions about the composition of the Board and ticket pricing is both empowering for them and directly promoting the furtherance of democratic engagement. By contrast, most English football clubs miss out on such social benefits through lack of proper empowerment of supporters, both at a local and national level.²⁵

22 The Social and Community Value of Football, Supporters Direct, 2010, p.16

23 E.g. it was reported in November 2013 that 4 in 10 British people would say that they would not consider voting for any political party: <http://www.independent.co.uk/news/uk/politics/apathy-alienation-how-disengaged-four-in-ten-voters-reject-all-parties-8940389.html>

24 For example, writing on New England's citizens' participation in local democracy de Tocqueville argued 'The native of New England...takes part in every occurrence in the place; he practices the art of government in the small sphere within his reach; he accustoms himself to those forms without which liberty [or democracy] can only advance by revolutions; he imbibes their spirit; he acquires a taste for order, comprehends the balance of powers, and collects clear practical notions on the nature of his duties and the extent of his rights.' – De Tocqueville, A, Democracy in America, 1840

25 Germany is also known for greater cultural co-production or 'co-determination' (*Mitbestimmung*) as a society. There is a co-determination law (*Mitbestimmungsgesetz*) which requires just under half of companies' supervisory boards be representatives of workers along with high levels of employee ownership and wider stakeholder influence – the 50+1 rule with football clubs is just one example. Interestingly, German turnout at national elections has been consistently higher since the second world war at an average of 83%, compared to the UK's 74% (72% vs 65% respectively at the most recent elections). This is arguably partly due to a greater such culture of participation in community and local institution democracy.

d) The old system of governance continues to endure

Most English clubs are the preserve of exceedingly wealthy or savvy businessmen who still exercise great freedom to run clubs essentially how they want. This means that aspects central to the identity of clubs such as kit colour (eg Cardiff City), name (eg Hull City) and even location (eg Wimbledon) are often subject to the whim of one person or small group of people with nothing supporters can do to influence the situation.

Conversely, in many circumstances, it is the supporter groups that are left to pick up the pieces when things go wrong, as was the case, for example, at Exeter City. This nadir in the governance of the game has prompted the establishment of what have been termed 'supporters trusts', set up by supporters to act as a community interest group, attempting to acquire greater influence in clubs and to temper some of the potentially negative social outcomes associated with unfettered commercial excess.

The vast majority are formed as 'community benefit societies' which are required by statute to operate for the benefit of the community and not for its members. They achieve this through:

- being the democratic and representative voice of the supporters of the Club and strengthening the bonds between the Club and the communities which it serves;
- achieving the greatest possible supporter and community influence in the running and ownership of the Club;
- promoting responsible and constructive community engagement by present and future members of the communities served by the Club and encouraging the Club to do the same;
- operating democratically, fairly, sustainably, transparently and with financial responsibility and encouraging the Club to do the same;
- being a positive, inclusive and representative organisation, open and accessible to all supporters of the Club regardless of their age, income, ethnicity, gender, disability, sexuality or religious or moral belief.²⁶

26 Football Club Licensing in England, Key Principles, Supporters Direct, 2011, p.5

Supporters' trusts have generally helped to improve relations between clubs, their owners and supporters. In some cases (e.g. Exeter City, Wycombe Wanderers and Swansea City) they have attained significant minority or even majority shares in the club. But this remains the exception rather than the rule.

Despite repeated calls for reform, the dominant system of benefactor governance continues to endure.

Case Study: Bristol City Supporters Trust

Bristol City Supporters' Trust was established in 2005. The club's owner, Steve Lansdown, has traditionally been regarded as one of the more transparent football club owners, holding periodic Q&A sessions with supporters and promoting an active engagement with the Supporters Trust in meeting regularly with club officials on issues affecting supporters.

Whilst this has been widely reported locally as a positive initiative²⁷ it has also become clear that much of this engagement has in fact been rhetorical and superficial, concentrating on issues which could be described as 'surface' issues such as stadium facilities, ticketing and the match day experience.

Indeed, in a recent statement, the Supporters' Trust lamented a 'lack of clarity about reporting lines and accountability' and asserted that 'we will never know how much our questions influenced the recent board changes and the appointment of the new CEO.'²⁸

With regard to influencing deeper structural issues in the running of the club, there appears to be even less progress. A recent interview with Lansdown's son, Jon (club vice Chairman) revealed the presence of an elected supporters' representative on the club's board between 2007-10 was not a successful exercise: 'We found it difficult to discuss some matters openly in front of a fan and it proved an embarrassing exercise in that there was so much we could not say.'²⁹

If this is the case at a club generally accepted as being

27 E.g. http://www.bristolcityst.org.uk/trust_news/article000666.shtml

28 Bristol City Supporters Trust Statement, October 2013

29 www.bristolpost.co.uk/EXCLUSIVE-Bristol-City-vice-chairman-answers-fans/story-19947938-detail/story.html

more transparent and open than most, it does not leave much hope for the rest of the football pyramid.

Conclusion

Football is more than just about commercial gain. Football clubs are, in part at least to be regarded as community assets meaning owners have broader duties than simply the promotion of private commercial gain. They have responsibilities to various stakeholders to whom they should be accountable, including perhaps the most important stakeholders, the supporters who are particularly disadvantaged by the current state of affairs.

Supporters' trusts have been established to mitigate this problem, but at present their impact is low and is not a prerequisite, especially where club owners are particularly secretive.

The current system of football governance does little to recognise the distinctiveness of football clubs as community assets and the importance of the engagement with wider stakeholders such as supporters in the way that football clubs and the national game is run.

■ 2. Current Issues of Governance

At the heart of most of the troubles in modern football is governance. Put simply, the 'setting of rules, the application of rules, and the enforcement of rules'.³⁰ In football, as in all industries and organisations, governance and the thinking that lies behind it determines in no small measure the end result.

This is not sufficiently acknowledged by the football authorities.

As we noted earlier, unlike German football which chose from the outset to be governed with an underlying philosophy that promoted the centrality of supporter involvement and sustainability, English football's governing principles are currently founded in neutrality towards supporters and commodification of something which should more properly be seen in part at least, as a public asset.

There are a number of aspects of football governance, directly related to the highly distinctive origins and history that football has endured, which still need to be addressed.

a) The benefactor model and FA governance

As stated in Chapter 1 many English clubs (professional and amateur) are often owned by 'benefactors' whose ownership has increasingly been characterised by the pursuit of commercial interest at the expense of all others. This began in earnest from the 1980s with the disestablishment of Rule 34³¹, when new 'types' of director began to buy and sell football clubs.

On the one hand, there were those whose primary motive was for monetary gain and who tended to be less likely to have local ties to the location of the football club and more likely to pursue

30 Kjaer, A. M. (2004) *Governance*, Cambridge: Polity Press, p.10

31 See p. 13

personal profit often at the expense of long term sustainability.³² It is a modern myth that no owners make money from football clubs, with a great number making millions in profit when selling on to other investors.

