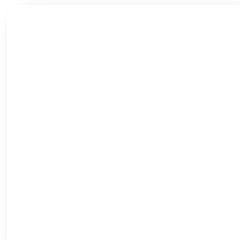
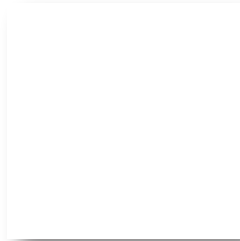


Football and the Big Society

Paul Marshall
with Sam Tomlin



CENTRE**FORUM**

About the authors

Paul Marshall

Paul Marshall is chairman of Marshall Wace LLP, one of Britain's leading hedge fund groups. He is also a founder trustee of Absolute Return for Kids (ARK), the children's charity, and co-Chairman of ARK Education. He is chairman of the Management Board of CentreForum.

Previous publications include: 'The Orange Book: reclaiming liberalism' (2004) which he co-edited, 'Britain after Blair: a liberal agenda' (2006) and 'Tackling educational inequality' (2007).

Sam Tomlin

Since graduating from Oxford University with a BA in Theology, Sam has worked in the social sector and is currently working within the venture philanthropy field for Absolute Return for Kids (ARK). Prior to that he worked for the Shaftesbury Partnership developing one of their venture programmes.

Acknowledgements

I would like to particularly thank Sam Tomlin for the huge support he has provided in the research for this paper. He has the dedication of a true (Bristol City) football fan. We would also like to thank the following for their input: Dave Boyle, Antonia Hagemann, Oli Winton, Brian Burgess, Steve Powell, Tim Gentles, Alan Mak, Michael Reuter, Federico Baradello, Patrizia Nowakoski, William Harvey, Iain White, Patrizia Barrat, Charlotte Pursey, Vincent Maguire, Oliver Bretz, Jon Darch, Jonathan Fillis, Joel Dungate, Mayhul Gondhea, Chris Bullock, Emilio Abejon, Michael Volkovitsch, Samuel Taylor and Andy Green. None bears any responsibility for the views contained herein.

ISBN 1-902622-86-3 Copyright 2011 CentreForum

All rights reserved

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of CentreForum.

■ Contents

	Executive summary	5
1	Introduction: Football and the Big Society	7
2	The commercialisation of English football and its attendant benefits	9
3	But all is not well...	12
4	Reviewing ownership structures for football clubs	22
5	A consistent and comprehensive licensing regime	35
6	How to ensure the financial stability of football clubs – improving on UEFA’s Financial Fair Play rules	37
7	Ensuring ‘good’ benefactors – enhancements to the fit and proper person regime	41
8	Giving more influence to supporters	43
9	The failings of the FA and why government intervention is necessary	49
	Appendix: Government and sport – how other governments are more effective	58

"We will encourage the reform of football governance rules to support the co-operative ownership of football clubs by supporters"

Coalition agreement 2010

"Many of the honourable members will have football clubs in their constituencies that sometimes do struggle financially, and I think seeing one owned by its supporters is a very positive move"

David Cameron responding to parliamentary question from Jessica Lee MP, on future of Ilkeston Town Football club, 20th October 2010

"Registered Supporters Trusts enabled to buy stakes in their club bringing mutualism to the heart of football."

*Step 32 of '50 steps to a future fair to all',
The Labour Party Manifesto 2010*

■ Executive Summary

- Football is one the most popular community activities in Britain and should be considered an integral part of the Big Society agenda.
- The commercial success of the modern game is to be welcomed but a balance must be struck between the forces of commercialism and the traditional values of community and identity.
- Financial debt and instability within the game have reached unsustainable levels, causing damage to the long term prospects of individual clubs and deep concern among supporters.
- We review the range of ownership models for football clubs both in this country and abroad – the variety itself is indicative of how different societies are seeking to find the right balance between the interests of commercialism and community.
- The FA should introduce a consistent licensing regime across the professional game (i.e. to include Premier League and Football League) to include financial fair play rules and rights of supporter representation on football club boards.
- Any financial fair play rules should include both income statement and balance sheet measures of financial sustainability.
- The Fit and Proper Persons Test should be enhanced to include Ownership Review Panels and Right of Review by supporters trusts.
- A new tax relief should be introduced under the Industrial and Provident Societies (IPS) regime to give income tax relief to individuals investing in supporters' trusts organised as not-for-profit IPS.
- The provisions of the Localism Bill (2011) should be expanded to specifically include football clubs and stadia under new community Right to Buy rules.

Football and the Big Society

- The governance of the FA suffers from poor representation, mismanagement, producer capture and conflicts of interest. Football is too important to be left to the FA in its current form, and a time-limited action by government (following the model of Australia in 2003) to reform FA governance is required if modernisation and reform of the game is to be achievable.
- Reform of the FA must ensure that the regulatory function is entirely separated from the management of the game.
- A reformed FA Executive Board should include a majority of independent directors.

■ 1. Introduction: Football and the Big Society

Every week during the football season, about 675,000 spectators attend a professional football match in England & Wales,¹ slightly more than 1 per cent of the population. In 'football towns', such as Manchester, Liverpool or Newcastle, the proportion who attend matches each week is significantly higher.

This compares with around 1.1 million people who attend Church of England services each week.²

Due to the escalation in ticket prices, many people can no longer attend weekly matches so have to settle for TV either at home or in pubs. BBC's 'Match of the Day', despite its unpopular late evening slot, draws over 4 million viewers each week. Live matches attract many more viewers; Manchester United's Champions League semi final with Barcelona in 2008 attracted an audience of 10.6 million.³

Football is deeply ingrained in our country's culture and identity. For many supporters, football is a defining passion, and central to their personal identity.

For many communities, the football club is the most important institution in their town or city, symbolised by the prominence of the football stadium in the urban landscape. All of our football clubs started life as voluntarist organisations, a coming together of like-minded members of the community with a shared passion for a local team. Many amateur clubs remain member based organisations, reliant on their members for funding as well as for matchday support. Many rugby and cricket clubs also remain member based organisations.

As such, sporting clubs, and football clubs in particular, stand alongside the church as one of the most concrete examples of David Cameron's Big Society, a coming together of citizens in the interests of local community and shared identity.

1 O Wyman, 'Playing and Watching Football'

2 www.ekklesia.co.uk/node/11080

3 www.guardian.co.uk/media/2008/apr/30/tvratings.television

However, there is an extra dimension which complicates the relationship between football and its community and that is the commercial dimension. Starting as long ago as the nineteenth century, most football clubs (and all of those in the top flight) evolved from membership based organisations to limited liability companies. Originally this move was triggered by the wish of owners to protect themselves against personal liability in the professional game, but also to provide capital to build a ground of their own. Further migration was driven either by financial pressure or financial ambition: the rescue of a club from financial ruin; the ambition of the club for more investment capital to enable the team to compete at a higher level; the determination of any outside investor for greater say in the affairs of the club in return for his investment; and the belief on both sides (sadly, normally mistaken) that investment in the club would bring financial rewards (which could only be captured through a limited liability structure).

In recent times the tide of commercialisation has been symbolised by booming revenues, TV and sponsorship deals, high-priced takeovers and stock market listings.

This paper is specifically not against the commercialisation of the game. We welcome the significant new funds that have been invested in the game and the substantial benefits that have arisen in terms of the purchase of quality players, the entertainment value of the Premier League and the success of English clubs in European competitions.

However, in recent years, the right balance has not always been struck between the interests of the community and the interests of commerce, whether that be in regard to the increasing financial instability – and even bankruptcy of many clubs – the use of acquisition debt in takeovers, the loss of community involvement in the running of clubs and the detachment of many clubs from their local moorings.

This pamphlet will explore what is the right balance between the new commercial dimension and the original, and enduring, 'Big Society' character of the game. We will look at examples of good practice in other football leagues and in other sports, as well as proposing reforms to the governance of football clubs which will protect community involvement without compromising success on the field.

■ 2. The commercialisation of English football and its attendant benefits

The launch of the Premier League in 1992 is rightly seen by many as a turning point in the commercialisation of the English game. The English Premier League has been a huge commercial success, transforming England's old first division into the most watched and lucrative league in the world. From the initial £304 million five year deal struck in 1992 the value of TV rights has risen more than tenfold to the most recent five year deal of £3.6 billion commencing in 2010.⁴

Particularly striking is the success in overseas markets, with the latest agreement generating £1.4 billion – around 44 per cent of the total.⁵ The Premiership also dwarfs all major rivals in terms of the income from selling its TV rights in foreign markets:

■ Premier League:	£479m
■ La Liga:	£132m
■ Serie A:	£74m
■ Bundesliga:	£35m
■ Ligue 1:	£26m ⁶

Premier League clubs have also been successful in boosting revenues from other commercial sources (sponsorship and advertising) and from match day sales, although there is not the same gap vis-a-vis other countries as exists in relation to TV rights (see Table 1).

The total commercial revenue of the top four German clubs in the year 2009/10 was €375.8 million compared to €301m for the top four English clubs. In fact, if German clubs could sell TV rights at the same level as Premier League teams could, they would be ahead of English clubs in terms of revenue.

Overall the aggregate revenues of the 20 Premier League clubs have risen by an average of 16 per cent per year between 1992 and 2008.

4 Deloitte Football Money League, 2011.

5 www.independent.co.uk/sport/football/premier-league/premier-league-nets-16314bn-tv-rights-bonanza-1925462.html

6 www.sportingintelligence.com/2010/08/21/revealed-premier-leagues-global-value-dwarfs-all-major-rivals-220801/

Table 1: Top four German clubs vs top four English clubs commercial revenues

Club	Commercial revenue (€ million)
Bayern Munich	172.9
Manchester United	99.4
Schalke 04	79.0
Liverpool	75.8
Chelsea	68.8
Hamburger SV	63.2
Borussia Dortmund	60.7
Manchester City	57.0

Source - Deloitte Football Money League, 2011

In comparison the UK economy grew on average by 5.4 per cent per year in the same period.⁷ In the UEFA Benchmarking report for the Financial Year 2009, English Premier League clubs had average revenues of €122m, compared to the next highest, Germany at €86m.⁸

Distribution of TV income between Premier League clubs is relatively even, certainly compared to other overseas leagues. Half of the money from domestic rights is split equally between the 20 clubs; 25 per cent is paid in facility fees, based on how often a club is shown on TV (with each club guaranteed a minimum of ten appearances, maximum of 24); and 25 per cent is paid in merit payments, determined by the club's final league position. In addition, each club receives an equal share of overseas rights.

