



Football Club Licensing in England

Key Principles

Supporters Direct

19 November 2011

Executive Summary

- This paper sets out proposals from Supporters Direct (SD) for a licensing system to be established in response to the recommendations in the Culture, Media and Sport Select Committee Report on Football Governance.
- The licensing framework should be aimed at securing:
 - The sustainable development of English football and its clubs
 - Supporter and community engagement in the running of football clubs
- The framework should be established by The Football Association (FA) but should be run independently and have appropriate governance to ensure impartiality and transparency. Compliance with the requirements of the licence should be a condition of FA membership.
- Compliance with the framework, with a sliding scale of requirements, should be a condition of participation in all league and cup competitions down to Step 7.
- The framework for sustainable development should accord with the following principles:
 - Promotion of financial and social responsibility, and balancing of the sporting, commercial and social objectives of clubs;
 - To ensure that clubs and their assets are protected for current and future generations
- The framework for supporter and community engagement should provide rights for supporters on behalf of the community subject to conditions. It should accord with the following principles:
 - Rights would be granted to a “Fit and Proper Supporters’ Trust” for engagement with their club.
 - The level of engagement would increase according to the degree of development of the trust, including:
 - All Fit and Proper Supporters’ Trusts would have basic rights to information, including financial, and meetings with club executives
 - The agreement of all Fit and Proper Supporters’ Trusts would be required for fundamental changes such as the sale of a club’s ground
 - Fit and Proper Supporters’ Trusts which met more onerous criteria would have further rights, including the right to nominate a supporter director and pre-emption rights on sales of shares
 - Fit and Proper Supporters’ Trusts will be assessed by the regulatory authority as properly constituted and representative of supporters and the wider community by reference to criteria agreed with SD.
- The licensing framework would have an appropriate scale of sanctions for clubs that do not comply, with the ultimate sanction being withdrawal of registration.

1. Introduction

This document outlines Supporters Direct (SD)'s proposals in response to the Culture, Media and Sport Select Committee recommendations for a licensing system in professional English football and the Government's response to those recommendations.

The Select Committee recommended:

“The introduction of a formal licensing model imposed rigorously and consistently throughout professional English football to underpin the self-regulation measures already introduced by the Premier League and the Football League. The licensing model adopted should both review performance and look to promote sustainable forward-looking business plans. (Paragraph 151)”

The Government has agreed with this recommendation.

This document provides SD's position on the licensing system in relation to:

1. Key Principles and Function
2. Operation
3. Content

SD published two briefing papers in May 2011¹ which outlined in full its approach to the issues of public policy and the regulation of football. The Appendix of this report provides a summary of this Rationale whilst the main body focuses on the detail of proposals.

¹ Brown, A *et al* (2011a) Briefing Paper 1: Developing Public Policy to Encourage Supporter Community Ownership in Football, London: Supporters Direct; Brown, A *et al* (2011b) Briefing Paper 2: Developing Football Regulation to Encourage Supporter Community Ownership in Football, London: Supporters Direct

2. Key Principles and Function

2.1 Overall Aims and Legality

The Culture, Media and Sport Select Committee has identified ways in which changes to the regulation of football would achieve both public benefits and commercial benefits for football. A club licensing system will achieve both of these aims provided that it:

- Supports sustainable development
- Involves significant supporter and community engagement

Government support for such a system is justifiable in principle from a policy perspective and would not be susceptible to legal challenge. (see Rationale in Appendix 1)

The requirements of the framework will have to be realistic and any action taken for breach of licence will have to follow a fair procedure and be proportionate.

2.2 Guiding Principles

The licensing system should enshrine what are considered to be the rudiments of a 'fit a proper football club', and ensure that only those clubs meeting that standard can participate. It should, protect the game as a whole from the instability and lack of sustainability it has experienced, and continues to experience and it should embed the involvement of responsible, democratically elected supporters in the governance of clubs.