There was also a second kind of owner that emerged, 'one who would happily endure substantial losses on the football club they owned because the directors' monetary return would not accrue directly from the receipts enjoyed by the club, but through association between the club and the other business ventures associated with the owners.'³³ This has been demonstrated to be the case for example at Blackburn Rovers.

Case study: Blackburn Rovers

Blackburn Rovers have endured a torrid period of decline following their acquisition by Indian family businessmen the Raos in 2010. With no previous experience of football club ownership the Raos family – owners of Venkys (a chicken meat processing business based in India) - acquired the club through holding company, Venkys London Ltd, which bought 99.9% of the club with £23m, taking on around £20m of debt in the process.

What has become apparent in the three years of ownership of the club by the Raos family, is that they are effectively using the club as a marketing ploy for their other business ventures (shown, for example in 2011 by Blackburn's players appearing in an advertisement for Venkys).

By contrast they appear to have little or no concern for the economic or social impact that their ownership has had on the standing of the club itself in both football and commercial terms.

For example, there have been five permanent managers appointed in the past three years – five different managerial appointments occurring in just one season (2012/13). Relegation has been accompanied by

32 See King, A. New directors, customers and fans: The transformation of English football in the 1990s. *Sociology of Sport Journal*, 14(3), 1997, pp.224–240

33 New football directors in the twenty-first century: profit and revenue in the English Premier League's transnational age, Millward, *Leisure Studies*, 2013 Vol. 32, No. 4, p.403

successive annual losses and mysterious appointments to unclear roles within the club abound.³⁴

Operational transparency is negligible – all those not intimately connected with the ownership of the club have seen a complete lack in transparency of governance and management responsibility. As the Supporters Trust indicates, 'Based on their lack of transparency to date, it is difficult to interpret anything they [Raos] have done, or any decision they have made as having any coherent plan or vision.'³⁵

The trust has lamented the role of the Raos, asserting that 'Blackburn Rovers is not a business asset, a marketing tool or a play thing. It is a community of local, national and international supporters (both individual and commercial) who every week want to support their team.'³⁶

If the situation characterised previously by Bristol City offers some cause for concern, the ongoing debacle at Blackburn Rovers is little short of a disgrace. Despite the continuing observable deficit in the governance of many professional clubs, the regulator (the FA), allows owners to continue to operate in a highly privileged, protected, sometimes corrupt and shrouded operational environment.

As Walters and Hamil (2013) suggest, the FA is structured so that the 'regulatory space' (essentially where the decision making happens) is controlled by a defined group of people at the expense of wider stakeholders.³⁷

34 For example, Shebby Singh was appointed 'Global Adviser' due to his connections with the Rao's and allegedly no shortlist according to Blackburn Rovers Supporters Trust

35 Blackburn Rovers Q&A, April 2013, p.6 provided by Blackburn Rovers Supporters Trust

36 Ibid. p.4

37 Walters and Hamil draw on Hancher and Moran (Hancher, L., and M. Moran. "Organizing Regulatory Space." In *Capitalism, Culture and Economic Regulation*, edited by Leigh Hancher, and Michael Moran, 271–300. Oxford: Clarendon Press, 1989.) to apply the idea of 'regulatory space' to football and the FA specifically

b) Failings In the current governance architecture of the FA

Current architecture of the FA

Under the current governance arrangements, the English FA (the governing body for football in England) effectively has the right to regulate the game as it pleases both at professional and amateur level. The governance architecture that the FA has been so instrumental itself in developing over previous decades has come under sustained recent criticism and is increasingly regarded by many as no longer fit for purpose.

Former sports minister Hugh Robertson criticised the Football Association as being ‘the worst governed sport in this country’³⁸, while the DCMS Select Committee Inquiry stated that ‘The ability of the FA to regulate the whole of English football—and so effectively balance the needs of the professional and the grassroots game—has also been damaged by the power of the professional game, particularly the Premier League, to influence its decisions and structures.’³⁹

Currently the FA operates a dual board structure in the governance of its affairs, with an executive (Main Board) for the immediate management of the FA’s business, and a supervisory board (the council) which acts as a check on the Main Board, ratifying or challenging its decisions.

The main board has 12 members: a chairman, a chief executive Officer, four ‘national game’ directors (from county FA’s), four ‘professional game’ directors (two from the Premier League and two from the Football League) and two independent non-executive directors (who were recently introduced, years after they were first suggested in a review of football governance by Lord Burns in 2005).

Underneath the Main Board sit a number of committees, the most significant of which are the Professional Game Board (PGB) – with four members appointed each by the Premier League and Football League – and National Game Board (NGB)

38 www.telegraph.co.uk/sport/football/teams/england/8272697/Hugh-Robertson-football-is-the-worst-governed-sport-in-Britain.html

39 Culture, Media and Sport Committee - *Fourth Report Football Governance Follow-Up*, 2013, Conclusions and Recommendations, para 8

– with 14 members, mostly from county FA's and including the national game directors of the full board.

Other committees look at specific issues ranging from youth membership, pitches and facilities and referees (but none are dedicated to supporters). These committees report back to the Council and the Main Board on their specific area of concern and are generally made up from people on the NGB, PGB or the Council.

The Council has 118 members who are said to represent the varying stakeholders in the game. Its purpose is to discuss decisions debated and made by the Main Board, offering scrutiny in much the same way as the House of Lords scrutinises the work of the House of Commons.

Major issues with the FA's architecture

i) Conflict of interest on the main board

While the composition of the main board technically meets Sport England's 'Whole Sport Plan' for board representation with at least 25% of the board being independent, this clearly does not go far enough. 75% of the main board membership is still effectively making decisions which might be in clear potential conflict of interest with their external roles.

For example, Professional Game representative to the main board Anthony Fry is currently also the Premier League Chairman. Any strategic decisions about limiting the amount of debt clubs are allowed to hold, or debates surrounding the case for mandatory supporter engagement will therefore naturally affect the positions of the clubs that he represents. Similarly, David Gill was CEO at Manchester United whilst also sitting on the main board of the FA. Consequently, any decision relating to leveraged debt taken by the Main Board of the FA which he actively participated in, had the capacity to be conflicted with the club's position – being owned by the Glazers with significant leveraged debt.

ii) Delegation of decisions to the regulated

While most decisions are supposed to be discussed and taken

by the Main Board, in practice, it would appear that much of the policy development is delegated down to the PGB and NGB. The football authorities' response to the DCMS Select Committee's original inquiry said it would address the situation that the main board delegated too much responsibility to the NGB and PGB. The reality is that little has changed: 'the detailed proposals in the [football authorities'] joint response, if anything, underline the Main Board's dependence on the NGB and PGB'.⁴⁰

In this respect it has been alleged that the Main Board has simply reduced itself to approving or rejecting decisions referred to it by the NGB and PGB. De facto, major areas of policy critical to the direction and operation of the game (ie club licensing policy and the implementation of that policy) have effectively become the sole preserve of the PGB.⁴¹ There is also the risk that issues not deemed important to the leagues and to owners (eg the FA Cup and international football), are marginalised or effectively ignored.⁴²