All this means that the top earning club (Manchester United) received £53 million in 2009/10, while the bottom earning club, Portsmouth, still received a very healthy £31.8 million. The ratio of average reported income for the four biggest clubs in England against all other clubs in the top flight is 3.6, compared to Spain which has a ratio of 7.1 and Italy with 4.1.⁹

The commercial development of England's lower leagues has been more limited. Total revenues of the three Football League divisions in 2008/09 were just above £500m, shared between 72 clubs.¹⁰ While there are clearly some 'trickle down' benefits from the success of the Premier League in terms of player transfers and revenues from cup competitions,

7 www.deloitte.com/view/en_LV/lv/press/lv-press-releases-en/efc2cb51ed812210VgnVCM100000ba42f00aRCRD.htm

8 UEFA Club Licensing Benchmarking Report Financial Year 2009, p.64

9 UEFA Club Licensing Benchmarking Report Financial Year 2009, p.65

10 www.deloitte.com/view/en_GB/uk/industries/sportsbusinessgroup/7642f7a3db6a1210VgnVCM200000bb42f00aRCRD.htm

the money is shared out fairly thinly amongst a large number of needy recipients and the longer-term trend is for these revenues to decline, as the domestic transfer market continues to weaken, and cup competitions erode in importance.

Nonetheless, the improved revenue base of football overall has brought with it higher levels of investment in stadia and club facilities. As a result football has become more family friendly and levels of hooliganism have decreased since the 1970s and 1980s. A report by Leicester University in 2002 found that many adults were 'pleasantly surprised by how family friendly football has actually become and by the general changes which have occurred to the condition of the sport.'¹¹ In 1988/89 there were 6,185 arrests at football matches in England and Wales¹²; this figure had declined to 3,391 in 2009/10 with the Home Office report stating, 'the downwards trend in football arrests is continuing'.¹³ Significantly there were no arrests at 70 per cent of matches and two or fewer arrests at 85 per cent of matches with police not being needed at 47 per cent of matches.¹⁴

Finally it could be argued (and is by the Premier League) that enhanced revenues feed through into higher quality players and in turn into a virtuous circle of English success in European club competition. Before last season there had been at least one English club in the semi-finals of the Champions League for seven years. There are of course wider issues stemming from the high share of foreign nationals in the Premier League, particularly in relation to the impact on the national team, but these issues lie beyond the scope of this paper.

11 www.le.ac.uk/so/css/resources/factsheets/fs14.html

12 www.le.ac.uk/sociology/css/resources/factsheets/fs1.html

13 Statistics on Football-Related Arrests & Banning Orders Season 2009-10.

14 *Ibid.* p.2

■ 3. But all is not well...

Unfortunately, the success of the Premier League in generating TV and other commercial revenues has not translated into broader financial health for the national game. Far from it.

First of all, as we have seen above, the revenue benefits from enhanced TV and commercial income are heavily concentrated within the Premier League.

But secondly, and even more importantly, apart from a very small number of elite clubs, football has a very poor record of translating strong revenues into bottom line profitability. The combined operating profits of the Premier League in 2008/09 were just £43.8m.¹⁵ Fourteen of the twenty clubs in the Premiership operate at a loss (see Table 2).

The financial health of the lower leagues meanwhile is nothing less than dire. 66 professional clubs have gone into administration since 1992. This is a critical issue and one which has been addressed by many including Greg Clarke, the Chairman of the Football League who was quoted during an evidence session for the Inquiry into football governance: "If I had to list the 10 issues that keep me awake at night about football it would be debt, one to 10... It [Deloitte Football Money League] talks about debt in the Football League this year in excess of a third of a billion pounds. That for a football league that, if you aggregate across all the clubs, makes no profit. You are trying to service a third of a billion pounds worth of debt with no positive cash flow and no profit."¹⁶

Football is Bad Business

Why do strong commercial, broadcasting and matchday revenues consistently fail to translate into profitability? The answer is that for any other than the small number of clubs who regularly compete in the lucrative European competitions, football is bad business.

15 www.independent.co.uk/sport/football/premier-league/the-debt-league-how-much-do-clubs-owe-1912244.html

16 G Clarke, House of Commons, Oral Evidence, taken before the Culture, Media and Sport Committee, Football Governance, Tuesday 15 February 2011.

Table 2: 2008/09 operating profits of clubs in the Premier League in the 2009/10 season

<p>Manchester United Turnover: £278.5m Operating profit: £91.3m Net debt: £716.6m Interest payment: £68.5m</p>	<p>Tottenham Hotspur Turnover: £113.0m Operating profit: £18.4m Net debt: £45.9m Interest payment: £8.0m</p>	<p>Birmingham City Turnover: £49.8m Operating profit: £13.7m Net debt: £12.0m Interest payment: £0.26m</p>
<p>Arsenal Turnover: £312.3m Operating profit: £58.8m Net debt: £297.0m Interest payment: £16.6m</p>	<p>Stoke City Turnover: £11.2m Operating profit: -£7.8m Net debt: £2.3m Interest payment: £0.5m</p>	<p>Blackburn Rovers Turnover: £50.9m Operating profit: -£6.8m Net debt: £20.3m Interest payment: £0.8m</p>
<p>Liverpool Turnover: £164.2m Operating profit: £24.9m Net debt: £261.7m Interest payment: £36.5m</p>	<p>Everton Turnover: £79.7m Operating profit: £6.3m Net debt: £37.9m Interest payment: £4.1m</p>	<p>Manchester City Turnover: £87.0m Operating profit: -£34.2m Net debt: £194.4m Interest payment: £14.4m</p>
<p>West Ham Turnover: £71.6m Operating profit: -£32.8m Net debt: £114.9m Interest payment: £3.0m</p>	<p>Burnley Turnover: £11.2m Operating profit: -£8.9m Net debt: £11.9m Interest payment: £2.7m</p>	<p>Bolton Wanderers Turnover: £52.3m Operating profit: -£5.3m Net debt: £58.4m Interest payment: £3.9m</p>
<p>Fulham Turnover: £53.7m Operating profit: -£2.1m Net debt: £164.0m Interest payment: £1.0m</p>	<p>Portsmouth Turnover: £70.5m Profit: -£17.0m Net debt: £57.7m Interest payment: £6.6m</p>	<p>Hull City Turnover: £11.2m Operating profit: -£9.2m Net debt: £17.1m Interest payment: £0.4m</p>
<p>Aston Villa Turnover: £75.6m Operating profit: -£13.1m Net debt: £72.3m Interest payment: £5.7m</p>	<p>Wolves Turnover: £18.2m Operating profit: -£1.6m Net debt: £13.0m Interest payment: £0m</p>	<p>Wigan Athletic Turnover: £46.3m Operating profit: -£17.0m Net debt: £54.0m Interest payment: £1.5m</p>
<p>Sunderland Turnover: £63.5m Operating profit: -£2.4m Net debt: £48.8m Interest payment: £0.7m</p>	<p>Chelsea Turnover: £190.0m Operating profit: -£11.4m Net debt: £511.6m Interest payment: £0.7m</p>	

Source - www.independent.co.uk/sport/football/premier-league/the-debt-league-how-much-do-clubs-owe-1912244.html (Figures for 2008-09)

It is an immutable law of capitalism that the more capital enters an industry the more returns go down. This basic law is evident everywhere from shipping to banking to airlines. In the case of football, not only is there unlimited capital, there is *unlimited irrational capital*. A significant number of the owners are looking for returns beyond the purely financial and therefore do not apply the normal disciplines of investing. They are irrational with their capital.

Where does the irrational capital end up? With the players. In 2008/09, 62 per cent of Premier League turnover was spent on players, according to the latest UEFA Benchmarking report.¹⁷ Our Continental cousins were no better. In Serie A, 72 per cent of club turnover went on players and in La Liga 62 per cent. Of the major leagues, only the Bundesliga managed to keep player wages down, to 52 per cent of turnover.¹⁸

The culprits in this arms race (although arguably it is not their fault) are not the big clubs, but the small clubs trying to keep up. In the 2009/10 season, Manchester United spent only 46 per cent of turnover on player wages and Arsenal 50 per cent. But many English clubs spent over 70 per cent and Manchester City spent 107 per cent (see Table 3).

Does it matter if a lot of money is wasted by irrational owners and ends up in the pockets of players? Well, in many respects it does not, or certainly not enough to warrant government intervention.

These are consenting adults. If a self-made tycoon wants to shower his life's fortune on a football club he should be free to do so. Indeed, communities and towns like Blackburn, Reading, Sunderland, Middlesbrough and Wigan, have arguably benefited from what might be called the "benefactor model" of ownership, even if the local overspend has a highly distorting impact on the overall football 'market' which makes it impossible for other clubs to keep up.

Limits to the Benefactor Model

The problems arise when the owners of a club do not operate in the interests of the local community; when, instead of supporting the community, they actually take money out of the club; when they burden the club with unsustainable levels of debt; or when they effectively mortgage the long term future of the club through financial excess.

In recent years, there has been a huge increase in the indebtedness of English football clubs; the combined net debt of the Premier League currently stands at over €3.5 billion.¹⁹ According to the 2009 UEFA Benchmarking report, "English clubs, where stadium ownership is the norm, contain on their balance sheets an estimated 39 per cent share of

17 UEFA Club Licensing Benchmarking Report Financial Year 2009.

18 *Ibid.* p.79

19 UEFA Club Licensing Benchmarking Report Financial Year 2009.

Table 3: Premier League wages as percentage of turnover in the Premier League (2008/09)

Club	Wages (£m)	Wages as % of turnover
Chelsea	149	68
Manchester City*	133	107
Manchester United*	132	46
Arsenal*	111	50
Liverpool	90	57
Tottenham*	67	56
Aston Villa	61	77
West Ham	60	79
Portsmouth	55	78
Sunderland	50	77
Everton	49	62
Bolton*	46	86
Blackburn	46	91
Fulham	46	69
Wigan	42	91
Hull	34	66
Stoke	30	56
Birmingham	27	99
Wolves	17	92
Burnley	13	120

* 2009/10 figures

Source: <http://swissramble.blogspot.com/2010/11/why-bolton-have-so-much-debt.html>

the total value of European balance sheet fixed assets and 46 per cent of Europe-wide net bank and commercial debt" (See Figure 1).