The domestic licensing system should be aimed at enshrining the following principles. A club licensing system should:

- a) Promote financial and social responsibility, balancing the sporting, commercial and social objectives of clubs.
- b) Recognise a club's long term importance to its communities and various stakeholders and that to serve these it must be run sustainably.
- c) Be preventative, enabling due diligence exercises to reduce the likelihood of a club getting into financial difficulties before it happens. This should include ensuring that debt and costs are kept under control; incentivising good financial practice; and imposing appropriate levels of sanctions for non compliance.
- d) Encourage financial 'fair play' to increase the competitive balance in football
- e) Recognise the social dimensions of clubs and the key importance of supporters to the game by embracing a progressive supporter engagement process.
- f) Promote good governance 'from above' through regulation of the licence and 'from below', via supporter engagement and scrutiny
- g) Help secure the tenure of clubs by preventing the sale or mortgage of key assets to support revenue losses.

2.3 Basis for Supporter Engagement

A framework for supporter engagement should be based on the principle that supporters have a legitimate interest along the lines of those recognised by Section 172 of the Companies Act 2006 and by other legislation which provides for interested parties to be provided with information or consulted about issues affecting them. In legal terms it is based upon the understanding that the control of the way property rights (in this case the rights of owners of clubs) are exercised is legitimate provided that it is 'in accordance with the general interest'².

² Jaquiss, K (2010) A Fan's Right to Buy: Making it Happen, Manchester: Cobbetts LLP: 2

The 'general interest' is recognised in the supporters' trust movement, in particular by the fact that the model constitution for a supporters' trust is a community benefit society (required by statute to operate for the benefit of the community and not for the benefit of its members) which has as its first stated objects:

The Society's objects are to benefit the community by:

- a) 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;
- b) achieving the greatest possible supporter and community influence in the running and ownership of the Club;
- c) 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;
- d) operating democratically, fairly, sustainably, transparently and with financial responsibility and encouraging the Club to do the same;
- e) 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.

The registration of these supporters' trusts with these objects reflects the legally recognisable community or public interest in the way football clubs are run which is the proper basis for intervention in private property rights in football clubs.

If they are to act as custodians of this interest, supporters' trusts should be able to demonstrate that they are:

- Properly constituted and have an effective democratic operation and governance
- Actively increasing membership of supporters
- Engaging the wider community and delivering social value

The engagement rights of supporters' trusts should be on an incremental, continuous improvement basis in which rights increase as the trust improves its performance against criteria set in agreement with SD. This will allow three levels of engagement: preliminary; intermediate and higher.

Opening a route to governance positions via a Fit and Proper Supporters' Trust would also produce a wider pool of appropriate people for board positions. It would no longer be necessary to have sufficient finance or to be connected with a large shareholder to join a club's board. Anyone with appropriate skills and experience could come forward as a candidate for a place on the board, subject to an appropriate selection process. This should increase the potential pool of directors who have the long term interest of the club at the core of their motivation for applying.

2.4 A Balanced Approach Throughout Football

Different levels of the league pyramid will require different levels of detail and different arrangements for compliance.

It would be unrealistic to expect a club in step 7 to have the same compliance requirements as a Premier League club. Not least because of available resources but also different issues apply depending on the level at which a club participates. A current example would be the ground grading criteria.

3. Content of the Club Licensing System

There are three main areas that the licensing system needs to encompass. Together, these will ensure:

- a) A 'regulation from above' in the form of a licensing system to ensure clubs are run sustainably
- b) A 'regulation from below' giving supporters a proper role, through appropriate organisations, in scrutinising and participating in the governance of their clubs
- c) A means of monitoring the contribution football clubs make to the wider community and the 'general interest'

Taking each of these in turn:

3.1 Ensuring financial sustainability and preventing 'financial doping'

SD recommended in its *Social Value of Football* report³ that football clubs should be run sustainably – financially, environmentally and socially. SD broadly supports the approach taken by UEFA in its introduction of UEFA Club Licensing and Financial Fair Play Regulations in May 2010⁴. SD believes that a Licensing system should include the approach taken by UEFA to ensure:

- The long term financial health of football
- Fair competition through a stipulation that clubs do not spend more than they generate.

A central tenet of this is that the licensing system should ensure clubs 'break even' and that 'relevant expenses' should not exceed 'relevant income'. This means that:

- A club should only be allowed to spend what it generates through normal activities
- Whilst income from benefactors, 'sugar daddies' or soft loans should be allowed, this should not be used to fund its 'relevant expenses', as defined in Article 58(2) of UEFA's licensing system

The approach should also be to:

- Protect rather than to punish
- Encourage and promote financial responsibility, with assistance from the FA and leagues in improving club governance
- Include stipulations on the levels of debt that a club can carry
- Assess 'fair value' in relation to corporate sponsorship and packages
- Give a proper remit for the regulatory authority to monitor
- Operate in a forward and backward looking way so that business plans are assessed prior to implementation and subsequently reviewed against performance.