Worryingly, it is also clear that the national game is dependent on the professional game (mainly the Premier League) for much of its funding. This has the potential, under the current governance structures employed, to impact negatively on the independence of decision making of national game representatives who might be reluctant to challenge the decisions of professional game representatives, given that everyone knows that in practice the latter effectively hold the purse strings over the former.⁴³

The result of this is the continuing opportunity for the exercise of disproportionate power by the professional game (and in particular the Premier League) across the current structure of governance operating within the FA with 'the regulator in effect ceding power to the regulated'.⁴⁴

iii) Lack of appropriate representation

This is the case at all levels of the FA's structure. The main board, as we have seen, requires more independent representation; the PGB and NGB together with the Main Board currently offer

40 Ibid para 21

41 Ibid. para 24

42 Ibid. paras 19-21

43 Ibid. para 28

44 Ibid. para. 29

no supporters', players' or managers' representation and only have two women represented amongst 34 members.

The lack in diversity of representation is palpable throughout the current structures of governance. Responding to this inadequacy, one member of the Main Board, Heather Rabbats, wrote in October 2013 to fellow board members criticising the lack of diversity on the newly established FA commission into the future of English football, a set of arrangements she alleges that was not discussed or agreed at the Main Board.⁴⁵

The Council fares no better. Of the Council's 118 members, there is only one designated supporters' representative, the same number afforded to Oxford University Football Association. There is also a lack of women and ethnic minority representation.

Greater supporter representation on the Council should include the requirement on the part of this body to receive nominations from the three major supporters' groups: the Football Supporters' Federation, Supporters Direct and Level Playing Field (which represents disabled supporters).

iv) The Council is not fit for purpose

The Council is supposed to be the 'parliament of football' where the various different interest groups sit to hold the FA chairman and independent non-executive directors it elects to the Main Board to account.⁴⁶ To achieve this aim it needs a vibrant membership reflecting and understanding the key contemporary issues impacting the game.

Some members of the Council have been serving for over 20 years and two thirds of the current membership is aged over 64.⁴⁷ The only restriction on length of membership is that the upper age limit is 75.

The reputation and operational effectiveness of the Council has been repeatedly called in to question. For example, the DCMS inquiry report damningly concluded, 'it meets five times a year, for a couple of hours on each occasion, approves or

45 www.theguardian.com/football/2013/oct/19/heather-rabbats-fa-diversity-commission

46 The Council's powers are outlined in Article 132 of the Articles of Association of the FA

47 At the time of the DCMS Select Committee's second report: Culture, Media and Sport Committee - *Fourth Report Football Governance Follow-Up*, 2013, Conclusions and Recommendations, para 13

rejects Board and Committee minutes without the benefit of background papers to explain the decisions adopted.⁴⁸

Malcolm Clarke (the one supporters' representative on the Council) has also suggested that the infrequency of meetings of the Council means there is no body to offer effective scrutiny or accountability.⁴⁹

v) Lack of external communication

Currently there is precious little requirement on the Main Board, the Council, or the various committees of the FA to publicly disclose their deliberations or the decisions that they take.

Whilst it has long been accepted that organisations need not disclose information that would be prejudicial to the protection of their commercial competitive advantage (of the body itself, or of its constituent members), this does not extend to a general right of non-disclosure. This is particularly the case where to do so might be prejudicial to the position of additional legitimate stakeholder groups.⁵⁰

In effective governance systems, denial of public disclosure of information requires justification and is regarded as the exception to the norm, rather than operating as the prevailing orthodoxy.^{51 52}

As we demonstrated the governance structure operated by the FA has a responsibility to be seen to be discharging its stewardship obligations to protect both the 'community' and the 'public interest' associated with the game.

Legitimate stakeholder groups affected by the outcome of these decisions, but not present where they take place (ie supporters, central and local government, civil society and the media), should none the less be able to hold the governance structure to account.

Currently, this is effectively precluded by the continuing absence

48 Culture, Media and Sport Committee - Fourth Report Football Governance Follow-Up, 2013, Conclusions and Recommendations, para 13

49 Culture, Media and Sport Committee - *Fourth Report Football Governance Follow-Up*, 2013, Conclusions and Recommendations, Oral Evidence, Tues 17th July 2012 Q86

50 *The Financial Aspects of Corporate Governance*, Cadbury A, 1992

51 *Chief Executives on Governance*, acevo Commission of Inquiry, 2007

52 The UK Corporate Governance Code, Financial Reporting Council (FRC), Sept 2012

of transparency in the workings and decision making of the FA governance structure.

Artificial barriers to transparency remain within the current governance structures. Individual members representing vested interests are able to preserve and protect their self-interest – perhaps to the detriment of the ‘community’ or ‘public interest’ – within the confines of what is deemed to be regulatory acceptable. This situation, in turn, effectively denies access to supporters, the media and to any outsiders (including possible new entrants) who might otherwise be regarded as having a legitimate interest in the proceedings of meetings.

The net result of this governance block is that very few ‘new’ clubs have ever been able to break into the professional pyramid (with the notable exception of AFC Wimbledon) and influence the way the game is governed.

Recommendations

- 1) The FA should accept the DCMS Select Committee’s proposal that the Main Board of the FA be reduced to ten members. Within the Main Board there should be provision for a maximum of two Professional Game representatives and two National Game representatives. There should be provision for a Chairman, the Chief Executive Officer of the FA with an additional four independent non-executive directors.
- 2) The FA Council should significantly reduce its current membership and limit the maximum potential term of office for a member to three years, with one possibility of re-election for a further three year period. It should commit to and publish an annual timetable of meetings. It should have provision within its membership for supporter based representation from at least three supporter representative bodies (ie the Football Supporters’ Federation, Supporters Direct and Level Playing Field).

Conclusion

All this makes football a hostile and inappropriate market from the community interest and supporter perspective. As Walters and Hamil (2013) conclude, there are major ‘challenges faced by

minor actors in trying to influence regulatory processes, where major actors (in this case the football authorities) are able to control the regulatory space.⁵³

While certain aspects of governance have improved there has been insufficient response by the football authorities to proposed reforms.⁵⁴ The same groups effectively still hold all the trump cards when it comes to policy development and implementation and continue to exercise their right to influence in a domineering and non-accountable manner.

If the game was governed in a more responsible manner, it would aim to protect the interests that give due accord to community concerns and the needs of secondary stakeholders (ie supporters) at both the club and the national game level.

Currently, the creation by established elites of complex and unrepresentative structures of governance both within clubs and at the top of governing bodies ensures that community and supporter interests are not properly protected.

