



Dame Caroline Dinenage DBE MP
Chair, Select Committee on Culture, Media and Sport
House of Commons
London
SW1A 0AA

30 April 2024

Dear Dame Caroline,

Thank you for your letter of 16 April, and the opportunity to set out the Premier League's perspective on the Football Governance Bill.

The Premier League has been asked to explain our views on this legislation, including by your Committee. We have been fully engaged from the outset of this process and will continue to make constructive suggestions to improve the regulatory system that is being created to reduce the risks to English football. Many other football organisations have also provided evidence to your Committee and are talking to Parliamentarians at this important moment in the history of our national game.

We recognise and fully respect the Parliamentary process. As I said to the Committee in January, I believe that it is for Parliamentarians to decide how to vote on the legislation. This is the point I hope I made clear in response to a question from the Committee.

We understand that the intention of the Bill is to give fans a bigger voice in the game, improve financial sustainability and establish an effective, proportionate regulator for the good of English football.

Before turning to our suggestions for improving the Bill, I believe it is important for the Committee to be aware of the history of the Premier League's engagement on this matter, which helps to explain the background to the issues we are raising.

Premier League proposals

Since the Fan-Led Review we have sought to inform the development of an effective regulatory model that could deliver for all of football.

Given the unique position of the leagues as existing regulators within football, we believed it would make sense to create a strong, outcomes-focused and broadly-scoped Regulator to sit above the leagues with visibility and oversight of the development and enforcement of all relevant parts of our respective Rulebooks.

The Regulator we suggested would have operated on a step-in basis, able to intervene whenever the Regulator believed there was a risk to its outcomes. This would include compelling the provision of information with statutory backing, ensuring relevant rules

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were being enforced stringently and met the regulator's policy objectives, and imposing sanctions.

An outcomes-focused body with ultimate oversight over all relevant rules, combined with 'first instance' regulation being carried out by the leagues, could have produced a light-touch and effective Regulator. This type of model is likely to have incentivised the Regulator to work with the leagues and clubs to address risks, with strong step-in powers which would consistently drive the right system-wide behaviours.

I believe this would have been an appropriately-powered, proportionate and effective regulatory model, with clarity over roles and responsibilities, which would build on the expertise and experience of the leagues.

We set out the details of that model in written submissions to the Fan-Led Review and the Government.

The Government's model

The model ultimately set out in the Football Governance Bill provides for a narrower, yet deeper, Independent Football Regulator (IFR).

Rather than regulating competitions and stepping in where problems have been identified, the IFR will directly regulate and license 116 football clubs in the pyramid, largely adopting an approach from banking regulation.

This means that the Bill may lead to the imposition of bespoke financial constraints for up to 116 clubs in the professional pyramid. Our suggested model would have meant the IFR having oversight of and step-in rights to govern the Premier League, EFL and National League's respective Owners' and Directors' Tests. However, the Bill will instead introduce a second, IFR-owned test.

Our overarching concern is that, despite good intentions, this regulatory model is unlikely to be the most proportionate, light-touch or effective model for football. It is possible (and to be hoped) that the IFR, working with the leagues, will use its discretion to develop a proportionate regime. However, we remain concerned that the Bill as drafted may just as feasibly result in a risk-averse model, delivered by a complex and duplicative system. This will inevitably cause unintended consequences for the smooth running of the leagues.

We worry above all that the model set out in the Bill may affect the carefully constructed competitive balance that is at the heart of our exciting competition, and therefore the appeal and value of the Premier League to fans and investors alike.

Since the White Paper, we have considered the scope of the planned regulatory model to make proposals that may help reduce the risks posed by this form of regulation.

There have been some improvements to the model in the Bill following our representations (and those of the other football authorities) to the Government. However, in a number of areas more could be done to reduce the risks of unintended consequences and ongoing uncertainty. The risk level of this regulatory model therefore, from our perspective, remains high.

Premier League priorities

We believe that the Bill could be improved in several respects. It is also important that key elements of the Bill are retained. The IFR's scope should not, in our view, widen any further.

Our suggestions are for improvements to the Bill to deliver:

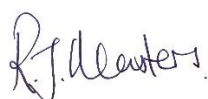
1. **A more proportionate, light-touch regulatory model** – presenting a lower risk of unintended consequences. This includes strengthening the emphasis on outcomes; ensuring that the leagues are consulted first, not last, in the licensing system; ensuring a higher intervention threshold for financial conditions in the licensing system; and reducing onerous duties on clubs.
2. **Long term certainty for clubs and owners** – allowing them to plan and invest for the future with confidence. This includes clarifying the principles around new ownership tests; ensuring a longer period between ‘State of the Game’ market reviews as is normal practice; and ensuring that the IFR is incentivised and able to deliver decisions within specified time periods. The protected period for agreements on financial distributions should never, in our view, reduce from five years.
3. **Protections for the continued competitiveness and growth of English football** – including by preserving strong roles for the football authorities in working together for the good of the game and fans. This includes making sure that the Backstop incentivises football-led solutions and allows for a proper weighing of Premier League Clubs’ property rights. It also means strengthening the independence of the IFR to offer protections from Government intervention.