Of course, the UEFA report is heavily influenced by the leveraged buyouts at Liverpool and Manchester United. In both cases, investors with no link to the local community used high and excessive levels of debt to take over the football clubs, effectively burdening the clubs with high financial charges, undermining the ability of the clubs to compete financially with their European peers, and increasing the burden on the local community through higher ticket prices.

In the (admittedly extreme) case of Manchester United, it has been estimated²⁰ that between the acquisition of the club in June 2005 and year-end 2010, the Glazer family extracted a total of £344 million from the club, broken down as follows:

Box 1 - Liverpool FC

In February 2007 Tom Hicks and George Gillett had an offer formally accepted for Liverpool Football club, valuing it at £218.9m, including £44.8m in debt.²¹ Liverpool became the third Premiership club after Manchester United and Aston Villa to be bought by Americans. It was not soon, however, until alarm bells began to ring when it transpired that the partners had borrowed around £200m to acquire the club from the Royal Bank of Scotland, with these debts immediately injected into the club.²²

Supporter protests began against the pair relatively early on in their ownership. Undelivered promises concerning a new stadium and public disagreements with the manager and other executives (including Rick Parry just 24 hours after the 19th Anniversary of the Hillsborough Disaster) suggested to the fans that Hicks and Gillett knew little of and showed scant respect to the club's illustrious traditions. The most serious problem, however (undoubtedly contributing to the feeling they cared little about the club itself) was the mounting debt into which the club was falling. For the year to August 2008, the club made a £42.6m loss, including £36m paid in interest payments that 'Kop Football Holdings' had to make to service the debt taken on by the club.²³ These losses had risen to £54.9m in July 2009, with an overall debt of £472.5m.²⁴

In October 2010, the club was eventually sold to New England Sports Ventures, with John Henry as principal owner, for a figure believed to be around £300m. Gillett and Hicks fought long and hard to prevent the sale for what they believed was well below the value of the club, Hicks calling the deal an 'epic swindle' after the board voted 3-2 for the sale.²⁵ Hicks believed the club was worth up to £800m,²⁶ and although the £300m paid for the club was around £80m more than they originally paid for it, the pair made collective losses of £144m²⁷ due to payment of interest rates and penalty payments.

The legacy the two have left at the club has been nothing short of catastrophic according to supporters. In the two seasons before Hicks and Gillett took over the club, they won the Champions League (2005) and the FA cup (2006); at the time of departure they were in the relegation zone of the Premier League.

21 news.bbc.co.uk/sport1/hi/football/teams/l/liverpool/6323037.stm

22 www.sportingintelligence.com/category/law/

23 news.bbc.co.uk/1/hi/business/8084182.stm

24 www.timesonline.co.uk/tol/sport/football/premier_league/liverpool/article7120084.ece

25 news.bbc.co.uk/1/hi/business/8084182.stm

26 online.wsj.com/article/SB10001424052702303491304575188380003762918.html

27 www.telegraph.co.uk/sport/football/teams/liverpool/8047093/Tom-Hicks-vows-to-fight-all-way-as-Boston-Red-Sox-owners-lie-in-wait-to-take-over-Liverpool.html

Box 2 - Portsmouth Football Club

In 2003 Portsmouth FC was promoted to the Premier League and stayed there for seven years, initially under the ownership of Milan Mandaric and subsequently Alexandre Gaydamak. During this time, the club was a competitive team in the Premiership and actually won the FA cup in 2008. However success was bought at a heavy price of accumulated debts and during the 2008-9 close season the debts began to be called in, leading to a major exodus of players. Successive new owners, Sulamin Al Fahim and Ali Al Faraj, failed to stem the rot. The club was forced to sell all its star players and became the first Premier League team to go into administration in early 2010. The club was relegated last season and is currently in the Championship.

During the 2003-10 period, the club spent well beyond its means to the extent of being completely reliant on outside funding. Essentially they were relying on an 'Abramovich' or 'Sheikh Mansour'-type figure which they believed they had in Gaydamak (and subsequently Al Fahim), when in reality these individuals had nowhere near as much money to invest as everyone thought.

Most of the deals for players and wages were made with clauses which would come back to bite the club when times got bad. In the administration report (April 2010) it was disclosed that the club owed: £9.7m in agents and scouting fees and £17.3m in unpaid transfer fees²⁸ as well as £17.1m due to HMRC in unpaid PAYE, NIC and VAT on ticket prices, merchandising and player purchases.²⁹ The club had essentially been using the Treasury as a bank. The club also owed several million pounds to local creditors, money that was effectively lost to the local community.

The total debt reported in the Administrators' Report was £108.6m.³⁰

Examples like Portsmouth and Leeds United grab the footballing headlines. But there is also a wider unease about the increased indebtedness, the commercialisation of the game and its impact this can have on local communities, which shows up in opinion polls such as the Four Four Two Fan 2010 Fan Census in Box 3.

Such figures would suggest the FA is badly out of touch with public opinion when they state in their response to the Select Committee enquiry: "It is the belief of The FA that the aggregate level of debt

28 Portsmouth City Football Club Ltd (In Administration), 'Report to Creditors pursuant to Paragraph 49 of B1 of the Insolvency Act 1986'.

29 Ibid. p.10

30 www.guardian.co.uk/football/2010/apr/21/portsmouth-report-creditors

Box 3 - Four Four Two Fan Census 2010

Do you think your club treats you like:

A customer: 57.1%

A valued fan: 24.8%

Someone to be exploited: 12.4%

Don't know: 5.7%

Is debt in football a problem?

A huge problem: 85.7%

A small problem: 13.7%

No problem: 0.6%

Do you expect a PL club to go out of business in the next 3 years:

Yes: 80.2%

No: 19.8%

Should there be a limit to the amount of debt an owner can incur in order to purchase a football club?

Yes: 93.9%

No: 6.1%

Does the Premier League damage the national team?

Yes: 53.7%

No: 46.3%

What is the biggest obstacle to the FA running the game?

Poor leadership: 45.2%

The Premier League: 23.3%

Agents: 12.1%

Lack of money/cost of Wembley: 7.2%

The players: 6.8%

Other: 5.4%

Which is the biggest problem facing football?

Debt: 53.2%

Sepp Blatter: 17.1%

Young player development: 11.2%

Players' Behaviour: 8.2%

Agents: 4.5%

Other: 3.2%

Match fixing: 1.5%

Racism: 1%

Performance enhancing drugs: 0.1%

Four FourTwo Magazine, Dec 2010.

(1,513 responses on Four FourTwo website between 29th Jul-31st Aug, 2010).

funding in itself is not necessarily a problem that needs addressing.”³¹ Their stance does not have much support from the 85.7 per cent of the fan base who believe debt in football is a ‘huge’ problem.

The unease is even more pronounced among supporters of Manchester United and Liverpool FC, arguably the two clubs that have suffered most from the injection of debt by ‘bad owners’. According to a recent survey by Co-operatives UK, 83 per cent of Manchester United fans and 72 per cent of Liverpool fans who expressed an opinion felt their club would be in better hands if it was owned co-operatively. Across the country 56 per cent of fans who gave an opinion feel the same way according to the survey.³²

In the long run the benefactor model is harmful to communities, primarily in two ways. The first is that having a wealthy owner, who pays for everything, discourages supporter groups from active participation in club-based activities. This means the sport loses out on community-building aspects seen at clubs like FC United of Manchester, where 10 per cent of the regular crowd volunteer together in the running of the club, or Union Berlin in Germany where around 1,600 supporters put in an estimated 90,000 hours of volunteer work to help build the new stadium, saving the club close to two million Euros after the DFB ruled that the previous stadium no longer met safety requirements.³³

As the Four Four Two survey showed, many fans feel like a customer (57.1 per cent) as opposed to a valued fan (24.8 per cent) with some even feeling they are exploited by their club (12.4 per cent).

Second, the benefactor model can discourage the development of a sustainable financial basis for clubs which become little more than ‘subsidy junkies’, without a community-based foundation for their finances, and therefore highly vulnerable to the departure of the ‘benefactor’.

It is perhaps easier to imagine high levels of community participation (both financial and otherwise) in the lower leagues, but even at the bigger clubs, the potential for democracy in action, with supporters involved in voting about club decisions as well as attending AGMs etc., can be just as powerful, as is shown at ‘big’ clubs in Germany and Spain (Barcelona in particular).

In summary, the benefactor model heavily distorts the finances of the national game, promotes financial instability at the club level and can be a significant discouragement to fan participation and community

31 The Football Association response to the Culture, Media and Sport Select Committee Inquiry into Football Governance, 26 January 2011.

32 Conducted by YouGov on behalf of Co-operatives UK: <http://www.uk.coop/node/7535>

33 www.dw-world.de/dw/article/0,,4243189,00.html

involvement. These flaws are significant and while this paper does not propose wholesale overhaul of the existing model, we do propose (from Section 5 below) a number of reforms which will make it more consistent with greater supporter ownership and community involvement.

■ 4. Reviewing ownership structures for football clubs

There is more than one model of football club ownership, ranging from the public limited company to outright mutualisation, with a spectrum in between. Variety is in itself something to be encouraged, reflecting genuine differences in the circumstances of different clubs. But to date variety in the English game is extremely limited. The overwhelming majority of football clubs in England & Wales are organised as Limited Liability Companies. The different models are reviewed below.

The Plc Model

The majority of professional football clubs in the English Football League are organised as Private Limited Companies with five as publicly quoted companies and a few more as public limited companies, which do not offer shares on an open market. This preference dates back to the nineteenth century when those running clubs opted for a limited liability structure in order to protect themselves from personal liability in the new professional era and in order to raise capital to build a ground.