53 *The contests for power and influence over the regulatory space within the English professional football industry, 1980–2012*, Walters & Hamil in 'Business History, 2013 Vol. 55, No. 5', p.748

54 For example, increasing the percentage of independent representatives on the main board to 25%

: 3 Promoting greater transparency and accountability in football governance

Introduction

While we support the broad concept of supporter ownership, we do not recommend imposing a particular form of ownership onto a complex industry structure. Our concern is that the current parlous state of football governance severely and inappropriately disadvantages key, legitimate stakeholders.

As we identified in the previous chapter, despite repeated calls for reform, the current structures of governance continue to operate in an opaque and restrictive manner. They are surrounded by a lack of transparency which precludes key stakeholder groups – the media, the general public and most significantly supporters – from accessing relevant and crucial information about their club and the national game.

Ultimately it would not matter as much who owns the clubs, as long as the people who own them are truly accountable. Without sufficient transparency, there can be no effective accountability.

The importance of transparency and accountability

The importance of transparency and accountability is documented frequently in modern corporate governance literature.

The second edition of the OECD's (2004) 'Principles of Corporate Governance' asserts that 'The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.'⁵⁵

55 *OECD Principles of Corporate Governance*, OECD, 2004, p.22

It also called for corporate governance structures to 'recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.'⁵⁶

UK company law further promotes this view. Section 172 of the Companies Act (2006) states that 'A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
- (c) the need to foster the company's business relationships with suppliers, customers and others,
- (d) the impact of the company's operations on the community and the environment'.

Likewise, in the public and voluntary sectors there are clear examples of organisations being obligated to recognise and protect the community interest and interest of otherwise disadvantaged stakeholders (eg planning authorities, health bodies, and registered charities having extensive obligations to consult people who may be affected by decisions they make.)

Football should be no different to other organisations in responding effectively to these challenges. Indeed, its own rhetoric supports a more purposive role in corporate governance: 'Good governance (ie good leadership, direction and control) is essential for a football club to be managed effectively and to demonstrate accountability and transparency.'⁵⁷

Responsible governance promotes:

- long term planning
- the sustainability of the organisation through the open and consistent application of planning disciplines linked directly to efficient and effective operational management

56 Ibid. p.21

57 Governance: A Guide for Football Clubs, The FA, 2005, p.4

- appropriate management⁵⁸

When these governance tests (efficiency, effectiveness and appropriateness) of owners and senior managers are met and they are supported by transparency and accountability, the propensity to break the rules in the belief that you are likely to get away with it, is avoided.

For football, as for other sectors of the economy, 'transparency and accountability are the key goals of governance.'⁵⁹

Cooper and Johnston (2012) support the significance of this view with specific regard to football governance. Indeed, they point not just to the absence of these two factors in the current governance of football, but to a more parlous situation where transparency and accountability are claimed to exist, and then disregarded in terms of the behavior that ensues.

They conclude that football governance must develop beyond 'vulgate accountability' where 'accountability has become a vulgate word that appears to be progressive, but in practice has taken on multiple meanings such that it lacks political force.'⁶⁰

The lack of any real, observable commitment on the part of the FA or the owners of clubs to change their governance behavior and bring it into line with the law, best practice or even their own prescribed rhetoric, has led to dozens of insolvencies and punishments handed out by the football authorities over the previous two decades in the professional leagues.⁶¹

Without relevant facts and figures being accurately, accessibly and frequently made available, the pretence of transparency and accountability is upheld when in fact there is no means readily available to effectively call the owners of clubs and the regulators of the game to account.

The particular case for supporters

Supporters are particularly disadvantaged by the lack of any real transparency or accountability in the current operation of football governance, none more so than in the powerful role both

58 The Henley Manifesto: Restoring Confidence and Trust in UK PLC, Board J et al., 2009

59 Governing FIFA, Concept Paper and Report, Pieth, University of Basel, 2011, p.7

60 *Vulgate accountability: insights from the field of football*, Cooper & Johnston, 2012 in *Accounting, Auditing & Accountability Journal* Vol. 25 No. 4, 2012, p.603

61 www.supporters-direct.org/news-article/whats-so-wrong-with-english-football-anyway

concepts play in enabling otherwise disestablished stakeholders the ability to gain an accurate appraisal of the issues of the day, and from this, to take appropriate action. It follows that where there is a pronounced or sustained absence of transparency and accountability, marginalised stakeholder groups are left with an inability to act.

Those in powerful governance roles within football often point to the lack of directed criticism of them by the vast majority of supporters of the game. In doing so, they at the very least infer that mute, benign acceptance of the current status quo of the governance of the game delivers a de facto vote of confidence in their behaviour.

This misses a critical point.

It is the very absence of any real transparency or accountability in the operation of the current system of governance that promotes and secures this inactivity in the first place.

Supporters have little or no opportunity to engage with the current system of governance of football, nor to understand its operation – it is the nature of the system itself (and the behaviours of the governing elites within it) that effectively excludes them.

It is hardly surprising then, that the bulk of this so called silent majority do not engage in protest or action – they do not protest or take action precisely because the prevailing system of governance precludes and excludes them from doing so.

Second, in other industries, severely disadvantaged consumers or stakeholders can reserve their residual right to the ultimate sanction – they can switch their allegiance to another organisation or purchase an alternative product. In reality, for football supporters this is not a practical option. It is most certainly not an option for the most committed.

Football, with the tribal like loyalty of its principal consumers (supporters) assured, needs more openness in governance and management than that exhibited in other sectors, in practice however the current system of governance delivers less.

Without sufficient knowledge of the detail associated with the how, the why and the way in which key decisions are taken, supporters are effectively forced to accept the product they are

given.

Worse still, any apparent lack of dissent associated with this situation (and itself the product of effective exclusion) is then further compounded by those in power as acceptance of the current governance status quo.

Transparency itself may not provide seats on club or the FA board for stakeholders like supporters, but it can create pressure for more positive change when the facts are known.

Conclusion

Transparency is crucial in any industry for two main reasons. The first is that it sheds light on practices which are otherwise not subject to appropriate scrutiny. The second is that it empowers otherwise disadvantaged stakeholders to identify, analyse and where appropriate to question what they might legitimately regard as ineffective or inappropriate practice.

These points are especially important with regard to football where the structures of power in operation ensure that certain well established and self perpetuating governance elites continue to occupy the seats of power, effectively excluding stakeholders such as supporters in decisions taken.

: 3 Specific proposals to enhance transparency and accountability in football governance

Introduction

Thus far we demonstrated in Chapter 1 that Football is in part a community and national asset that must be effectively stewarded and protected for the common good. This places obligations upon owners and regulators to operate in the public good as well as seeking simply to maximize private commercial or reputational self interest.

We have further demonstrated in Chapters 2 and 3 that real and significant engagement with all stakeholders in an equitable and meaningful manner is an important way of demonstrating the attainment of this obligation. This is now recognised in both law, best practice and in the rhetoric surrounding the FA's own governance arrangements.

Yet in practice, the governance and management of football by owners and regulators lacks the transparency and accountability necessary to achieve these aims in any real or meaningful sense.

How then and in what precise ways might the current governance deficit in football be addressed?