Specifically, financial aspects of the Club Licensing System should ensure:

- a) Benefactor funding, soft loans, and other means of 'financial doping' would be limited by imposition of regulations based on UEFA's Financial Fair Play criteria.
- b) Any revenue support from benefactors would need to be lodged in advance and registered as a 'bond' or similar to remove the instability caused by sudden withdrawal of finance.

³ Brown, A et al (2010) *The Social Value of Football*, London: Supporters Direct

⁴ UEFA Media Release 038, 27/5/10; UEFA Club Licensing and Financial Fair Play Regulations Edition 2010

- c) All new owners of clubs would need to provide full evidence of the source of their funds and all information would be shared with the relevant authorities and Fit and Proper Supporters' Trusts to ensure that all funds were obtained legally.
- d) In order to prevent the value of capital assets being eroded in support of revenue losses, all mortgages or charges on the club's stadium and other fixed assets would need approval by the relevant league and where relevant the Fit and Proper Supporters' Trust through its 'golden share' type arrangement.
- e) In order to protect the game's asset base, clubs would not be able to use the sale of property assets to repay existing soft loans from Directors and owners.

Whilst these measures will assist in creating a more sustainable environment, football will also need to consider additional measures to promote competitive balance (for example through revised arrangements for the distribution of solidarity payments).

3.2 Ensuring that supporters, as key stakeholders, have an appropriate role in the governance of football clubs

The appropriate level of involvement for supporters in the governance of their clubs must be clearly articulated in the licensing system. This will both assist better governance through increased transparency and engagement of a key stakeholder group and provide a mechanism for ensuring the 'general interest'.

Such rights should however be balanced by responsibilities and based upon supporters' trusts being 'fit and proper'.

The framework should function so as to incrementally improve the level of engagement between Fit and Proper Supporters' Trusts and their clubs in line with their performance against these criteria and this will be assessed independently (by the regulator in collaboration with SD). Issues in which supporters should have a direct role can be addressed within the licence framework by the concept of embedded rights and responsibilities taking account of stakeholders' legitimate interests.

The incremental levels should be:

i. Preliminary Level:

A properly established supporters' trust should be provided with information (including financial and major transactions) and regular consultation meetings with senior club executives.

ii. Intermediate Level:

'Fit and Proper Supporters' Trusts which demonstrate increasing membership as well as properly operating democratic structures should be entitled to a 'Golden Share' type arrangement in which they must give permission for 'fundamental changes such as sale of a ground, change of club name or location and the taking on of debt above specified levels.

iii. Higher Level:

Fit and Proper Supporters Trusts that show continual improvement in their representation of supporters as well as engagement of the wider community should be able to nominate a director and have pre-emption rights, giving them first refusal to purchase shares when these are available for sale or in an insolvency situation. This should also include the right to bid to acquire all or part of the shareholding and receive a reasoned response to be reviewed by the regulator.

Table 1. below illustrates this incremental approach.

Table 1 – Club Licensing - Supporter Engagement Rights & Responsibilities for Fit and Proper Supporters’ Trusts

Level	Requirements on Supporters Trust	Engagement Rights
1.Preliminary:	<ul style="list-style-type: none"> ▪ Properly constituted as a community benefit society. ▪ Open membership. ▪ Compliance with Good Governance criteria ▪ Initial development plan including targets for increasing members. 	<ul style="list-style-type: none"> ▪ Information provided by the club including detailed annual accounts and directorships (as supplied to regulator). ▪ Regular (at least twice yearly) meeting with senior club executives.
2. Intermediate	<ul style="list-style-type: none"> ▪ Demonstrable increase in membership and representativeness. ▪ Structured engagement with all supporters groups. ▪ Compliance with Good Governance criteria including demonstrable properly operating democratic structures. ▪ Full development plan. 	<ul style="list-style-type: none"> ▪ Information on club finances, business plans and governance drawn from information provided to regulator. ▪ Regular meetings with senior executives. ▪ Requirement for supporter agreement for: <ul style="list-style-type: none"> i) Sale of ground ii) Debt beyond specified limits iii) Relocation iv) Change of name. ▪ These requirements could be met by the club issuing a “golden share” in a form approved by the regulator.
3. Higher	<ul style="list-style-type: none"> ▪ Achievement of membership targets. ▪ Delivery of Full Development Plan ▪ Engagement with other community organisations evidenced through for example stakeholder surveys and a social audit. ▪ In the context of any exercise of pre-emption rights or a right to bid, demonstrable fund raising ability and a Fit and Proper Business Plan 	<ul style="list-style-type: none"> ▪ Right to nominate a supporter director to the club board with full fiduciary duties. ▪ Pre-emption rights on any sale of shares or insolvency. ▪ Right to bid to acquire all or some shares in the club and receive a reasoned response subject to review by the regulator.