The main distinguishing features of the limited company model from the perspective of the owner are: first, that they will be able to participate in the (hoped for) profitability of the business; second that owners of the shares participate in the profits of the company in proportion to the level of their investment; and third that votes are cast in proportion to the number of shares held rather than on a 'one member, one vote' basis.

With the growing commercialisation of the game, the first motive has recently become more important (at least in theory), certainly in relation to Premier League clubs; starting with the listing of Tottenham Hotspur in 1983, a succession of football clubs came to the market, and at one stage around twenty clubs had stock market listings, enabling a wider range of investors to share in the dream of capital gains. However it is fair to say that this particular dream has now been fairly widely disabused, and few clubs, other than the small elite with potentially global brands, offer a realistic prospect of strong returns on investment.

Nonetheless, it is understandable that football club benefactors who are willing to invest substantial sums in a club should expect to see their investment rewarded with a proportionate share of the equity and voting capital, even (or, perhaps, all the more so) if they are investing without the prospect of significant returns.

What the limited company structure does not provide is any guarantee (via collective or individual director responsibility) of protection for the local community, or of the interests of wider stakeholders in the club (such as supporters).

Theoretically, UK company law does require (under section 172 of the Companies Act 2006) the directors of a limited company to take into consideration the wider interests of the company (including its community) when considering a takeover. Under the Act it is a director's duty to act in the way he considers, in good faith, would be likely to promote success of the company for the benefit of the members as a whole.

The list of factors that a director should have regard to includes:

- ⋮ long term consequences;
- ⋮ interests of employees;
- ⋮ relationship with suppliers, customers etc;
- ⋮ community and environment;
- ⋮ reputation.

However, one can have limited confidence in the application of the law to specific cases. There can be few better examples of where the duty on directors to consider wider community interests should have applied than the Glazer takeover of Manchester United in 2005. Although at that stage there was only a common law (ie. not statutory) duty on the directors to consider the best interest of the company, it is known that the board of Manchester United did consider the wider responsibilities to the Company and community when reviewing the Glazer LBO for the club and concluded that there was no justification for blocking the bid or attaching any conditions.

Industrial and Provident Societies

Industrial and Provident Societies (IPSs) are mutual societies under the 1965 Industrial and Provident Societies Act. These societies can either be a bona fide cooperative society or a society acting and trading for the benefit of the community. A number of non-league clubs, notably FC United of Manchester, Scarborough Athletic, Merthyr Tydfil and Clydebank, are constituted under the latter model.

The attraction of the IPS form lies not in its tax treatment (IPS are corporate bodies, and therefore to the extent there were any distributable profits,

would be liable to corporation tax), but in its mutual structure. An IPS generally has a nominal share capital. However, unlike a Plc, where the value of shares rises and falls with the success of the enterprise, shares in an IPS are par value shares which can almost only be redeemed (if at all) at par (face value).³⁴ The profit and loss of the IPS is therefore the common property of the members. The rules of the society must not allow distribution of the profits or assets to members; profits must be ploughed back into the business.

The share typically acts as a membership ticket and voting is on a one-member-one-vote basis (i.e. regardless of the nominal value of the member's shares). The statutory commitment to a 'one member one vote' democracy is probably the single most attractive feature of the IPS legal form from the perspective of supporter-based clubs.

While it is acknowledged the IPS model may not be appropriate for *all* clubs to adopt, the model (or models similar to it) comes close to embodying the notion of club as foremost a community with an economic dimension, rather than foremost an economic unit with a community dimension. The success of FC United, for example, both on and off the field, suggests that the IPS legal form is well suited to their needs, or at the very least not a hindrance; and for those clubs which wish to operate on a mutual basis, the IPS model is likely to become more widespread.

A number of county cricket clubs, including Lancashire, Yorkshire and Nottinghamshire, are also organised as an IPS (see Box 5). The use of such legal forms amongst some of the leading clubs in another major English sport is further testament to its viability.

It is to be noted that clubs with the IPS structure are technically not allowed to enter Football League competitions mainly because if an IPS goes into administration, it must either completely dissolve or can only be taken over by another IPS. The leagues argue that this will help ensure clubs do not go out of existence. But while it may be impossible for clubs officially to have IPS status in the football leagues, there is theoretically nothing stopping supporters trusts (which are almost all IPS's) having a larger stake in clubs.

34 There is a notion of 'withdrawable share capital' in an IPS which can have interest paid on it technically.

Box 4 - FC United of Manchester, IPS

FC United of Manchester was set up as an IPS (under the Industrial and Provident Societies Act 1965) by disaffected Manchester United fans in 2005 who opposed the takeover of Manchester United by the Glazer family. Their website states: "The material theft of a Manchester institution, forcibly taken from the people of Manchester, was the tip of a pyramid of destruction, with changing kick off times for the benefit of television, soulless all-seater stadia full of 'new' supporters intent to sit back and watch rather than partake in the occasion, heavy handed stewarding and ridiculously priced tickets propping it all up."³⁵

The founders of FC United believed that when football tried to satisfy the global market with Premier League football, it ultimately hurt the interest of the local community and fans, leading to a loss of community, identity and ownership.

Their stated aim was, "to create a sustainable club for the long term which is owned and democratically run by its members, which is accessible to all the communities of Manchester and one in which they can participate fully ... Above all we want to be seen as a good example of how a club can be run in the interest of its members and to the benefit to its local communities."³⁶

FC United has almost 2,500 members. Attendances have now averaged out around 2,000, a slight drop from when the club started but still significantly higher than the average at the level it plays at. The club achieved 3 running promotions in its first 3 seasons but has since stalled for a couple of years. It is currently seeking to build a new 5,000 Capacity stadium at Ten Acres Lane, in Newton Heath Manchester. This is an ambitious project costing £3.5 million and the money is being funded from a variety of sources, including local council grants and Football Foundation community grants.

The club is involved in many community programmes including 'Positive Activities for Young People', after school clubs and working with young offenders. This work led to the club winning Cooperative UK 'Cooperative Excellence Award' in 2009,³⁷ and has been a key contributor in raising support for the building of the new stadium, which again is aimed at regenerating the local area, and at providing a community sports hub with specific facilities put in place to help this. Over 10 per cent of the average crowd volunteers for the club in some way or another all motivated because they own a single share.³⁸

35 www.fc-utd.co.uk/history.php

36 www.fc-utd.co.uk/manifesto.php

37 www.ethos-pr.com/news/entry/celebrating-co-operative-excellence-awards-winner/

38 Supporters Direct written evidence to House of Commons Culture, Media and Sport Committee, Football Governance, 8 February 2001.

Box 5 - Yorkshire County Cricket Club

Yorkshire County Cricket Club was founded in 1863. In 1999 the club changed to IPS status to release members from an individual responsibility of the club's anticipated debt & borrowings (as would have been the case under the existing structure) required to finance the ground development. Other cricket clubs also took up this opportunity. The club has around 6,900 subscribing members full membership (£175 per year) is like a season ticket as it allows access to all home fixtures in the County Championship, the CB40 over competition and also the Twenty Cup at Headingley Carnegie and Scarborough (where the club plays its home matches). There are also other membership options such as Associate Membership and Twenty20 membership. It is officially a 'Members club' in that it is owned fully by the members. A nominal 5p share is allocated to subscribing members which is the total share issue, adjusted for 'leavers and joiners'.

The club board is elected by members at either AGMs or EGMs and it also has the power to change the rules of the club by a majority of two thirds. There is also a membership committee which 'was established to provide a representative body for the club membership. The committee meet with the club management on a frequent basis throughout the year to ensure that matters of substance affecting the membership as a whole receive the appropriate degree of discussion and consideration.' The committee is a 9-10 person committee with around 4 elected members, 4 co-opted members (asked to join because of specific expertise and experience in business and/or cricket matters) and the Chief Executive. Elections take place each year at the AGM with one elected member standing down each year giving a four year rotation. Finally the chairman produces a report on the year's key activities and this is published in the annual report of the club and reproduced in the Year Book.

Supporters' trusts/hybrids

English football boasts over 170 supporters' trusts with over 250,000 members.³⁹

All supporters trusts are organised as IPS apart from one – Southend United - which is a Company Limited by Guarantee, but is actively considering converting to an IPS.

Despite their clear public, non-profit character, supporters' trusts enjoy no special financial or tax status, and in particular do not enjoy charitable status, principally because the goal of supporters' trusts is influence in the club's governance, primarily achieved through purchasing equity. As the club is a for-profit company playing elite-level sport, it cannot be

39 Supporters Direct, 2011

Table 4: Noteworthy clubs with supporters' trusts holding a percentage share

Club	Approx. % of shares held by or associated with the supporters trust	Total Number of Directors
Arsenal	5	0
Brentford	60	4
Bury	14	1
Carlisle Utd	25.37	1
Exeter City	63	2
Ipswich Town	2.3	0
Swansea City	19.9	2
Tottenham Hotspur	0.1	0
Reading	1	0
Wycombe Wanderers	15	2

Source: Supporters Direct, 2010.

charitable, and so any entity like a trust which makes payments into it cannot be considered charitable.

62 of the 92 clubs in the Football League have supporters' trusts and of these, 28 own stakes (varying from 0.01 per cent to 63 per cent) in their respective clubs. The most significant supporters trust stakes are set out in Table 4.

Powers of supporters' trusts

Supporters' trusts hold varying powers, largely determined in relation to the size of their shareholding in the club, and negotiated within the context of powers normally applied under Company Law in relation to limited liability companies.

A number of clubs where supporters' trusts own minority holdings have granted the trusts board representation, but the nature of the representation is varied and normally determined by the specific circumstances of the original supporters trust involvement. The powers that come with the board representation are no more than any normal board member and/or minority shareholder.

In accordance with company law, the most significant shareholding thresholds are 25 per cent and 50 per cent. Ordinary resolutions require a simple majority of 50 per cent and Special Resolutions require a majority of not less than 75 per cent. Special Resolutions under the Companies Act include:

- the change of a company's name;
- the re-registration of a private company (whether limited or unlimited) as a public company limited by shares or vice-versa;
- the disapplication of pre-emption rights;
- the consent to a variation of class rights;
- approvals for the redemption of repurchase by the company of its shares.⁴⁰

Carlisle United and Lincoln City are the only clubs where the supporters trust is over the 25 per cent threshold without being a majority. They have not yet needed to exercise any minority blocking powers.

