



ENGLISH FOOTBALL REGULATION – MAKING IT WORK

1. Introduction and overview

- 1.1 Fair Game is a campaigning organisation, led by our growing band of member clubs from right across the football pyramid. Our member clubs want to see football governed with fairness, openness and transparency at its core; honouring the mantra that the game can be a force for good and putting clubs at the heart of the communities they serve.
- 1.2 We believe that the establishment of an Independent Regulator of Football is an essential part of achieving this change and we have strongly welcomed the commitment in the King's Speech to do this. We understand that this will initially operate through a Shadow Board, establishing and testing the key principles of how regulation should work and the key design, governance, culture and resourcing issues that will be critical to achieving its objectives.
- 1.3 Fair Game is focused on working with its member clubs, supporters' and community groups and football experts across a wide range of areas to help develop and deliver practical solutions to the challenges facing football. As such, we want to work closely with DCMS and others that will be making the critical decisions on the establishment of the regulator, to get the key design issues right and to ensure buy-in from across the football pyramid.
- 1.4 Our thinking in this paper has been guided particularly by working with our member clubs and has been shaped by our experts who have experience across a wide range of regulatory issues and sectors, underpinned by their understanding of the factors that have been critical to the success of other regulatory bodies. It has also been informed by a range of other ways in which we are working with member clubs to help them make the changes that football needs. This includes the development of a Code of Governance for football clubs, and of the Fair Game Index to identify and measure what good practice looks like. This approach is supported by a growing body of evidence on financial sustainability, good governance, equality standards, community and fan engagement.

2. Principles of effective independent regulation

- 2.1 The new regulator will face considerable challenges and no doubt a degree of opposition, especially during its earlier phases of operation, as it sets up the regulatory framework and begins to exercise its authority. Its culture and approach must be guided by an appreciation of the importance of being proactive and demonstrating a strong commitment to promoting club viability across the pyramid. In too many places, clubs and fans have been threatened by bad actors, and from the outset the regulator will need to show that it is going to make football a place where they will not flourish. In saying this, it is not simply about waving a big stick. The regulatory framework needs to be set up and operated so as to incentivise good behaviour and promote a culture of partnership working between the regulator and the many good actors there are across the football ecosystem.

2.2 Bearing that approach in mind, and taking account of recommended best practice from relevant bodies such as the [OECD](#), the [Financial Conduct Authority](#) and the [National Audit Office](#), we set out below key principles required for the independent regulator to operate effectively.

- (a) Independence – avoidance of conflict of interest; no pecuniary interests permissible on the part of members of the regulatory authority (such as substantial shareholdings in the clubs subject to regulation, or other interests that stand to gain or lose significant sums from or via decisions of the regulatory authority);
- (b) Governance - following best practice in accepted standards of governance, both in the regulatory authority’s own operations and the standards of governance it requires from the regulated entities;
- (c) Accountability, transparency, appeals and complaints-handling – for instance, all minutes of decisions to be published on the regulatory authority’s website, and with a process that ensures complaints about the decisions or actions of the regulator and whistleblowing allegations are investigated independently, with the results published on the authority’s website;
- (d) Professionalism and expertise – with members of the regulatory authority who understand and can ensure that the body addresses market distortion;
- (e) Representativeness – ensuring that the voice of the consumer is heard at the highest level, whilst at the same time enabling the regulated entities equally to be heard;
- (f) Diversity and inclusion – recognising that football is a sport whose appeal, both in terms of participation and support, is to all sections of the community, and that continuing to restrict the real power to a narrow and unrepresentative elite flies in the face of a broad and inclusive approach;
- (g) Capability to act promptly – and with access to effective powers of sanction and intervention, and statutory force behind those powers;
- (h) Authority and funding – sufficient to provide for the appointment of an Executive Team and support staff, and specialist advisors (including legal advisors) to take forward the work of the regulatory authority; with funding being appropriately drawn from the regulated entities;
- (i) Delegated authority – coherent and appropriate delegation of authority from the Board of the regulatory authority to its Executive.

3. **Responsibilities of the regulator**

3.1 We propose that the regulator's purview should encompass all professional men's football in England, to include oversight of the Premier League, Football League and the National League (including National Leagues North and South). At this time, we do not propose that the regulator has oversight of women's football, as that is currently subject to separate review, but the case for doing this should be examined in the future.