3.3 A means of demonstrating a football club's contribution to its communities

In SD's 2010 report, *The Social and Community Value of Football*, it was argued that although football clubs of all kinds can generate social value in their communities, more needs to be done to encourage this as well as evidence and report it.

The club licensing system should include requirements for clubs to provide basic reporting on their social, economic and environmental impact. Many clubs already report the work of their community departments. However this should be extended to include:

- Introduction of company objects to make explicit the club's obligations to their communities.
- Annual reporting on the club's performance in the following categories:
 - Environmental impacts
 - Impact of community work and charitable contributions
 - Stakeholders' survey
 - Staff profile
 - Local economic contribution
 - Procurement and investment policies

4. Operation of the Club Licensing System

SD proposes that a domestic licensing system should operate as follows:

- a) The licensing system should be established by the Football Association (FA) and could be a requirement for Full FA Membership which would be necessary to compete in any league or competition. It should be operated by a more independent Football Regulatory Authority (FRA), the establishment of which should be overseen by and agreed with the Government.
- b) The licensing system should be agreed by the FRA with all leagues, with appropriate scales of financial requirements for each level of the football pyramid.
- c) Clubs would submit a licence application in the spring of each year, assessed by the appropriate league under the overall regulation of the FRA.
- d) The application will include:
 - A detailed cash flow for the forthcoming season
 - Proof of income related to expenditure levels
 - A rolling business plan for the next three years
 - The most recent detailed and audited accounts shown against predicted performance given to the league in previous years' applications.
 - Details of supporter, other stakeholder and community engagement
- e) The relevant league and the FRA would have the power to undertake spot checks of all clubs at any time, and would undertake detailed scrutiny of clubs deemed to be 'at risk' but allow lighter touch checks of clubs regularly meeting their targets.
- f) The FRA should impose a sliding scale of sanctions against clubs that do not comply, with the ultimate sanction being expulsion from the FA and league.
- g) The licensing system should include:
 - A means for clubs to appeal against sanctions where they have been imposed, provided there are sufficient grounds.
 - A means for supporters, other stakeholders and communities to appeal against the granting of a licence where there are sufficient grounds.
 - Criteria for these, set by the FRA

To ensure that a reformed FRA would be a suitable regulatory body, the reforms should include, but not be limited to, the following key requirements:

- FRA members should be independent
- Membership should encompass expertise in law, accountancy, community representation, governance and regulation, monitoring and evaluation.
- No members should have any positions in any football clubs.
- It should be adequately resourced to give it the security and independence to undertake its work, with funds to undertake the policy work informing the licensing system and the means to actively implement it, including spot checks.

Appendix 1.

The Rationale for A Club Licensing System and Supporter Engagement

i. The Legal Basis

The proposed licensing framework is based on two principles:

- Sustainable development
- Supporter and community engagement

These principles are closely linked and mutually dependent.

Firstly, supporters are key stakeholders in clubs and the financial and cultural lifeblood of the game. Supporters want their clubs to be sustainable so that their history cannot be ended by the profligacy or incompetence of a particular ownership regime. The threatened or actual insolvency of so many clubs and the polarisation within every league has eroded blind faith in the “sugar daddy” approach to success on the pitch, even in those who have benefited from it.