At 50 per cent, a supporters' trust controls the company and can exercise the normal powers of a majority shareholder. Thus Exeter City Trust (see box 6), as majority shareholder in Exeter City FC, effectively appoints its own board members which represent the Trust, and has the power to elect the majority of board members, although it chooses not to exercise this power.

Typically, the arrival of a supporters' trust onto the share register only occurs at times of crisis. Supporters' trusts at Leicester City, Northampton Town, Swansea City and York City were all set up in response to financial difficulties at the club and invited onto the share register as part of the solution.

Rarely have supporters' trusts been invited onto the board of a Football League without financial problems acting as a catalyst.

However, some clubs, such as Arsenal FC, have been highly encouraging of supporter ownership, offering greater access to club decision-making, even if not any substantive powers beyond the voting rights which come with shareholdings. In the case of Arsenal FC, the encouragement given by the board to the supporters trust may well be linked to the uncertainty over current ownership and the need to counter the influence of certain minority shareholders.

40 There are two main types of resolutions for English companies: ordinary resolutions and special resolutions. Ordinary resolutions require a simple majority of over 50 per cent and special resolutions require a majority of not less than 75 per cent. In order to have a vetoing power with regard to special resolutions, the Supporters Trust would need a holding of more than 25 per cent. The Companies Act 2006 (the "Companies Act") provides that, where any provision of the Companies Act requires a resolution of a company or its members and it does not specify what kind of resolution is to be passed, an ordinary resolution will be required unless the company's articles require a higher majority or unanimity.

Box 6 - Exeter City Supporters Trust

Exeter City Supporters Trust was set up in 2000 by a group of supporters concerned that the current owners “were running our much loved, but largely unsuccessful football club, into a crippling economic decline.”⁴¹ They achieved IPS status and sought to engage with the owners of the club with a view to buying shares. In 2003, following relegation from the Football League to the Conference, three of those running the club were arrested (two of them were subsequently convicted of a series of offences) and the former chairman, who still owned the majority of shares, asked the Trust to take over the day to day running of the club or face winding it up. The Trust paid £20,000 for this privilege and inherited debts of £4.5m. Eventually a CVA was negotiated to pay 7.1p in the pound to all debtors. Meanwhile working parties (consisting almost entirely of volunteers) set about restoring the ground to playing standard and doing all the things that hadn’t been done for many seasons in the way of maintenance.

In 2005 the club was drawn against Manchester United in the FA cup and an away draw and TV money from the resulting replay helped significantly with the debts and in December 2005 had concluded its CVA and was effectively debt free.⁴² The club has been promoted twice since being in the Conference and is now in League One – a remarkable achievement from the situation in 2003.

The Trust currently holds 53.8 per cent of the issued shares, but when the shares resting in the suspense account and other untraceable shareholders are considered, the Trust has a de facto strength of 63 per cent. The remaining shares are held by a total of 209 other shareholders, only two of whom hold over 5 per cent and none over 7.5 per cent. More than 100 shareholders have less than 5 shares each - [total shares in the company is £40,000].

Directors are appointed for the specific skills and experience they bring to the board. There are only two members directly nominated by the Trust, out of a total of nine directors. For the rest, there is a process involving the Club Board Appointments Panel (CBAP) – comprising two current non-executive directors and two members representing the trust Board of Society - the BoS). Recommendations (from either the club board or the Trust) for appointments to the club board are referred to CBAP, and the CBAP make the final recommendation to the club board.

⁴¹ www.ecfcst.org.uk/home/trust-history/

⁴² *Ibid.*

Box 7 - Arsenal Fanshare Scheme

In July 2010, Arsenal won plaudits for launching a “Fanshare” scheme, offering supporters to buy shares at one hundredth of the nominal value of shares in Arsenal Holdings Plc and promising participation, through the shares, in the ‘Custodianship’ of the club. Fanshare was set up by a group of Arsenal fans who decided it would be worth trying to put the club back into the hands of the fans. They decided to make the Fanshare a separate IPS organisation to the Supporters Trust (set up in 2003, which is also an IPS) for legal and tax reasons.

Participants pay either by direct debit per month or in lump sums and are technically allowed to own as many of the 62,217 shares in the club as possible. However, the Fanshare has imposed a limit of £12,000 per year for participants so that one person does not dominate with many more shares than others. Each share in Arsenal is worth around £9,500. The Fanshare splits payments into one hundredths of a share at £95 each. Participants will then buy a one hundredth share at a time, until they are able to fully buy a whole share. There are currently just over 4,000 participants in the scheme and they have around 5 per cent of the shares in the club. As well as buying a share in their club, participants receive a certificate of membership, the Arsenal CEO shareholder email, and entrance into a ballot to attend AGMs. The slogan of the Fanshare is: ‘Shared influence, shared ownership, shared values’.⁴³

The Arsenal Fanshare scheme shows that when supporters groups come together and organise themselves in the way the Arsenal fans have, they can command respect from their clubs as well as acquiring shares in the club. Arsenal FC has been very supportive of the Fanshare movement and set up regular contact with the group.

Overseas Models

German Football’s 50+1 Rule

German clubs are genuine members’ clubs, the majority of which run amateur sections for a whole host of sports, as well as a section running football, including a ‘first eleven’ (run in the top two divisions on a professional basis).⁴⁴ It was not until the 1998 that the German FA – under pressure from Borussia Dortmund – changed its statutes, allowing a club to create a limited company within which to run its professional football operations. Since 24th October 1998 it has been possible for the country’s 36 first and second-tier clubs to spin off their ‘licensed football’ departments into a limited company.

43 www.arsenalfanshare.com/

44 For more information on German 50+1 Rule, see ‘What is the Feasibility of a Supporters Direct Europe’, Jan 2009.

As football was opening itself up to the financial markets and thus to potential outside influences, clause 8, paragraph 2 was added to the articles of the German Football League, specifying that where such a spin off takes place the parent club must hold at least 50 per cent of the voting rights, plus one further vote, in the limited company.

A year later Borussia Dortmund became the first club to spin off its football operations, using a partnership structure to comply with the 50+1 rule (see Box 8). Interestingly, just as Dortmund were the first club to explore these structures, they were also the first club to suffer an English-style problem of chronic club-threatening debt. Dortmund won the Champions League in 1997, but by 2000 had overspent excessively on the basis of assuming continued success to service the debt. The club spent much of the last decade in financial difficulties and is only now emerging in better health.

Box 8 – Borussia Dortmund

In 1999 the Borussia Dortmund members' annual general meeting voted to spin off the club's taxable business operations. A limited partnership (Borussia Dortmund GmbH & Co. KGaA) was founded, with Borussia Dortmund Geschäftsführungs-GmbH, a 100% subsidiary of the members' club, designated as the general partner. A 'general partner' in a German limited partnership has full control of the business. This corporate structure therefore satisfies the 50+1 rule.

At the club's AGM on 26th February 2000 a resolution was passed to float the limited partnership on the stock market. This was done on 31st October of that year. Participants in a partnership of this kind, other than the 'general partner', have no control over it, i.e. people buying shares in 'Borussia Dortmund' on the stock market have no control over how it operates. That control rests solely with the 'general partner', which in this case is wholly owned by the club. The club members thus have control. The largest investor, a German businessman holds just over 10%. 80%+ of the equity is spread between numerous small investors.

Other top tier clubs who have adopted this 'limited partnership' form of business to satisfy the league requirements are Hannover 96 (100 per cent owned by the club), FC Köln (100 per cent owned by the club) and Werder Bremen (100 per cent owned by the club)

Other clubs have spun off their professional football operations into more straightforward forms of limited company (e.g. Gesellschaft mit beschränkter Haftung (company with limited liability) – GmbH or Aktiengesellschaft (literally: shares company) - AG), in which the club maintains a majority holding. In the top tier these are FC Bayern Munich (AG - club owns 87.4 per cent), TSG Hoffenheim (GmbH – club owns 4 per cent, Dietmar Hopp 96 per cent with 49 per cent voting rights), VfL

Wolfsburg (GmbH – Volkswagen own 100 per cent), Bayer 04 Leverkusen (GmbH – Bayer own 100 per cent), Borussia Mönchengladbach (GmbH – club owns 100 per cent) and Eintracht Frankfurt (AG – club owns 100 per cent).

Top flight clubs that have not spun-off their professional football operations and continue to operate as ‘pure’ members’ clubs are SC Freiburg, Hamburger SV, FC Kaiserslautern, 1. FSV Mainz 05, FC Nuremberg, FC St. Pauli, FC Schalke 04 and VfB Stuttgart.

While the 50+1 rule has made it impossible for Russian oligarchs, American speculators or Arab sheikhs to acquire control of German football clubs, some of the clubs’ business managers dislike the fact that the rule makes it hard for them to attract major outside investment and therefore to compete financially with the big clubs in England and Spain. One of these is the president of Hannover 96, Martin Kind, who tabled a motion at a German Football League members’ general meeting in November 2009 proposing that the rule be abolished. But, the members, the 36 clubs of the top two divisions, voted 32-1 against the motion with three abstentions.⁴⁵

However, the corporate structure in no way impedes German clubs from performing well in terms of generating commercial revenues. On the contrary, according to the most recent Deloitte Survey, German clubs punch significantly above their weight in terms of commercial revenues (see Table 5).

Of the top 10 commercial revenue generating clubs in Europe, four are German, even though all but one of these are outside the top 12 for overall revenue. A German club also tops the entire commercial table, Bayern Munich with €22.1m more commercial revenue than the second placed Real Madrid; and this is with 87.4 per cent of the joint stock of the club owned by the club’s members. After tax profit for the club in the 2009/10 season rose 20 per cent to €2.9m.⁴⁶

It is clear from this that a model of club ownership with the key stakeholders, the fans, at the centre does not mean a reduction in healthy commercial revenue. In fact, if it is introduced under the right conditions (i.e. tighter financial regulations and stricter ownership rules), it can mean higher commercial income, as evidenced by the table above as clubs cannot rely on a small number of benefactors for their main income as evidenced by Table 5.