Our position remains that sensible, light-touch regulation can be made to work, notwithstanding the risks it presents to the best-funded and deepest pyramid in world football. No industry normally likes to be regulated, and we are not the only football organisation to be raising concerns about the potential for overregulation and inadvertent damage.

Certain risks are intrinsic to the decision to regulate this highly successful industry in this manner. However, in a number of areas we hope that our suggestions could offer a degree of protection against some of the unintended consequences we believe are foreseeable. These are set out in the Appendix to this letter.

We are still considering the Bill in detail and will continue to engage with the Government and Parliamentarians to discuss our suggestions for improvement, including at the Public Bill Committee.

Yours sincerely,



Richard Masters
Chief Executive

Appendix

Risks and Suggested Mitigating Proposals

Priority 1: Delivering a proportionate, light-touch model - presenting a lower risk of unintended consequences

Risk

Despite the IFR's positive focus on improving financial sustainability, the adoption of banking-style regulation may drive a risk-averse approach that deters investment and aspiration.

Managed risk-taking, new investment and aspiration are intrinsic to the dynamism of English football's competitions and pyramidal system, along with structural elements such as promotion and relegation that create sporting jeopardy and excitement for fans. However, the Bill is largely based on banking regulation, with liquidity, debt and expenditure controls for individual clubs, and an overall drive for systemic resilience, for a sector that has scarcely any similarities with banking.

Banking is an industry that requires systemic stability. The football industry overall is remarkably stable, with just six administrations in the last twelve years and a strikingly consistent presence of the same clubs in the pyramid over the last century. However, what goes on inside the league structures is inherently unstable. Fierce competition, prizes for success and consequences for failure are all part of a highly competitive league system that fans want to follow. These are not deficiencies to be managed out.

Football clubs are not heavily connected, unlike the complex and interwoven relationships between banks. There are no contagion consumer effects leading to a "run" on a football Club, nor does the activity of a football club create wider systemic problems in the economy, unlike with a financial institution.

Our concern is that this model of regulation is likely to encourage far greater risk aversion than is appropriate for football. While the Government has stated that the system should not be a "zero-failure" system, in reality there will be significant pressure on this Regulator to never allow a single club to fail financially. This pressure may be so great that this will drive a system-wide caution that will materialise in inappropriate financial constraints for the football context.

A system of overly cautious financial regulation could be an unintended consequence that may make English football less competitive internationally, lock-in the status quo, prevent clubs from aspiring and make the game far less exciting for fans.

Mitigating proposals

We will make suggestions for improving the Bill to explicitly encourage the development of an outcome-focused regime that imposes financial conditions on clubs only where absolutely necessary, having engaged cooperatively with the leagues to ensure proportionality and a level-playing field. We will also make specific suggestions to the licensing regime (see below) to further mitigate the risks of over-intrusive regulation.

We will also raise the need for the removal of the ability of the IFR to impose license conditions on individual clubs for the purpose of advancing the resilience of the pyramid, which we believe is not proportionate.

Risk

The licensing regime allows the IFR to intervene to advance their very broad duties rather than address an identified problem. This is likely to lead to overregulation and the imposition of inappropriate financial constraints.

The licensing regime allows the IFR to intervene to advance their very broad duties (the financial soundness of clubs and the resilience of the overall system) rather than address an identified problem.

The licensing regime is set up to be *ex ante*, seeking to pre-empt issues and prevent them from arising, rather than addressing or responding to an identified problem. This may compound the risks from adopting banking regulation, because “soundness” and “resilience” have no end state. The IFR and its rules could potentially drive more soundness and resilience, eventually at the expense of the investment, risk-taking and aspiration that delivers vibrant, exciting football competitions for fans.

It is likely from s21(2) of the Bill that the Regulator could easily impose bespoke licence conditions on a club, including capital buffers, the rescheduling of debt or liquidity requirements, justified on the grounds that this could advance systemic resilience in football or promote sustainability. There could be different requirements for different clubs, and the Bill does not clarify whether these conditions would be public or private. Either way, the widespread use of bespoke conditions could impact the level playing field and is likely to have implications for the competitive balance and smooth functioning of the leagues.

Mitigating proposals

We will suggest amendments for an outcomes-focused approach to financial regulation, with the IFR imposing discretionary licence conditions only where there is a risk to those outcomes. We will continue to suggest amendments, including at s21(2) and s12, that would preserve the IFR’s ability to adopt a proportionate approach.