Secondly, the sustainability of clubs is to a significant extent dependent on their relationship with supporters and their community. Most obviously and directly, supporters are customers, both at the live game and through other media, and purchasers of merchandise – the greater the engagement of supporters with their club, the greater their loyalty and interest. Less directly, but also importantly, the loyalty supporters have to a club is influenced by its relationship with the community – as a representative of that community as well as an organisation which it is seen to exercise a positive influence. This principle is recognised in the work already done by many clubs and the proposed licensing system offers a means of developing this into something with even greater value to communities and to clubs.

The proposed licensing system is therefore a holistic solution to the issues identified by the Select Committee. This rationale focuses on the principle of supporter and community engagement in that broader context and sets out the legal and practical rationale for the structure we have proposed.

a) “Ownership” and “Interest”

Football fans sometimes use the language of ownership when they talk about their club – “Which is your team?” – but the deeper resonance is in the language of shared history and experience – “We beat Villa”, “We need a new winger” and any number of printable and unprintable terrace chants. The collective “we” extends back into history to great defeats, victories and tragedies and also forward into hopes and expectations for the future. It spans generations, often running within families, and is the lifeblood of football as a cultural force. Football where supporters pay to watch a team, is something in which people invest their hopes and dreams and on which they spend significant amounts of their money (and this is qualitatively and quantitatively different to casual participation in the game).

It is this collective emotional investment which makes football special and means that the success or failure of a football team can have an impact in communities and on local economies on an altogether different scale from anything in politics or the arts. There is a sense in which a football club is a brand but no other brand commands loyalty over generations irrespective of the quality of the product. The loyalty is to the history and the collective emotional investment rather than to the club in its present incarnation on or off the pitch.

This analysis is crucial any consideration of the issues of supporter and community engagement. If engagement is to be a means of delivering a healthy future for football, a proper understanding of

the nature of the relationship must be the starting point. The reality is that for many fans, indeed perhaps for most fans, the important thing is that their collective emotional investment should be recognised and respected so that the traditions of the club are maintained from generation to generation. It follows that the most important thing about the club, its essence, is never owned by anyone in the traditional sense that it can be bought and sold and that other means to protect it should be found.

b) Legal Principles

Turning to legal principles, this means that the proper aim of any practical or legislative steps should be to reflect the nature and consequence of the supporter stakeholding. The key is that, even if they do not own shares, supporters have a legitimate interest in the club they support. If that legitimate interest is recognised and protected, many of the troublesome issues in football are addressed as a matter of course.

This analysis supports the proposal for a framework reflecting legitimate interest in two key areas:

- i. **The club should operate in a sustainable way** so that its assets and heritage cannot be dissipated or destroyed by those who control it at any particular point in time; and
- ii. **Supporters should have a voice** in the affairs of the club and a means of acting as responsible custodians of the club's history and tradition.

c) Legal recognition of a legitimate interest

There are various ways in which legitimate interests are recognised and protected in law and these suggest a framework on which a healthy future for football might be built:

- Directors of companies have a duty under Section 172 of the Companies Act 2006 to have regard to various legitimate interests in the way they act, including the interests of employees, suppliers, customers and the community. They must also have regard to “the likely consequences of any decision in the long term”. There is no statutory monitoring or reporting regime in connection with these obligations but they establish the principle that requiring directors to “have regard” to legitimate interests is legally proper and feasible.
- In various contexts, people with legitimate interests are given an ongoing right to information so that they can satisfy themselves that their interests are being protected. A good example is the regime requiring pension trustees to communicate with beneficiaries and potential beneficiaries.
- Public bodies (particularly planning authorities and health bodies) have extensive obligations to consult with people who may be affected by decisions they make.
- In particular situations in both the public and private sectors, where people's rights may be under threat they are given both a right to information and a right to be consulted or to have their views taken into account. At the less onerous end of the scale, employees who ask to work flexibly because of family commitments or wish to postpone their retirement have the right to have their request considered. At the other end of the scale, an employer who proposes to make 20 or more employees redundant has to go through a detailed process of providing information and consulting with reference to specified objectives.
- In situations where legitimate interests are not properly respected, the law provides a range of remedies.

d) The “Interest Principle”

The starting point for a legal framework is establishing the “Interest Principle” (along the lines of and subject to Section 172 of the Companies Act) which is that a person acting as a director of a football club must have regard to the legitimate interests of supporters and in particular to:

- The importance of the sustainability of the club for the benefit of future generations; and
- The need to establish ways in which the views of supporters can be taken into account.