45 Note: Two clubs are exempt from the 50+1 rule. This exemption applies where a corporate entity was able to show 20 years of continuous and substantial financial support for a club in the period prior to 1st January 1999. This exemption was effectively created to accommodate Bayer and Volkswagen, the owners of Bayer 04 Leverkusen and VfL Wolfsburg respectively.

46 www.fcbayern.t-com.de/en/news/news/2010/26911.php?fcb_sid=53f8dacfa4d26bd44aaab3ee031d7e9e

Table 5: Top 10 commercial revenue generating clubs in Europe

Rank	Club	Revenue €m	% Of Overall Revenue	Overall Money League Ranking
1	Bayern Munich	172.9	53%	4
2	Real Madrid	150.8	34%	1
3	FC Barcelona	122.2	31%	2
4	Manchester United	99.4	28%	3
5	Schalke 04	79.0	57%	16
6	Liverpool	75.8	34%	8
7	Chelsea	68.8	27%	6
8	AC Milan	63.4	27%	7
9	Hamburger SV	63.2	43%	13
10	Borussia Dortmund	60.7	N/A	Outside top 20

German clubs in grey

Box 9 - Barcelona FC

Barcelona Football Club is, in effect, a mutual or co-operative, owned and run by its members. According to its statutes, the club exists for the pursuit of sporting excellence. It can be dissolved upon approval of the general assembly of its members in which case its unmoveable assets are transferred to the local councils in which premises reside and movable assets, after payment of the club's debts, are donated to the Catalan government.⁴⁷

The members vote every few years for a new president (equivalent to Chairman in English clubs). The winner will serve for six years, and with the members' blessing, serve for a further six, terms introduced by the last president, Joan Laporta whose goal was to ensure the club's identity was not aligned too closely to one individual.

Barcelona was allowed to stay as a member club under the 1990 Sports Act (see section 9.3) as it was not in debt (along with Real Madrid, Athletic de Bilbao and Osasuna), whereas other clubs were required to become Sociedades Anonimas Deportiva (SAD) – private, non member-based companies.

It is noteworthy, however that the co-operative structure does not always bring financial success. Although Barcelona's revenues are the second highest in Europe (after Real Madrid's), part of this is due to the €140m TV deal they receive because Spanish clubs

⁴⁷ J Michie, 'New Mutualism, A Golden Goal? Uniting Supporters and their clubs', 1999.

can organise their own television deals. Club debts, however were audited as €442m in July 2010 with a loss of over €77m in the 2009/10 season.⁴⁸ The lack of financial regulation (with no licensing system in the Spanish League) and consequent transfer fees and wages are to blame for this debt which led to the controversial decision to stop paying Unicef for the privilege of wearing their name on the shirt, and turning to a €150m sponsorship deal with Qatar.⁴⁹

The lesson learnt from Barcelona, then, is not that by being a co-operative, football clubs have a definite means to financial and on-pitch success, but that they have a better route to deal with failure.⁵⁰ Presidents really can be held to account and ultimately sacked if the stakeholders are not pleased with what they are doing.

Australian Rules Football

In the AFL (Australian Football League) the majority of clubs are 'member clubs' in that they are owned (for the most part) by members (as they are with Barcelona and FC United of Manchester). Boards of the clubs are accountable to the members in that they are elected by members who can also vote them off (although voting rights do differ, at times, between clubs). Member-ownership has not prevented Australian Rules Football from becoming the biggest sport in Australia.

This also does not, importantly, affect the commercial revenue of clubs. In 2010 Collingwood Football Club, for example, had an annual turnover of \$75.5m (around £47m) with an overall profit of just over \$1m (over £600,000). Collingwood also boast over 58,000 members.⁵¹ This is an impressive figure for a country only a third of the size of the UK and for a sport that generally only attracts attention from Australians (compared to English Premier League football clubs, which have much revenue coming in from abroad). The club was in debt in past seasons but made a commitment for the 2010 season substantially to reduce the debt, which resulted in over \$8 million being paid off existing loans associated with the purchase of their two hotel leaseholds.⁵² The AFL has the biggest broadcast deal of any sport in Australia with the current deal worth \$780m (around £490m) over 2007-2011 with channels 7 and 10.⁵³ A new deal is being negotiated at present with reports that the deal from 2012-2016 could be worth up to \$1billion (over £600m).⁵⁴

48 news.bbc.co.uk/sport1/hi/football/europe/8859257.stm

49 www.independent.co.uk/sport/football/european/barcelona-ditch-unicef-for-huge-sponsorship-deal-2156427.html#

50 D Boyle, 'Barca, Fan Ownership and the Future of Football', 2010.

51 www.collingwoodfc.com.au/newsfeatures/news/newsarticle/tabid/5586/newsid/105462/default.aspx

52 Ibid.

53 www.smh.com.au/articles/2006/01/05/1136387573051.html?from=rss

54 www.heraldsun.com.au/sport/afl/b-afl-tv-rights-deal-could-be-just-weeks-away/story-e6frf9jf-1225994502803

■ 5. A consistent and comprehensive licensing regime

According to the most recent UEFA Benchmarking Report, 51 countries in Europe had some kind of domestic licensing or financial control system in place in the financial year 2009/10, up from 43 two years previously.⁵⁵ UEFA is actively seeking to encourage a more consistent and effective use of licensing regimes, and in the current season the only major European country without any form of domestic licensing regime is Spain.⁵⁶

England sneaks under the wire on the grounds that, according to UEFA, it does operate a “domestic licensing system beyond the top division”, a reference to the fact that there is some financial regulation of the lower leagues, which includes:

- a salary cost management protocol (SCMP) for League Two, limiting club spending on wages to 60 per cent of turnover;
- direct monitoring of club PAYE payments to HMRC and ability to impose transfer embargos in instances where clubs fail to meet tax payments;
- certain financial reporting requirements; and
- ‘sporting sanctions’ with a 10 point penalty applied to any club entering administration (applicable to all leagues).

The requirements are somewhat patchy and have been introduced unevenly; to describe them as a licensing regime would perhaps be too generous. This applies particularly to the Premiership where most of these specific rules do not apply, but where from 2012/13 those clubs aspiring to enter the Champions League will need to conform to the UEFA Financial Fair Play Rules. Effectively the lower half of the Premiership will be almost a licence-free zone.

The FA’s failure to implement a more comprehensive licensing regime is largely down to the conflicting interests of the different leagues

55 UEFA Club Licensing Benchmarking Report Financial Year 2009.

56 Ibid. p.24

and the conflicts of interest embedded within the FA governance (see section 9).

The FA should introduce a comprehensive and consistent licensing regime applicable to all the professional leagues.

Licensing regimes are primarily focused on club finances, and this should be the case here.

However, in addition to financial fair play, the UEFA regime now also includes:

- ⌚ the obligation for clubs to disclose spending on agents' fees;
- ⌚ the obligation for clubs to disclose the identity of the ultimate club owners; and
- ⌚ the obligation for clubs to appoint a supporter liaison officer to improve and manage the relationship with the fans.

The FA should seek to incorporate parallel measures, particularly to encourage supporter involvement, in its own licensing regime. We return to this in section 8.

■ 6. How to ensure the financial stability of football clubs - improving on UEFA's Financial Fair Play rules

2012 will see the introduction by UEFA of the *Financial Fair Play* rules, designed to ensure that clubs who play in UEFA competitions only spend what they earn. As the term implies, the main purpose of the rules is to ensure a financial level playing field between clubs competing in European competition; there is also a specific secondary objective of supporting the 'viability and sustainability' of European club football and of increasing the 'economic and financial capability of clubs'. The main purposes of the rules as stated by UEFA are set out in Box 10.

Curiously, the rules have been crafted in a way that focuses only on an income statement measure of financial sustainability (the 'break-even' rule); they do not put any specific restrictions on balance sheet debt, which means that in periods of ultra-low interest rates (such as the present time) it would still be possible for clubs to run what would normally be considered excessive debt burdens (the full text of the UEFA Financial Fair Play rules is set out in the Appendix). This is indeed the case with Manchester United, which would comfortably pass the UEFA Financial Fair Play rules despite the fact that its bonds are classified by financial markets as 'junk'.

America's NFL also takes the issue of financial sustainability very seriously, and in contrast to UEFA, imposes specific limits on the absolute amount of debt, which any club may incur. In 1988 the NFL rules stated that the absolute amount of debt, which any club could incur was limited to \$35 million. This has been periodically increased and since 2005 the debt ceiling stands at \$150 million.

Box 10: Main Purposes of UEFA Financial Fair Play rules

- a) to promote and improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;
- b) to ensure that a club has an adequate level of management and organisation;
- c) to adapt clubs' sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;
- d) to protect the integrity and smooth running of the UEFA club competitions;
- e) to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.

Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular:

- a) to improve the economic and financial capability of the clubs, increasing their transparency and credibility;
- b) to place the necessary importance on the protection of creditors by ensuring that clubs settle their liabilities with players, social/tax authorities and other clubs punctually;
- c) to introduce more discipline and rationality in club football finances;
- d) to encourage clubs to operate on the basis of their own revenues;
- e) to encourage responsible spending for the long-term benefit of football;
- f) to protect the long-term viability and sustainability of European club football.⁵⁷

57 UEFA Club Licensing and, Financial Fair Play Regulations, 2010.

Box 11- NFL

In order to take part in the two professional conferences the thirty two NFL teams must comply to the 'Constitution and Bylaws of the National Football League,' which was first applied in 1970 with many subsequent revised editions, the latest of which is the 2006 edition. In order to ensure financial transparency for the good of the game, the players and supporters, teams are only allowed to be in a certain amount of debt. In 1988 an amendment was created which stated: "each member club is prohibited from incurring more than \$35m of debt related to such a club".⁵⁸ On top of this, "debt includes any amounts...incurred by the principal and/or controlling owner of the club, for which the assets, stock or ownership interest of the club is pledged or hypothecated."⁵⁹ In 1996 the limit was raised to \$55m and it was stated that, "any debt of principal and/or controlling owner of a club secured by such owner's interest in the club shall count towards such club's \$55m debt ceiling on a dollar-for-dollar basis".⁶⁰ Each club must also annually submit compliance with this law otherwise they will not be allowed to compete in the league. In 2005 the debt ceiling was raised to \$150m⁶¹ and this is the current limit. What it essentially means is that owners cannot buy clubs with substantial amounts of borrowed money.