Risk

Burdens imposed on clubs may reduce the unique appeal of football club ownership.

The Government has described the Bill’s regulatory model as proportionate. However, our view is that the Bill sets out a relatively complicated and intrusive regulatory framework that may impact clubs’ ability to operate effectively. This may not only impact clubs at the top of the pyramid but also particularly clubs lower down, potentially impacting the appeal of club ownership at all levels.

It is a complex regime with objectives and threshold requirements that do not clearly map to each other, and multiple sets of requirements on clubs. Clubs will not only have to comply with mandatory licence conditions but also with threshold requirements and discretionary licence conditions, as well as detailed duties and freestanding requirements (e.g. suitable owners) that sit outside the licensing regime.

There are burdensome reporting requirements on clubs, including a vague requirement at s50 requiring clubs to notify the IFR if it considers there has been “a material change in circumstances affecting the club *that is relevant to the exercise of the IFR’s functions*”.

In practice it will be challenging for a club to judge what might be relevant to the exercise of the IFR’s functions, or everything the IFR can do under the Act. This could drive significant burdens on clubs with higher compliance costs on clubs, which tend to disproportionately affect smaller clubs, which itself is likely to distort competition.

Football relies on a relatively small pool of investors who often see club ownership as a passion project as well as a business investment, enjoying relative freedom to invest their capital and aspire to rise up the pyramid. Burdens of this scale may further reduce these freedoms and reduce the attractiveness of club ownership, particularly in the lower leagues.

Mitigating proposals

Further thought should be given to streamlining the licensing system utilising the existing UEFA, FA, Premier League, EFL and National League regulatory systems. Some of these burdens could be reduced by closer working with the IFR to streamline duties and requirements for clubs, with a stronger duty of cooperation with the leagues in Part 2 of the Bill.

Risk

The IFR leaves very little room for leagues or clubs to challenge controversial decisions or put forward their case to be considered on the merits.

A significant majority of IFR decisions are challengeable only on judicial review grounds, including the Backstop, involving the redistribution of large amounts of revenue, based on a binary decision between two potentially divergent proposals. The imposition of licence conditions that may constrain spending relative to clubs' competitors are similarly not appealable on the merits. Financial penalties – amounting to up to ten per cent of a club's or competition organiser's annual revenue – are also not appealable on the merits. This regime does not seem to us to be justifiable or proportionate.

It is a well-established norm that a regime which allows for a greater ability to challenge decisions will result in a system that is lighter-touch and more proportionate, irrespective of how often in practice decisions are in fact challenged. The restrictive nature of the appeals regime in the Bill is likely only to compound the wider risks and unintended consequences prevalent in the wider system.

Mitigating proposals

A fairer, more open and accessible appeals regime would help to mitigate a number of the issues with the wider regulatory regime.

Priority 2: Long term certainty for clubs and owners – allowing them to plan and invest for the future with confidence

Risk

Despite the necessity of a strong ownership test, the IFR's new ownership rules are opaque and may cause disruption and ongoing uncertainty.

The Bill will introduce a new and different test to the status quo to assess the suitability of owners. However, that test will only be developed at a later date, once the IFR is set up and has the capacity to design and implement the test. It is clear from the legislation that the intention is to create a test which is more subjective, rather than the largely objective test implemented by the Premier League and the EFL.

It is also clear that it will have different criteria and a broader scope in respect of ownership (integrating the concept of "significant influence", in addition to the current focus of "significant control") and club officials that are caught by the scope of the test.

However, there is not yet clarity as to what the Government is trying to achieve with the new test, or precisely how it may be different in practice. That lack of clarity may drive significant short-term uncertainty for clubs and investors.

In the medium term, a test with subjective elements could drive ongoing uncertainty that will cause concern for fans, as well as deter investors and would-be owners. Unless owners can look at a test and know with confidence that they would be approved according to clear and transparent criteria, they may not proceed with an acquisition or investment, and could take their interest to another league or industry.

The interaction between the new test and the Premier League's existing test remains an issue to be worked through. It remains unclear how these two divergent tests will interrelate and what would happen in a circumstance, for example, where the IFR approved an owner but the Premier League did not. This could occur, for example, by virtue of s37(2) of the Bill; or perhaps if the IFR designed a less stringent test than the Premier League's existing test, which is one of the strongest in world sport.

Mitigating proposals

We will continue to request greater clarity on the test in the Bill, and a stronger cooperation duty in respect of the leagues and the IFR on the operation of their respective tests at s37(1).

Risk

'State of the Game' report frequency and scope may drive continuous uncertainty.