A football club for these purposes will be one playing in a recognised league at or above a specified level (e.g. Step 7) and the holding of a licence from the regulator will be a condition of playing in all league and cup competitions.

Compliance with the Interest Principle would be a key issue for the FA in its regulatory role and would be a condition of registration. Registration would be renewed on an annual basis by reference amongst other things to the reporting regime set out below. All the proposed actions which follow are proper and lawful steps for a regulator to take by reference to the Principle.

The framework would require clubs to demonstrate their adherence to the Interest Principle under various headings. Proposals for the detailed arrangements are set out elsewhere but there would be a incremental phases offering various levels of rights to supporters according to the extent to which there was in place an active and effective trust truly representative of supporters and the community. The concept of a “Fit and Proper Supporters’ Trust” would be developed and agreed by the regulator and Supporters Direct (see below).

All of this is designed to produce steady pressure in the direction of taking account of the Interest Principle. Not all clubs have appropriate supporter groups with which to engage and it will not be appropriate in every case for there to be supporter representation on the board. The expectation, however, would be that clubs would work within the statement of recommended practice in a pattern of continuous improvement.

The framework would give well-developed trusts rights to act as custodians of the history and traditions of clubs through “golden share” type rights in relation to fundamental issues such as the sale of the ground, rights to nominate a supporter director, rights of pre-emption on sales of shares or assets and a “right to bid” subject to review by the regulator.

By way of example, in circumstances where the owners had decided to sell, a club would be expected to have very good reasons (taking into account the Interest Principle) to turn down an offer at market value by supporters using an appropriate and sustainable vehicle aimed at preserving the club as a community asset for future generations. The acquisition of a stake in the club would be likely to happen only by agreement with the owners but might be a step in the pattern of continuous improvement in recognising the Interest Principle.

Serious breach of any of the previous provisions would give the FA the right to take regulatory action. The various levels of action would include for the purposes of enforcement of the Interest Principle:

- A public finding of breach of the code
- A warning as to future conduct
- A fine
- The imposition of conditions on the club’s continued registration, including conditions relating to the ownership of the club
- Withdrawal of the club’s registration.

In theory, imposition of conditions relating to the ownership of the club could have the effect of compelling a sale. The power would only be exercised in cases of serious breach of the Interest Principle but it needs to be recognised that the more basic power to withdraw registration may have disastrous financial consequences for the owners - a reasoned decision to compel sale on terms considered to be appropriate in the circumstances would not be offensive in principle.

ii. ‘Fit and Proper’ Supporters’ Trusts: Representing Interests

As observed above, the regulatory framework will have little effect unless supporters establish appropriate, transparent and sustainable structures through which to engage with the clubs they support.

The concept of a “Fit and Proper Supporters’ Trust” will take into account the following:

- The concept of “community benefit” is closely related to the concept of legitimate supporter interest. This covers a number of areas, including the following:
 - social benefits (health and well-being, education, community safety, and development of social capital through participation);
 - economic benefits (creating new jobs, bringing income into the community).
- It would be for supporters to work with the owners of the club to optimise the opportunities for delivering community benefit. To do this in a way which causes minimum interruption of the owners’ private rights, the community needs to be organised, and strategic.

This requires:

- The development of a clear pathway for engagement by members of the community who wish to be involved
- The formulation of appropriate ideas and plans by the supporters’ trust
- A healthy relationship between the supporters’ trust and the private owners in which the community benefit strategy can be communicated, discussed and developed in partnership with the owners.

As such a framework for supporter engagement should be based on the principle that supporters have a legitimate interest along the lines of those recognised by Section 172 of the Companies Act 2006 and by other legislation which provides for interested parties to be provided with information or consulted about issues affecting them. In legal terms it is based upon the understanding that the control of the way property rights (in this case the rights of owners of clubs) are exercised is legitimate provided that it is ‘in accordance with the general interest’⁵.

The ‘general interest’ is recognised in the supporters’ trust movement, in particular by the fact that the model constitution for a supporters trust is a community benefit society (required by statute to operate for the benefit of the community and not for the benefit of its members) which has as its first stated objects:

- a) 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;
- b) achieving the greatest possible supporter and community influence in the running and ownership of the Club;
- c) 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;
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iii. Role of the FA

The FA is the governing body which takes responsibility for “all regulatory aspects of the game of football in England”. The FA is therefore the obvious starting point in identifying who might have responsibility for a licensing framework. Given, however, that the framework involves recognising a wide stakeholder group and that the powers of the regulator (FRA) through the framework will necessarily be significant, it will be necessary to develop a special governance structure for the regulatory function which guarantees impartiality and transparency.