Progress on our initial recommendations

We return initially to CentreForum's 2011 recommendations.⁶² Regrettably, it is clear that little has been done in the intervening period to promote better governance and transparency in the management of football.

62 'Football and the Big Society', Marshall and Tomlin, CentreForum, 2011, p.5-6

On the positive side, two independent directors have now been appointed to the FA main board.

Additionally, two further recommendations contained in our initial report were partially accepted, namely the introduction of financial fair play (across the top two divisions) and the provisions of the Localism Act (2011) being extended to football grounds so they can be assigned 'Asset of Community Value' status.

However, little if any progress has been made with the other recommendations contained in our original report despite the fact that each of these were designed to encourage or force the football elites toward greater levels of transparency and accountability.

The lack of any real practical progress and the continued reliance upon vulgate rhetoric in the absence of amended or reformed regulation or behavior, demonstrates that there is a long way to go before a culture of transparency exists within the game at the highest levels.

The need for further transparent governance reform

Since the publication of our initial report, additional areas of governance reform have become imperative if football is to reflect social and community interests alongside the partial commercial interests that it has protected and enhanced so effectively.

Ownership

The issue of club ownership is perhaps the most pressing in the discussion of transparency in English football. As we saw earlier, many different stakeholders can claim some form of 'ownership' over the clubs they interact with. However, the continued predominance of the benefactor model ensures the protected status of official (or legal) owners to the extent that beneficial owners are sometimes not even known to supporters.

Whilst technical regulations to ensure disclosure of the ultimate ownership of clubs do exist, these rules are not always enforced by the leagues – a further example of 'vulgate accountability'

that permeates football governance.⁶³

Often faced with clear evidence of gross mismanagement, cavalier avoidance of the rules and the onset of potential or actual financial ruin, many clubs' supporters have tried tirelessly to establish who owns their club in recent years without success.

With no effective governance avenue open to them, they have had to resort to painstaking investigative journalism or expensive legal work to attempt to find out precisely who is responsible for the lack of effective stewardship of their clubs.

Case Study: Coventry City

Coventry City FC is a club with a proud history. Established in 1883, they were FA Cup winners in 1987 and only relegated from the top division within the professional game for the first time in 34 years in 2001. But by the summer of 2013 this previously famous community club saw the culmination of a number of years of uncertainty and decline. At the start of the 2013-14 season, it had 10 points deducted from its league total as a result of entering administration, having just agreed to play its home games over 30 miles away in Northampton.

It has been embroiled in a drawn out takeover attempt, shrouded in uncertainty and lack of clarity. Essentially, it appears that a company called Otium attempted to buy the club when it became insolvent from the existing owner company, Sisu which, it transpires, actually owns Otium in the first place.

The central issue has been the ambiguous nature of the ownership of the club. According to one investigative writer⁶⁴, there are two versions of the club which are registered: Coventry City Football Club Ltd (CCFC Ltd) and Coventry City Football Club (Holdings) Ltd (CCFCH Ltd). There is significant confusion over which company

63 E.g. the Football League's Rule 94 of its regulations states: 'Each Club shall publish the identities of the ultimate owner (Person, not Entity) of each Significant Interest in the Club... That information shall as a minimum be published on the Club's official website on a page accessible directly from the home page of that official club website.'

64 Footy Law: Exploring legal issues around football and other sports <http://footylaw.wordpress.com/about/>

actually owns Coventry City FC and it appears that some parts are owned by each.

Information obtained by this investigator indicates that CCFC Ltd is a subsidiary of CCFCH Ltd, which is a subsidiary of Otium Entertainment Group Ltd, which is a subsidiary of Blue Sky Sports and Leisure Ltd, which is a subsidiary of the Cayman Islands registered company Sconset Capital LP, which appears to be fully owned by the London based Sisu Capital Management Ltd which is a subsidiary of the Virgin Islands based Wynecare Ltd.⁶⁵

To make matters worse, at the time of writing this report, it appears that neither CCFC Ltd, CCFCH Ltd, Blue Sky Sports or Leisure Ltd have filed statutory accounts for the requisite period, casting further darkness on the internal workings of the club.

Finally, one of the key parts of the administration process was finding out who owned the 'golden share', entitling the club to membership of the Football League and Football Association. As this is a fairly significant document, one would have thought someone would know who owned it, but again this was shrouded in mystery until documents from 2008 obtained by the website '200%'⁶⁶ showed it belonged to CCFC Ltd.

The Coventry City case study remains confused and complex but it is illuminating with regard to the parlous state of football governance as it relates to the transparency of ownership:

- There remains a desperate need for clarity if owners are to be properly held to account for their actions in governing and disposing of the community assets in their charge;
- Without effective prescribed routes for communication of the precise standing and ownership status of a club, legitimate stakeholders will remain disenfranchised from knowledge and decisions that directly affect them.

65 footylaw.wordpress.com/2013/06/19/will-coventry-city-fcs-new-owners-fail-the-fit-and-proper-person-test/
66 twohundredpercent.net/?p=23866

Clarity

The Coventry case demonstrates that the current system of owner disclosure by the Football League, and ultimately the FA, is inadequate. Although technically much of the information is available, it is often only possible to obtain it through arduous and time-consuming research by investigative journalists or concerned members of the public.

By way of response, Football League Chairman Greg Clarke, in evidence to the DCMS Select Committee's follow up report (January 2013), commented that while he agreed in principle that supporters should know who owned their club, many owners wanted to protect themselves from a minority of fans who may put pressure on them to spend more money on the club.⁶⁷

This is entirely unsatisfactory and in 2013 the DCMS Select Committee endorsed our view:

'We remain unconvinced that the ultimate owners of football clubs—which are not ordinary businesses and operate for the enjoyment and benefit of their local communities and fans—require their anonymity to be preserved either from or by the football authorities.'

DCMS Select Committee

Fourth Report Football Governance Follow-Up, 2013

People can choose to remain a private, inconspicuous member of society or they can own an asset of cultural importance – a football club – which has a deeply public dimension. They should not be allowed to do both.⁶⁸

Schnackenberg and Tomlinson (2013) describe transparency as necessarily involving three interrelated elements: disclosure, clarity and accuracy.⁶⁹ For transparency to be effective therefore all legitimate stakeholders should enjoy ease of access to information: they should not be faced with the levels of complexity and obfuscation engendered by the witting supply of barely minimal information. This should be remedied by a

67 Culture, Media and Sport Committee - *Fourth Report Football Governance Follow-Up, 2013*, Conclusions and Recommendations, para 63

68 *Blowing the whistle: Time's up for financial secrecy*, Christian Aid, 2010, p.6

69 Schnackenberg, A. K., & Tomlinson, E. (in press). Organizational transparency: A new perspective on managing trust in organization-stakeholder relationships. *Journal of Management*.

rule within a full licensing regime which requires all beneficial owners to disclose their identity as if they are based in the UK.

The intent here is not to challenge English football's global brand (which should be celebrated), but to ensure clear and accessible information is provided about club owners. It should still be possible for foreign investors to invest in and own clubs, but it is vital to know who they are.