Regulatory standards

3.2 The regulator should adopt a set of standards governing the behaviour and operations of clubs. These standards should address such areas as:

- Governance, including decision making, risk management and control;
- Club ownership;
- Financial viability and sustainability;
- Probity in business dealings, openness and transparency, including appropriate whistleblowing arrangements;
- The distribution of centrally obtained funding (e.g. broadcast income) across the football pyramid;
- Transfer fees and the role of players' agents;
- Fan engagement;
- Club heritage protection;
- Community engagement, including support for grassroots football;
- Equality, diversity and inclusion;
- Health and safety;
- Environmental sustainability.

3.3 In our experience, these standards are likely to work best by following the principle of co-regulation. In other words, the standards will be mandatory and will set out principles to be followed by the regulated entities, rather than spelling out in detail how the organisations concerned should operate. It will be for the regulated clubs to demonstrate to the regulator and to their stakeholders how they comply with the standards, and for the regulator to assess whether a club is operating in compliance with the standards.

3.4 The regulator should have the power to issue codes of conduct to accompany the regulatory standards. These could be advisory only, for example on issues where guidance on good/best practice would be helpful but compliance is not felt necessary. There is likely to be a greater need for such codes to be issued in the early years of the new regulatory framework, to assist the regulated bodies in understanding and coming to terms with the new environment and regime.

Regulatory powers and sanctions, including financial distribution of broadcast revenue

- 3.5 The regulator will require appropriate powers to sanction regulated entities that do not meet the standards set, and also related parties (e.g. club owners). These powers and the potential sanctions must be transparent, substantive and sufficient to deter potential transgressors. Any use of such powers will need to be accompanied by a public explanation of the rationale for taking action. Taking account of regulatory systems in other industries, potential sanctions are likely to include:
- Power to commission an in-depth audit and review of a club’s governance and finance;
 - Financial penalties, which could be applied to the clubs and/or their owners;
 - Power to appoint members to the club’s board;
 - Control over a club’s ability to participate in specific competitions, via a licensing system.
- 3.6 We would further expect the regulator to have a specific role in relation to the distribution of broadcast and other funding income to clubs across the football pyramid. The explicit objectives of the White Paper include “club sustainability”, “systemic sustainability” and the absolute necessity of “safeguarding clubs across the football pyramid”. It is essential therefore that the regulator has the tools to deliver. Those tools must include the ability to determine, even if only as an intervention of last resort, an income distribution model that can secure those objectives.
- 3.7 More generally, the regulator should have the power to intervene in any situations where the actions of any of the governing bodies involved (the FA, the Premier League, the EFL and/or the National League) put the sustainability of the pyramid in jeopardy.
- 3.8 Overall broadcasting revenues should be distributed more fairly between the divisions, which we believe should be based on average divisional attendances. Within each division, we propose that the distribution should be based on an annual assessment of clubs’ fitness in terms of governance, financial sustainability, fan and community engagement, environmental sustainability, and approach to equality, diversity and inclusion. This would be along the lines set out in the Fair Game Index.
- 3.9 The divisional pot should be split according to how highly a club scores on the Fair Game Index. This would ensure that the regulator strikes the right balance between imposing sanctions on badly-run clubs and incentivising well-run ones. We recognise that such a system will take time to develop, but we see it as achievable, in terms of putting the principles and mechanics into operation, certainly within three years of establishing the regulator. An important first step will be to ensure that the State of Play survey accurately measures how well run a club is.
- 3.10 There should be a right for clubs to appeal against decisions of the regulator that they do not regard as reasonable and proportionate. The appeals process must be independent and operate transparently.
- 3.11 Given that the regulated bodies are commercial entities, it will be necessary for the regulator to have regard to the need for commercial confidentiality in its dealings with those bodies, and in publishing its rationale for taking particular actions.