We agree that the State of the Game report is a vital market review and should be developed appropriately once the IFR is set up. We expect that the first report will be done quickly once the IFR is in place to provide an evidence base for the outcomes, guidance and approach to regulation and cooperation it pursues. However, we believe it needs to be carried out with more consultation and transparency than is currently specified.

While we support the idea that the IFR should undertake an early market review exercise, the Bill mandates that the IFR publishes a State of the Game report every three years. This is a high frequency for a market review and means that the IFR's fundamental approach may be subject to perpetual and significant flux.

The possibility that the IFR may change course every three years will cause significant uncertainty. To avoid the worst outcomes from becoming a regulated industry, football will need long term certainty above all else. We believe the market reviews should occur according to a longer timeframe, more akin to other regulated sectors, and more accurately reflecting the long-term investment horizons of clubs.

The scope of the market review should be limited to issues that are germane to the functions of the IFR, i.e. financial sustainability. This is not currently the case, leaving scope for an IFR, which has developed an expertise in financial sustainability, potentially intervening on matters that should, in our view, be reserved for the leagues.

There is no requirement in the legislation that the IFR's report examines the impact its approach is having on investability, competition and international competitiveness (the avoidance of which is central to the IFR's secondary duties). This examination of unintended consequences is, in our view, essential to making a reality of the Government's intention to protect the Premier League's position and the parts of the pyramid that rely on its continued success.

Mitigating proposals

We suggest a longer timeframe for the report (e.g. a maximum of once every five years, as with Ofcom's Wholesale Fixed Telecoms period, and matching the Backstop Powers in this Bill), as well as a tighter scope that ensures the IFR's secondary duties are reflected fully in the review.

Priority 3. Protections for the continued competitiveness and growth of English football and fans – including by preserving strong incentives for the football authorities to work together, and to protect the IFR’s independence

Risk

The Backstop Powers may hardwire continuous negotiation and uncertainty into football.

The Premier League has always sought to share our success and support the vibrancy and competitiveness of the pyramid. As we have become more successful, the scale of our investment through solidarity payments has substantially increased since their inception in 2007. The amount of money the Premier League shares with the lower leagues and wider football is world-leading, and that will continue.

The Premier League has been seeking in good faith to agree a new settlement for financial distributions throughout the pyramid. For more than a year, we have been developing systemic proposals that would realign the football pyramid for the future and provide certainty and stability for all clubs and competitions.

We have been concerned from the outset that the prospect of a Backstop Power could significantly impact on incentives and make a deal harder to strike. For example, in the EFL’s evidence to the Committee in January 2024, they indicated they would seek to trigger the Backstop to request more funding, even if they had already agreed to a new settlement in the meantime. Our concern, therefore, is that the existence and design of the Backstop Powers may lead to perpetual negotiation and uncertainty. We believe that is a bad outcome for all of football.

Furthermore, it is important to recognise the significance of changing what has to date been a voluntary arrangement based on goodwill and good faith into a compulsory arrangement. This may fundamentally alter the dynamics of how solidarity payments are made, how they are justified on sustainability grounds, how they are directed and what conditions are imposed. This change should not be underestimated.

Clearly the Backstop, based on choosing between what may inevitably be two very divergent proposals, is a novel mechanism, perhaps without precedent in regulatory terms in the UK. It will be very important that its design can be shown to be capable of proper consideration of the Premier League and its clubs’ property rights. In its current form, we continue to have concerns about how it will operate in practice.

We note that some MPs have already proposed the inclusion of Parachute Payments within the Backstop and suggested that the IFR could have the power to intervene in financial distributions even when there is an agreement between the two parties. Either raises significant implementation challenges for the IFR, increases regulatory uncertainty and could damage long-term investment for all football clubs.

Mitigating proposals

We will be suggesting greater clarity to ensure there is a sufficiently high threshold for triggering the backstop. We are also considering the broader impacts of the Backstop process by which the IFR could impose a Distribution Order on the leagues.

Risk

The independence of the IFR needs to be enshrined in the Bill.

It is important that the IFR is, and is seen to be, fully independent of Government. However, the Secretary of State must write a Football Governance Statement about football every three years, as well as the ability to expand the types of financial conditions that can be imposed on clubs, designate additional Premier League revenue to be eligible for redistribution, and to determine what “significant influence” means when it comes to ownership.

This is in addition to a very specific clause that states the IFR must have regard to the trade and policy objectives of the Government when making decisions about the suitability of owners and directors.

The Government appears to have written a stronger role than anticipated for itself into this regime. This may lead to pressure in the future for the Secretary of State to further expand the scope and powers of the IFR beyond financial sustainability. If this goes too far, it may even conceivably present issues with FIFA and UEFA, whose statutes ban state interference in competitive football.

Mitigating proposals

There are further steps the Government could take to strengthen the independence of the IFR.

Premier League

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