If a debt ceiling had been effective in English or European football, it would have prevented owners from buying clubs with substantial amounts of borrowed money (as the Glazers did at Manchester United or Hicks/Gillett did at Liverpool).

The FA's version of financial fair play rules should combine the best of the UEFA Financial Fair Play rules and the NFL's debt ceiling. In the case of the former, a limit of spending as a proportion of revenue should be imposed of around 100 per cent of turnover (as with UEFA Financial Fair Play rules). Clubs would be required to break even within one year of the rules being put in place. Then, within three years clubs should be required to spend no more than 60 per cent of their revenue on wages, otherwise the danger could be that clubs spend a high percentage on wages and neglect other aspects such as upkeep of the stadium. In the case of the latter (debt ceiling) a useful modification would be to define debt as a percentage of revenues rather than as an absolute number. An acceptable starting level would be 100 per cent of revenues.

It could be argued that having measures that apply only to the English game and are not Europe-wide may put English clubs at a disadvantage. However, in the case of Manchester United and Liverpool FC, limits to

58 Constitution and Bylaws of the National Football League, 2006.
 59 Ibid.
 60 Ibid.
 61 Ibid.

debt levels would have actually helped the clubs' long-term competitive positions.

Any such enhancement to licensing rules would fit firmly within the agenda of UEFA and even the European Commission which recently stated, 'The Commission welcomes the adoption of measures aimed at enhancing financial fair play in European football while recalling that such measures have to respect Internal Market and competition rules.'⁶²

A limit on debt in relation to turnover is supported by football club chairmen such as David Gold (West Ham United): "Turnover is a common denominator that all clubs have. So I'd start by saying that you cannot have debt that exceeds a year's turnover and if you do, you will be deducted points. When it is accepted you could later say that debt cannot exceed 75 per cent of turnover and so on. This is about getting 92 clubs to accept a principle and provided it's not too painful they will. To get everybody to agree you would have to start by asking what the worst case scenario is. And that is Manchester United. They have debt of £700m and they would have to address it. West Ham have £100m of debt at the moment and let's say turnover is £100m, we know that is barely sustainable. They were on the brink of going bust."⁶³

It also has the backing of the overall majority of football supporters. In a recent poll on the Football Supporters Federation website, 83 per cent of those who responded backed the UEFA Financial Fair Play rules.⁶⁴

62 Communication from the commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, European Commission, Jan 2011.

63 www.guardian.co.uk/football/2010/jan/31/premier-league-debts-panel

64 www.fsf.org.uk/polls/Do-you-back-Uefas-financial-fair-play-rules.php

7. Ensuring 'good' benefactors - enhancements to the Fit and Proper Person regime

"Football is the only 'business' where you can be a crook, everyone knows you're a crook, and you can carry on working."

*Greg Dyke, Chairman, Brentford FC*⁶⁵

Currently there are two sets of 'Fit and Proper Persons Regulations' in the English game, a unified 'Owners and Directors' Test' for the Football League and the Premier League which is applicable for all professional football in England; and a second 'Fit and Proper Persons Test' which is operated by the FA for all non-league football (see Table 6).

Since the amalgamation of the Football League and Premier League Tests in 2010, the Fit and Proper Persons Regime is broadly consistent across the game. There are few differences between the Owners and Directors Test and the FA's Fit and Proper Persons Test. Prospective owners are disqualified for a number of reasons including having influence in another club, having been convicted of offences such as corruption or perverting the course of justice, having been subject to a bankruptcy order and having been a director at either two or more football clubs that have entered into insolvency events or one football club that has been in two separate insolvency events. However it could be strengthened further.

Ownership review panels

The FA could appoint an independent third party body, including experienced ex-directors with a good track record and lawyers to act as an 'ownership review panel', reviewing any change of ownership with clubs. Currently the decision lies with the leagues' boards, which could put the short term interests of the competition that season above the long term sustainability of the clubs.

65

www.guardian.co.uk/football/2010/jan/31/premier-league-debts-panel

A model for ownership review panels is to be found with the NFL in the USA where a panel (consisting mostly of team owners) decide whether to let new owners buy the club. There have been cases where the highest bidder has not been given the transaction because the panel voted against it, as in the 2005 case of Reggie Fowler who was about to buy the Minnesota Vikings for around \$625m.⁶⁶ The league, however, became wary of Fowler's ability to fund the transaction (including 30 per cent of the price to be paid in cash),⁶⁷ and eventually the Vikings were sold for \$600m to Zygmund Wilf.⁶⁸

Another significant intervention occurred in 2009, when Ross Limbaugh was said to be in a consortium looking to buy the New Orleans Saints. Within days the NFL ruled that given Limbaugh's record of racist comments, having someone like him in a position of ownership of a club representing a mixed community would not be acceptable; the NFL advised that if Limbaugh were involved in the consortium the bid would be rejected. It is difficult to imagine similar timely guidance from the FA under the current arrangements.

Full disclosure

In the case of change of ownership of a club, *all* names in the ultimate controlling party should be disclosed (i.e. it is not enough to disclose the 'owner' or 'director' of the parent company; all individuals with shares or interest in the company should be disclosed to avoid another situation like Portsmouth FC).

Right of review by supporters' trusts

Any prospective new owner should be required to meet with the supporters trust, and before a decision is made, the trust would provide a report to the decision makers (the board, FA) which is non-binding but publicly disclosed (a requirement which could be incorporated into a comprehensive licensing regime).

Further forward planning

Under the Owners and Directors Test, a prospective owner must show proof of funds to prove they can sustain the club for the year ahead. This is certainly a positive element of the test, but in order to combat 'short-termism' in the game completely, this should be increased to three years.

66 <http://sports.espn.go.com/nfl/news/story?id=1991455>

67 <http://sports.espn.go.com/nfl/news/story?id=2054791>

68 http://news.minnesota.publicradio.org/features/2005/05/25_williamsb_vikingsale/

■ 8. Giving more influence to supporters

The variety and changing nature of football's corporate structures, both in this country and abroad, demonstrate how far each country is grappling to reconcile the forces of commercialism with the protection of local community and supporter interests.

There are some who will argue that supporters are no different from normal customers, and should be treated as such. According to this argument football is entertainment, like any other form of entertainment, and is purchased as such in a commercial "transaction" by its customers. However this ignores the role football clubs play in defining an individual's identity, the historic role that football clubs have played in their local communities and the way they still bring together local communities to the present day.

It also ignores the role supporters play in the success or otherwise of the 'club'. It has been argued persuasively that unlike a normal consumer, the supporters stand at both ends of the value creation process, "since by creating the atmosphere at grounds they contribute to the collective production of what is being 'consumed' both by those at the ground and by those watching on television (either simultaneously or at some other time) and on radio."⁶⁹

It is the contention of this paper that the community (Big Society) dimension of football needs to be given more protection and recognition in a way which does not damage the commercial dimension of the game.

Below we propose pragmatic and incremental adjustments to the existing tax regime, which go with the grain of commercial ownership but which would encourage a larger role for supporters in the ownership of football clubs.

The key justification for extending the scope of tax benefits to supporters trusts would be the recognition, in the context of the Big Society, that community is a social good and that community benefit should qualify for specific tax status.

69

J Michie, 'New Mutualism: A Golden Goal?', 1999.

Existing fiscal regimes for supporter ownership

Supporter ownership of football clubs has to date attracted limited fiscal relief. At the level of the professional game this is largely because clubs are organised as ‘for profit’ limited liability companies and therefore any investment in the club, whether direct or indirect, could not normally qualify for charitable status.

In the amateur game, 5,693 sports clubs are currently registered as Community Amateur Sports Clubs (CASC) under the 2002 Act which entitles them to 80 per cent mandatory rates relief and the ability to claim Gift Aid on voluntary donations. It is estimated that they have collectively benefited from £76.2m tax savings since 2002.⁷⁰

To qualify under the CASC scheme, sports clubs have to pass a number of tests, notably:

- ⋮ be open to and provide sporting opportunities to all sections of the community (private members clubs which have no intention to provide sporting opportunities to the local community are not eligible);
- ⋮ have a core purpose of the provision of facilities for the promotion of participation in one or more eligible sports; and
- ⋮ be non-profit making and amateur.

Supporters’ trusts have not been able to organise under the CASC scheme because they do not qualify as providing sporting opportunities to the community.

They are instead typically organised as Industrial and Provident Societies (IPS) designated as societies for the benefit of the community, as discussed in section 4 above. Supporters trusts have chosen the IPS corporate form for its mutuality and corporate structure rather than for any tax reason. Most supporters trusts do not allow distribution of surpluses (if there were ever to be any) but instead require the surplus to be held within the trust or ploughed back into the football club.

New tax relief under variation of the IPS regime

In considering the design of tax incentives for supporters trusts, the most appropriate models will be those which provide relief from income tax without the need to demonstrate profit (given the rare and unreliable incidence of profitability at the level of the football club), i.e. reliefs which act to reduce an individual’s taxable income on purchase of shares in the trust.

We believe the government should grant a new tax relief on supporters’ subscription of shares in an IPS used to acquire shares in a football club.

70 cascinfo.co.uk

Tax relief would apply against the basic rate of tax for the amount subscribed. The IPS would in turn invest in the shares of the football club. The IPS may end up owning anything from a minority stake in a football club to a full controlling interest.

It should be possible to define a new category of not-for-profit IPS, under the community benefit regime, where such income tax relief applies. As the IPS would be defined as 'not for profit', any gain or distributable income from the shares purchased in the club would need either to be reinvested in the club or used for community benefit.

Any such new relief would need to comply with EU law regarding state aid.