This fits well with the government's plans to increase transparency in the way all companies are managed in the UK post the G8 summit in June 2013. In a policy paper it has committed to ensuring 'the Companies Act 2006 and UK Money Laundering Regulations oblige companies to know who owns and controls them. Under these new provisions companies will be required to obtain and hold adequate, accurate and current information on their beneficial ownership', a fact that must be accurately and readily available to the authorities.⁷⁰

So what the government believe to be so self-evidently right for all companies must be diligently implemented and enforced by the football regulatory authorities.

Communication

Even when the owner is known, often very little is known or communicated about the way the club is effectively run and governed. There have been over 70 insolvencies to clubs in the top four English tiers alone (comprising 92 clubs) since 1992.⁷¹ While a lack of transparency cannot be the principal cause of football club insolvency, appropriate levels of transparency and accountability would offer stakeholders such as supporters and the media greater scrutiny at an earlier stage.

This matters in a material sense in relation to football governance precisely because clubs are not like other businesses. Few people take the time to notice of or even care about the ownership credentials of many of the companies that impact their lives, because their relationship with those organisations is often superficial, highly tangible and transient in nature.

70 *UK Action Plan to prevent misuse of companies and legal arrangements*, Department for Business, Innovation and Skills, HM Treasury, Prime Minister's Office, 18th June 2013

71 www.supporters-direct.org/?news-article=whats-so-wrong-with-english-football-anyway

The relationship endured by the football supporter to their club is characterised by none of these characteristics – once established it is no longer a matter of choice, it matters deeply (for both parties) and it is rarely transient. As community and national assets, owing much of their standing in the communities within which they reside to non commercial factors, the owners of football clubs have a duty to engage and communicate effectively with those communities and with the supporters that come from them.

Clubs are now required by the Premier League and Football League to have a 'supporter liaison officer' (SLO) with whom the club are required to liaise about club affairs, a welcome addition. However, 'liaising' can look very different from club to club, and there is certainly no mandate for the least communicative owners to act upon the concerns of the SLO.

3) The current requirement of mandatory public disclosure of holdings of 10% or more in a club by the leagues should be included in a comprehensive new licensing regime established by the FA and should be reduced to any holding of over 1%

4) The disclosure of the ultimate beneficial owner(s) to the leagues should be extended to the general public with the rules consistently applied as part of the new FA licensing regime

a) Financial management of clubs and the game

The financial standing of English football is one of the most shameful aspects of the modern game.

Despite a major increase in Premier League clubs' revenues to over £2.3bn⁷² in 2012, mainly thanks to television deals, only half made an operating profit⁷³ and collectively they registered net debt of £2.4bn in the same year. Championship clubs were in debt to the tune of £0.9bn.⁷⁴

Yet the word 'debt' (with reference to finances) is not mentioned once in the football authorities' response to the government's reply to the DCMS select committee investigation into football governance in 2012. The saying 'revenue is vanity, profit is

72 Turn on, tune in, turn over: *Annual Review of Football Finance – Highlights*, Deloitte, 2013, p.2

73 Ibid p.8

74 Ibid. p.11

sanity' appears apt.

This is not to say that there have not been some positive developments in recent years. Greater financial regulation has been established by the football authorities, for example the introduction of voluntary wage caps in the lower professional leagues and welcome rules around debt in all leagues.⁷⁵ These measures are certainly moves in the right direction.

But as Walters and Hamil (2013) point out, they have been achieved not by positive behaviour change amongst football elites. Rather, they have been 'reactionary' tactical concessions offered by authorities, pushed to change policy through necessity (ie crisis).⁷⁶

Drawing on work by Hancher and Moran⁷⁷ (1989), Walters and Hamil have demonstrated that the primary motivation for these piecemeal gains is 'a move by the football authorities to maintain control of the regulatory space by implementing a series of regulatory measures to offset the possibility for alternative forms of regulation (particularly government intervention)',⁷⁸ rather than as effective moral leadership of the game.

The result is a regulatory framework which still lacks the comprehensive functions to promote the longer term financial sustainability of the industry. It still leaves the vast majority of stakeholders, especially supporters, with little or no access to pertinent financial information and left in the dark over important financial matters.

What supporters and other external stakeholders currently lack in their ability to hold owners to financial account is the general requirement on the part of the owners to share a 'fit and proper business plan'.

The concept has already been established by the Premier League and Football League (for the Championship) in the three

75 E.g. Premier League: <http://www.premierleague.com/en-gb/news/news/2012-13/feb/premier-league-new-financial-rules-explained.html> and Football League: <http://www.flw.com/publications/all/articles/football-financial-fair-play.aspx>

76 *The contests for power and influence over the regulatory space within the English professional football industry, 1980–2012*, Walters & Hamil in 'Business History, 2013 Vol. 55, No. 5'

77 Hancher, L., and M. Moran. "Organizing Regulatory Space." In *Capitalism, Culture and Economic Regulation*, edited by Leigh Hancher, and Michael Moran, 271–300. Oxford: Clarendon Press, 1989.

78 *The contests for power and influence over the regulatory space within the English professional football industry, 1980–2012*, Walters & Hamil in 'Business History, 2013 Vol. 55, No. 5', p.753

year Future Financial Information plan.⁷⁹ The details, however, are not made available to supporters, who could help by adding to the scrutiny through which this information must pass.

The public disclosure of Future Financial Information should apply to all clubs and form part of a licensing regime where clubs are required to apply each season for entry into FA competitions (which include the leagues). This would not need to last in perpetuity – simply until the FA has the correct structures in place to regulate football finances more effectively and the number of insolvencies and administrations has significantly decreased.

5) The 'comprehensive three year Future Financial Information' required by the leagues should also be part of the FA's licensing regime and should be publicly disclosed. This rule should remain until the number of club insolvencies and administrations have significantly reduced

Wage, transfer and agent transparency

Wages

The primary reason for the gigantic debts in football is often attributed to the escalation in players' wages and large transfer fees.⁸⁰

Again, international comparison with the German experience indicates that wage and transfer inflation are not a 'necessary' state of affairs - and their absence does not preclude both footballing success or the achievement of long term financial sustainability.

For example, in the Premier league in 2011-12, the wages to revenue ratio was 70%, with the average club's wage bill reaching £83m. Compare this to the German Bundesliga for the same period - here the ratio was just 51% with average wages at £43m (€53m).⁸¹

In the USA's Major League Soccer (MLS), players' salaries

79 www.premierleague.com/en-gb/news/news/2012-13/feb/premier-league-new-financial-rules-explained.html

80 Football and the Big Society, Marshall and Tomlin, CentreForum, 2011, p.14

81 *Turn on, tune in, turn over: Annual Review of Football Finance – Highlights*, Deloitte, 2013, p.2

are now routinely published each year - this has not deterred star players, such as Thierry Henry and David Beckham from playing for MLS teams. It has though afforded the beneficial effect of greater transparency on the issue of player's wages and a greater understanding of the more general standing of the financial affairs of the club – not least because player's wages now form such a major part of their overall budget.⁸²

If it is possible in the USA, it is certainly possible in England.