The licensing framework should be established by the FA with appropriate governance to ensure impartiality and transparency. Compliance with the framework should be a condition of participation in all league and cup competitions and there should be a system of sanctions, supported by proper processes, for breaches of the framework. The regulatory body (FRA) would receive reports and monitor compliance with powers of investigation.

Current regulations on the finance and ownership of clubs deal with the symptoms and not the causes of instability in ownership and unsustainable financial management. At present, there are no coherent licensing requirements that can be used to force clubs to manage their finances more effectively.

There are of course some demands made on clubs as a condition of entry into leagues or the FA: Appendix 1 of the Football League's rules focuses on the suitability of the stadium, media facilities, pitch dimensions and so on. Apart from the requirement for clubs to submit their annual accounts to the League (clause 16) the regulation of club finances is inconsistent with varying requirements between divisions (eg the Salary Cost Management Protocol does not apply to all 3 divisions).

Part 2 of Premier League Rule D requires reports to be made of any important transactions to be included in a financial report made annually to the League, but in both cases, there is no requirement that the accounts must report finances within league-mandated thresholds, rather just that the report be made.

All member clubs of the FA must apply annually for re-entry into the Association, and provide certain information to the FA. However, membership of the FA is not a precondition for membership of a league, and FA membership has hitherto been an internal category entitling members to vote in meetings and access tickets to FA-organised matches such as the FA Cup Final.

The football authorities have collectively been slow to adopt strict regulations in respect of clubs' finances. Although reports must be made each year, these are for the sake of transparency rather than to ensure that a club is being run in a financially prudent manner.

Even so, the rudiments are in place for a more thorough-going system, as the key principles already exist. Specifically, it has long been accepted that membership of the FA and Leagues is conditional on satisfying whatever criteria those bodies insist upon. The licensing systems in place in other countries use exactly the same architecture to add greater scrutiny and control of club finances to the standard criteria found here.

iv. The Sustainability of Football

Whilst some parameters on club ownership have recently been strengthened there remains a *laissez faire* approach on the part of the game's regulators in regards to types of club ownership. This is predicated on the notion that the optimal financial running of clubs (and the game as a whole) is best achieved through the unencumbered action of club owners.

This is not borne out by the financial performance of clubs, which instead attests to a chronic and deep-set financial instability throughout the game 52 clubs who are or have been in the top 92 have suffered from insolvency events since the formation of the Premier League in 1992.

This strongly suggests that even the interests of shareholders – not to mention football as a whole, its supporters and the wider community – are not being fulfilled by those that run clubs. Short-term success is prioritised over longer-term sustainability by many club owners, contrary to their role as custodians. Imprudent financial risks are taken in the pursuit of glory – supported by 'soft loans', unsustainable debt or 'sugar daddies' - in a chronically unstable system of competition. This means that administration, CVAs and a merry-go-round of ownership have become the norm, not the exception.

The impact of this on supporters has been two-fold:

- On one hand they have *de facto* been excluded from ownership and from having a real say in what happens to their clubs.
- On the other where supporters have taken ownership of clubs they find that the odds are stacked against them, trying to run their clubs within their means but facing other clubs prepared, and allowed, to play casino economics with their futures.

Additionally, this un-level playing field means significant damage is done to the financial *and* the cultural fabric of the game and the social value that it can generate. Research commissioned by Supporters Direct demonstrates that club-led initiatives which can produce wider community benefits – inclusive ticket policies, actions to encourage local business, preferential local employment, and environmental improvement measures – are harder to deliver because of the unstable financial structures that the absence of regulation on ownership and the running of clubs generate.

An alternative regulatory regime can counter counteracting the negative impacts of a *laissez faire* approach as well as encourage wider social value and the public interest through longer term approaches embracing a wider groups of stakeholders⁶.

⁶ For further detail on this see Supporters Direct [Briefing Paper No.2 Developing Football regulation to Encourage Supporter Community Ownership](#)