4. **Membership of the regulatory authority and how it should operate**

Board and Executive of the regulator

- 4.1 The regulator's strategy, direction and policy should be determined by a Board that is supported by an Executive. The Executive would operate under delegated authority from the Board within specified bounds; it would be responsible for delivering the Board's strategy; and it would advise the Board on all relevant matters. Similarly, the Board will be responsible for monitoring and reviewing the delivery of the strategy that it sets.
- 4.2 To help ensure its overall effectiveness, it is critical that the Board should have an understanding of the football ecosystem and of key stakeholders such as fans and community groups, as well as financial and regulatory expertise. This means in part drawing its membership from relevant interests, not on a representative basis as delegates from particular interest groups. Rather the involvement of the Board would aim to ensure that the regulator's approach and actions are informed by a strong understanding of and effective engagement with the different groups within football, in addition to understanding of effective regulation, good governance, business management and other facets of running relevant enterprises and initiatives.
- 4.3 We propose that the membership of the Board of the regulatory authority comprises nine members, drawn on the following basis:
- (a) Two members elected by the clubs;
 - (b) Two members elected by formally constituted supporters' associations;
 - (c) Two members elected by formally constituted players' representative bodies;
 - (d) Three independent members appointed by Parliament.
- 4.4 All parties concerned should be mindful of the need to ensure diversity of views and background (e.g. gender, ethnic origin) among the membership of the Board.
- 4.5 The Chair of the Board should be one of the independent members (see 4.3 (d)).
- 4.6 In line with best practice elsewhere, and taking account of the importance of accessing new ideas, as well as ensuring representativeness, we believe that terms of office on the Board should be time-limited. We suggest that Board members are appointed on a three-yearly basis, with no member being allowed to serve for more than two terms. There should be a minimum of three years before a previous member can again be considered for the Board.
- 4.7 Eligibility for membership of the Board should be based on the following principles:
- No members to be current directors or substantial shareholders in, or employees of, clubs in the Premiership, Football League or National League (including National League North and South);
 - An assessment of the skills required for effective participation in the Board, including an understanding of the principles of good governance.

- 4.8 The Executive should consist of suitably qualified people, appointed by the Board following open competitive recruitment against published selection criteria. The Executive will have a secretariat that manages the authority's day-to-day governance arrangements.
- 4.9 As with other bodies of this kind, the Board should obtain independent input regarding its effectiveness every three years.

Funding, resourcing and reporting

- 4.10 The regulator should be sufficiently funded to enable it to carry out its responsibilities effectively, having regard to the nature and scale of the entities that it is responsible for regulating. The recruitment and retention of suitably experienced personnel will be key to its ability to fulfil its regulatory functions.
- 4.11 Its funding should come through a mix of a levy on broadcast revenues, and membership subscriptions set annually and levied on the clubs based on a percentage of overall club revenues, raised proportionately so that the great majority of funding comes with the greatest resources - those in the Premier League
- 4.12 The regulator will need to be sufficiently staffed, both in numbers and seniority, to be able to meaningfully and effectively engage with clubs and their owners. To maximise its ability to respond flexibly and quickly to a range of issues, the regulator should in the first instance combine a relatively small core staff with the capacity to call on specialist skills as and when they are required. Plainly this core staffing will need to be expanded as the regulator progresses its work, so that most regulatory activities can be conducted using internal resources.
- 4.13 The regulator should formally report annually to Parliament and all its key stakeholders, and on a continuing basis to the Department for Culture, Media and Sport. The relationship with DCMS would be detailed in a Framework Document.
- 4.14 It will be appropriate for the regulator to liaise and share information with other regulators, government departments and agencies that also have a role in relation to the regulated entities. Examples would include the Financial Conduct Authority, and H.M. Revenue and Customs. Where appropriate, protocols for the sharing of information should be put in place between the football regulator and relevant agencies or other regulators.
- 4.15 The regulator should adopt a set of service standards for its own operations, setting out how it engages with those it regulates and other stakeholders.

Regulatory monitoring and engagement with clubs

- 4.16 The regulator's regulation, monitoring and supervision of, and engagement with, clubs should include:
- (a) Review and analysis of club documentation and performance reporting that will be required to be submitted on a regular basis, including real-time monitoring of some elements;
 - (b) Assessment of clubs' financial viability and sustainability against specified and published criteria, taking into account any support provided by external sources, such as their owners;
 - (c) The regulator will, following its analysis, apply an internal risk rating to each club which will drive the extent and nature of its engagement; this will include assessment of the reliability of any support provided by external sources such as the club's owners;
 - (d) Clubs and their significant related parties (i.e. any party on which a club states it financially depends to meet its viability requirements) will be required to provide any additional information and analysis that the regulator reasonably requires to fulfil its regulatory functions;
 - (e) Timetabled visits by regulatory staff to conduct in-depth assessments of clubs;
 - (f) Ad hoc visits and other engagement where apparently credible whistleblowing or other allegations have been made against a club, suggesting a breach of the regulatory standards, or where concerns have been raised by organisations such as those identified at paragraph 4.14 above.
 - (g) The power to effectively sanction clubs, and in certain circumstances their significant related parties (i.e. those they have dependence on to meet regulatory criteria) for non-compliance.

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