We contend that as part of the licensing regime, clubs should be required to fully disclose the wages they pay to each of their players and manager on an annual basis.

Publishing players' salaries will not solve all the issues, but it would lead to greater transparency in the financing of clubs.

Transfer fees

Two other important elements where greater transparency could be introduced are transfer fees and agents.

It was reported in September 2013 that, of 115 permanent transfers involving Premier League clubs the previous summer (not counting free transfers), only five were disclosed with an official figure.⁸³

In Italy clubs are now required to publish a list of players at clubs, with the amount they paid for the player, contract end date, and depreciated book value.⁸⁴

A proper licensing regime in England should enforce *all* transfer fees to be publicly declared. This would end the payment of 'undisclosed' fees for players, leaving stakeholders without details of how much was paid and whether an arrangement of payments by instalment was part of a deal, the latter point often leading to clubs making unrealistic deals they cannot afford. This was a major issue for Portsmouth before it first went into administration in 2010, owing other clubs £17.3m in transfer fee instalments.⁸⁵

6) As part of the FA's licensing regime, clubs should be

82 www.mlspayers.org/salary_info.html

83 www.theguardian.com/football/blog/2013/sep/04/undisclosed-fee-transfer-window-deadline

84 www.financialfairplay.co.uk/latest-news/player-contract-disclosure-a-lesson-we-can-learn-from-the-italians

85 www.theguardian.com/football/blog/2010/apr/22/portsmouth-football-creditors-money-millionaires

required to fully disclose details of any transfer fees paid and arrangements for payment on an accruing annual basis. This information should be made public at the end of each season and/or whenever a transaction occurs.

Agents

Good progress has been made in recent years by the Premier League, Football League and FA with regard to the nature of the relationship that clubs develop with football agents. Clubs now routinely publish details of how much they contribute by way of aggregate agents' fees each year.

The leagues and FA should be praised for this, but they should also go further, requiring fees paid to agents for each transaction to be declared to the respective league and then made public.

Ultimately, if clubs were required to report their dealings, with transactions available for public (or just supporter) scrutiny, it would encourage them to be more responsible. It is often claimed that some supporters may put pressure on clubs to spend excessively once they are aware of their club's situation. But that has not happened in Germany, and ultimately, publishing this kind of data will put more pressure on the FA to regulate: promoting good governance in advance of any contentious issue, rather than constantly punishing in retrospect.

6) As part of the licensing regime, clubs should be required to fully disclose the wages they pay to each of their players and manager, full details of any transfer fees paid and arrangements for payment, and fees paid to all agents whenever they use them. This information should be made public at the end of each season and/or whenever a transaction occurs

Tax transparency

The current lack of financial transparency goes beyond debt, inflated wages and payments and financial planning issues.

A 2010 report by Christian Aid outlined the extent of financial secrecy among British clubs, culminating in the publication of a 'football secrecy league' of the top 25 most secretive clubs.

2010 Christian Aid football club secrecy league

| Ranking | Club | Company Number | Company Name | Country of Control | Opacity Score | Average Attendance | Secrecy Score |
|---------|-------------------------|--------------------|--|------------------------------|---------------|--------------------|---------------|
| 1 | Manchester United | 95489 | Manchester United Football Club Ltd | USA | 92 | 74,728 | 231.4 |
| 2 | Tottenham Hotspur | 57156 | Tottenham Hotspur Football and Athletic Co Ltd | Bahamas | 100 | 35,788 | 189.2 |
| 3 | Manchester City | 40946 | Manchester City Football Club Ltd | Abu Dhabi | 92 | 45,292 | 180.1 |
| 4 | Liverpool | 35688 | The Liverpool Football Club & Athletics Grounds Ltd | USA | 92 | 43,326 | 176.2 |
| 5 | Aston Villa | 3375789 | Aston Villa Football Club Ltd | USA | 92 | 38,181 | 165.4 |
| 6 | Rangers | SC004276 | The Rangers Football Club plc | Channel Islands | 87 | 47,372 | 164.7 |
| 7 | Leeds United | 6233875 | Leeds United Football Club Ltd | Not known | 100 | 24,134 | 155.4 |
| 8 | Sunderland | 49116 | Sunderland Association Football Club Ltd | Jersey | 87 | 39,933 | 151.3 |
| 9 | Derby County | 49139 | Derby County Football Club Ltd | USA | 92 | 29,170 | 144.6 |
| 10 | Birmingham City | 27318/ 3304408 | Birmingham City Football Club plc | Cayman Islands | 92 | 24,921 | 133.6 |
| 11 | Leicester City | 4593477 | Leicester City Football Club Ltd | USA | 92 | 23,979 | 131.1 |
| 12 | Fulham | 2114486 | Fulham Football Club (1987) Ltd | Bermuda | 92 | 23,968 | 131.0 |
| 13 | Arsenal | 109244/ 4250459 | Arsenal Football Club plc | Multiple offshore | 71.9 | 59,878 | 126.6 |
| 14 | Ipswich Town | 315421 | Ipswich Town Football Club Company Ltd | Bermuda | 92 | 23,983 | 122.6 |
| 15 | Blackburn Rovers | 53482 | Blackburn Rovers Football and Athletic plc | Jersey | 87 | 25,046 | 119.8 |
| 16 | Hull City | 4032392 | The Hull City Association Football Club (Tigers) Ltd | Jersey | 87 | 24,289 | 118.0 |
| 17 | Portsmouth | 3747237 | Portsmouth City Football Club Ltd | British Virgin Islands (BVI) | 92 | 18,543 | 115.3 |
| 18 | Queens Park Rangers | 60094/ 3197756 | Queens Park Rangers Football and Athletic Club Ltd | Not known | 100 | 13,075 | 114.3 |
| 19 | West Ham United | 66516 | West Ham United Football Club plc | New club owners | 75 | 33,452 | 105.6 |
| 20 | Wolverhampton Wanderers | 1989823 | Wolverhampton Wanderers Football Club (1986) Ltd | Guernsey | 79 | 28,191 | 104.8 |
| 21 | Bolton Wanderers | 43026 | Bolton Wanderers Football and Athletic Company Ltd | Isle of Man | 83 | 21,843 | 101.8 |
| 22 | Crystal Palace | 3951645 | Crystal Palace FC (2000) Ltd | Jersey | 87 | 14,523 | 91.2 |
| 23 | Hearts | SC5863 | Heart of Midlothian plc | Lithuania | 72.1 | 14,389 | 62.4 |
| 24 | Hartlepool United | 98191 | Hartlepool United Football Club Ltd | BVI | 92 | 3,466 | 49.8 |
| 25 | Watford | 104194 | The Watford Association Football Club Ltd | Multiple offshore | 61.5 | 14,167 | 45.0 |

Source: *Blowing the whistle: Time's up for financial secrecy*, Christian Aid, 2010, p.18

As the table above illustrates, of the 25 clubs represented here, 14 Premier League, five Championship and two Scottish clubs were registered offshore.

By 2012 the situation appears to have barely improved – the Independent newspaper reported⁸⁶ that, out of £150m profits made by eight Premier League clubs, just £3m corporation tax was paid, with five clubs paying no corporation tax at all, despite a combined surplus of £70m.

A significant number of clubs still appear to be registered abroad and although no laws seem to have been broken, there is a serious point football itself needs to address.

It may well be that a secretive and ‘tax efficient’ owner has the best interests of the club at heart and no laws are being broken. However, financial opacity obscures the truth, so that other stakeholders simply do not know what the financial standing of their club really is, creating an uncertainty entirely inappropriate for public institutions such as football clubs.

To this end and in line with government plans, we recommend that full tax details of each club should be made public. We also recommend that the FA and the leagues publish expected reduction in the number of insolvencies in the coming three seasons on an annual basis.

Finally, Christian Aid recommended in 2010 that each parent or holding company a club has should reduce the amount of money it gets from its league.⁸⁷ This has yet to be enforced and would introduce an effective tax on opaque ownership structures across the professional game. Such structures are inappropriate for public entities such as football clubs.

7) Each club should be required to publicly disclose full tax details as part of the licensing regime

8) Clubs should be required as part of the licensing regime to publicly disclose the number of parent or holding companies involved (in any capacity) in the club's ownership along with their location. For each holding company there should be an additional financial penalty in the form of reduced payments by the club's respective league

9) The FA and leagues should publish expected reduction

⁸⁶ www.independent.co.uk/sport/football/premier-league/ios-investigation-footballs-tax-shame-8373895.html
⁸⁷ Blowing the whistle: Time's up for financial secrecy, Christian Aid, 2010, p.33

in the number of insolvencies in the coming three seasons

Governance and the FA

We continue to believe that the FA is the appropriate regulator of the English game. Issues with the structure and governance of the FA were described in Chapter 2 and continue to revolve around a lack of accountability and the potential for self-interest in decision making. We believe that both of these issues could be remedied in large part through greater transparency.

The FA is a public body, established in no small part to protect and preserve the 'public interest' that exists in all facets of our national game.

In addition, the FA, as the governing body of our national game and hundreds of clubs in receipt of tax benefits,⁸⁸ receives public funding (mainly via Sport England) that it has an obligation to steward efficiently and effectively in the 'best interests' of the game as a whole and in providing value for money back to the British taxpayer.⁸⁹

The FA itself should hold itself open, transparent and accountable in all of its dealings as they directly impact on its application of publicly sourced funds and its critical role of protector and steward of the game's national interest.

Too often current FA custom and practice is effectively hidden to all external interested parties.⁹⁰ The inquisitive supporter or journalist has little or no chance of finding out how decisions are really made, unless someone from within happens to disclose information by accident or in protest.

The FA and the Freedom of Information Act

This leads to a further recommendation of this report: that the FA is subject to the Freedom of Information Act.

In its introductory paragraph this Act states that its purpose is to 'make provision for the disclosure of information held by public

88 Under the CASC programme introduced by the government in 2002, 580 football clubs are registered with the scheme saving an estimated £1.7m a year: <http://www.thefa.com/my-football/football-volunteers/runningaclub/casc/casc-intro>

89 www.thefa.com/News/2012/dec/sport-england-funding-grassroots-football.aspx

90 E.g. see Malcolm Clarke: Culture, Media and Sport Committee - *Fourth Report Football Governance Follow-Up*, 2013, Conclusions and Recommendations, Oral Evidence, Q86;

authorities or by persons providing services for them'.⁹¹ As we have established, there is strong evidence to suggest the FA should fall under the definition of a 'public authority'.

Currently the FA's stewardship and governance of the national game falls outside the scope of the Act. We recommend here that it is included within it.

The change that we recommend would be simple to enact but would provide an important additional, protection to the 'public interest'. There would be no need to change the actual legislation.

Structural reform

Further reform also needs to come to the structure of the FA. The continued imbalance between non-independent and independent directors on the Main Board remains unsatisfactory.

The DCMS Select Committee have come forward with a number of sensible and appropriate suggestions for reform of the FA. The former Sports Minister committed on behalf of the government to legislate if the adequate reforms were not enacted by the FA.⁹² The new Sports Minister should be held accountable to this assertion if reforms have not been enacted within the given time frame (the DCMS Select Committee suggested 12 months from January 2012).⁹³

Opening up the regulatory space

Finally, efforts should be made to open up the 'regulatory space' of the FA to other stakeholders. One way to do this would be to make decision making processes associated with the business of governance more generally transparent. For example, the agendas of the Council meetings could be published beforehand and public access to view proceedings might be introduced, much in the same way that many public authorities, public bodies and even parliamentary committees allow members of the public to attend their proceedings to give confidence to the governance process.

91 www.legislation.gov.uk/ukpga/2000/36/introduction

92 Rt Hon Hugh Robertson, MP

93 Rt Hon Helen Grant, MP

10) The Football Association should be added to the list of organisations subject to the Freedom of Information Act as an organisation that commands significant public interest

11) The Sports Minister should be held accountable to the promise to legislate (with a time-limited Act) if the football authorities fail to make adequate progress in implementing the recommendations demanded by the government's response to the DCMS inquiry into football governance

12) FA Council meetings should have their agendas published before meetings take place and the unreserved business minutes published after each meeting. Where appropriate, specifically determined formal meetings of the FA (i.e. meetings of the FA Council) should be open to the public and/or broadcast online

■ Conclusion

This paper has explored the current state of English football with specific reference to its governance. While some progress in this respect has been made in recent years, all too often these changes have been seen to be either the product of necessity (crisis) or the result of an attempt by the football authorities themselves to keep their own control over the 'regulatory space'.

The governance deficit that remains at the heart of the game has been maintained at the expense of external stakeholders. Supporters in particular, who by their unique role in the co-production of the spectacle of the modern game have done so much to support the commercial successes within the industry, are all too often removed and impoverished when things go wrong.

Current arrangements provide a simple veneer of transparency and opportunity for redress with supporters. The groups within which they associate (ie supporters' trusts) are routinely withheld from decision making and from key information about their community assets.

The promotion of a 'vulgate' accountability structure within football clubs in particular, and more generally within the proceedings of the FA, has enabled those with the power to give the impression of being accountable while in fact failing to release important information.

In this report we have set out recommendations which promote greater transparency in the governance and management of football. They are underpinned by three very clear principles – disclosure, clarity and accuracy.

If taken forward the recommendations contained within this report will not solve all the contemporary ills associated with the

game, but they will give external stakeholders, and particularly supporters, the relevant information with which to inform action. They will provide a level of transparency commensurate with that necessary to protect the national interest in the game and the community and national assets that football clubs represent.