Provision of relief to supporters' trusts would require a reliable form of certification. In the case of amateur clubs, the supporters' trust may be one and the same as the football club. In the case of the professional clubs, there would probably need to be a system which recognises official supporters' clubs through the proposed FA Licensing Regime (film tax relief – although not an exact parallel – uses a system of certification, whereby only films certified by the Secretary of State on the advice of the UK Film Board, qualify for relief).

Government may also wish to consider a number of other conditions to ensure that the relief will apply to the community as a whole rather than a handful of individuals who may have the resources to buy a club, to include:

- a) a requirement for a minimum number of supporters (eg 10,000);
- b) a maximum amount that qualifies for relief (eg £1,000); and
- c) a statement that the IPS would use some of the club's profits for local Community Investment.

A distinction would need to be retained between annual membership fees to the IPS/Supporters Trust, for which members are likely to receive benefits and monies which are designated for investment in shares of the football club.

Supporter representation

Tax relief for supporter ownership should over time lead to a gradual increase in the share of supporter ownership both in the amateur and professional leagues. This incremental approach can be effective within the existing plc model of ownership, such that supporters will steadily earn (through greater share ownership) the right to exercise more powers within the clubs.

Of course, many share registers are closed to new investors; but as we have seen in section 3, the extreme financial instability and high levels of

attrition mean that over a relatively brief period of time, a significant share of clubs will provide opportunities for their supporters to buy shares.

However, in addition to the above, the FA can take measures to encourage supporter involvement and enhance the status of supporters trusts, by granting specific rights to board representation within a new licensing regime.

UEFA are already providing a helpful precedent by including in their licensing regime (to be introduced in 2012-3) a requirement that all clubs competing in their competitions appoint a 'Supporter Liaison Officer'.⁷¹ Although this would not give supporters more voting rights in decisions made by the club, it would encourage clubs' boards to engage with supporters.

However the FA should go further than this and require, under a licensing regime, that official supporters trusts be given board representation. It has been argued that in some cases this would be nothing more than window-dressing and the supporters trust representative could theoretically be ignored. However at the very least it would serve to further enhance the status of supporters trusts and it should encourage greater dialogue between the clubs and their fans.

Community assets and the right to buy

There have been two important legislative initiatives in recent years which recognise the importance of community 'assets' and which could be applicable to football.

The 2003 Cooperatives and Community Benefit Societies Act introduced the concept of an asset lock to IPS, following on from its introduction for Community Interest Companies. IPS can apply an asset lock to prevent specified assets being used for unintended purposes. Both FC United of Manchester and (technically if not officially) AFC Wimbledon have taken advantage of this legislation to protect the use of their stadia. In the case of AFC Wimbledon this followed the bitter experience of losing their previous stadium (see Box 12).

The 2003 legislation is only applicable under an IPS structure. Perhaps more significant is the potential opportunity provided through the 2011 Localism Bill.

In 'A plain English guide to the Localism Bill', The Department for Communities and local government stated as follows:

'In some places... voluntary and community groups ... have bright ideas that ... do not get a proper hearing. The Localism Bill will give these groups the right to

express an interest in taking over the running of a local service. The local authority must consider and respond to this challenge. This will make it easier for local groups with good ideas to put them forward and drive improvement in local services.

'Every town, village or neighbourhood is home to buildings or businesses that play a vital role in local life. They might include meeting rooms, swimming pools, village shops, markets or pubs. Local life would not be the same without them, and if they are closed or sold into private use, it can be a real loss to the community.

'In many places across the country, when local amenities have been threatened with sale or closure, community groups have taken them over. In some cases, however, community groups who have attempted to take assets over have faced significant challenges. They often need more time to organise a bid and raise money than the private enterprises bidding against them.

'Proposals in the Localism Bill will require local authorities to maintain a list of assets of community value. Communities will have the opportunity to nominate for possible inclusion the assets that are most important to them. When listed assets come up for sale or change of ownership, community groups will have time to develop a bid and raise the money to buy the asset when it comes on the open market. This will help local communities keep much-loved sites in public use and part of local life.'⁷²

Football stadia are not specifically mentioned in the Bill or in its preamble, although other 'private' assets such as pubs and shops are. However they are clearly prime community assets and should be included within the remit of the Bill. The Bill should be amended so that the eligible assets include both clubs and stadia.

Right to Buy and the FA Licensing Regime

The FA could of course go further than the Localism Bill and include a Right to Buy provision in the new comprehensive licensing regime. As with the Localism Bill, the supporters trust would have a right to put forward a formal bid on each occasion where the ownership of the club changes hands, either through administration or through a negotiated sale.

Box 12 - AFC Wimbledon

AFC Wimbledon was founded in 2002 after the “local” club, Wimbledon FC, moved 56 miles north to a new stadium in Milton Keynes built by a Milton Keynes based consortium. As the original club, Wimbledon FC, was in severe financial difficulties the board accepted the proposal. The move was accepted by the FA and The Football League, but was deeply unpopular with supporters, as in one fell swoop a football club had been taken from its community and relocated much further than anyone would realistically be able to travel for home games. When it was clear the move was to take place, fans of Wimbledon FC cut ties immediately with the club and set up the new club: AFC Wimbledon.

The club is mainly (88% of the voting rights in the PLC ‘AFC Wimbledon’) owned by ‘The Dons Trust’, a supporters group in the form of an ‘Industrial Provident Society’, registered with Financial Services as ‘Wimbledon Football Club Supporters’ Society Limited’.

Not wishing ever to repeat the mistakes of the past, AFC Wimbledon took advantage of the 2003 community benefit legislation to impose an effective asset lock on the new stadium, preventing its use for unintended purposes: the governance arrangements mean that a sale of the stadium would require the assent of 85% of members in two consecutive meetings, which in effect is never likely to happen.

AFC Wimbledon has been promoted four times in seven seasons since the club’s formation.

■ 9. The failings of the FA and why government intervention is necessary

This paper has proposed a number of changes to improve the operation of the national game, including the introduction of a comprehensive licensing regime, the introduction of enhanced FFP rules into England & Wales and a strengthening of the Fit & Proper Persons Test, as well as wider changes to the ownership model to encourage greater supporter ownership and representation.

As football and other sports have hitherto largely operated outside the scope of government, it is reasonable to ask whether these changes should simply be left to the FA or whether more active government intervention is required.

The FA has so far strenuously resisted any outside ‘interference’ in the management of the game on the grounds that sport should lie largely outside the ambit of government and that football should not merit any special treatment. In their recent statement to the parliamentary select committee the FA stated, “There is no justification for direct intervention by government into the running of English football.”⁷³ This position does not stand up to scrutiny.

First, there are precedents for more active government intervention in football, both in this country and abroad. The UK government has already introduced statutory legislation on at least two occasions to deal with issues of public safety in football. The 1975 Sports Ground Act was introduced to improve safety at football grounds after a number of fatal incidents, most notably the Ibrox disaster of 1971. Following the Hillsborough disaster, further safety improvements were deemed necessary, leading to the Football Spectators Act of 1989. In both cases government action was necessitated by FA inaction.

There are also good examples from abroad of governments acting on a one-off basis to address poor governance and mismanagement of a

73 www.telegraph.co.uk/sport/football/teams/england/8302376/FA-Premier-League-and-Football-League-warn-government-not-to-interfere-in-football.html

national sport, notably the Australian Sports Commission intervention, following the Crawford Report in 2003, to reform the governance of the Soccer Australia Board (the equivalent of the FA) (see Section 10).

The FA's claim that it should not and does not enjoy any special treatment is also disingenuous. Football already benefits from a number of "special" measures, notably the Football Creditors Rule, which puts HMRC in a worse position as a creditor of a football club than of any other type of limited liability company. Given the number of clubs that enter insolvency, this is a not immaterial issue for the UK taxpayer.

Box 13 - Football creditors rule

The Football creditors rule states that when a club suffers an 'insolvency' event, the 'football creditors' (e.g. the Premier League, the FA, other clubs, players and managers) must be repaid before everyone else. The rule was set up in order to ensure no club can gain an unfair sporting advantage by failing to honour commitments (financial or otherwise) within the game. According to the Football League, to allow otherwise, would 'be to expose all clubs at all levels of the pyramid to a "domino" effect of financial distress.'⁷⁴

While it certainly has this positive element, the rule essentially means, however, that non 'football creditors' will often be out of pocket after an insolvency of a club, even after the CVA has been agreed by the administrator. This was most apparent after Portsmouth went into administration: HMRC (the tax-payer) was owed millions in unpaid taxes because the 'football creditors' had to be paid off first. Non-football creditors (famously including St John's Ambulance who were owed £2,702) were only paid a fraction while millionaire footballers were paid in full.⁷⁵

The rule also introduces an additional element of moral hazard into the game as it diminishes the need for clubs to do due diligence on their peers in the knowledge that payments from other clubs are guaranteed.

It would be unfair to say that no thought has been given to this problem (including debts to HMRC in general) by football. The Football League, for example now monitors PAYE of its clubs directly with HMRC, with transfer embargos where clubs fail to meet tax debts. This has meant HMRC debts of Football League clubs have decreased significantly, although more still certainly needs to be done, according to Football League Chairman, Greg Clarke.⁷⁶ Ultimately, however, by having the Football Creditors Rule in the first place, football is admitting that financial distress is likely

74 Football League Submission to The Culture, Media and Sport Committee, 26th January 2011.

75 www.guardian.co.uk/football/blog/2010/apr/22/portsmouth-football-creditors-money-millionaires

76 www.fcbusiness.co.uk/news/article/newsitem=970/title=football+league+chairman+greg+clarke+warns+clubs+of+debts+danger

to be an ever-present element of the game. Rather than actively promoting good governance of the game, the rule is simply there to reduce potential damage for clubs (while creating a moral hazard and arguably encouraging poor financial practice).

There are at least three major justifications for more active government intervention in the national sport at this juncture.

First, as we have discussed earlier, football plays a central enough role in many local communities to justify measures, which 'protect the community'. Second, as we have seen in the recent failed World Cup bid, football now plays a sufficiently important role in both local and national economies to justify government involvement in the national economic interest (See box 14). Thirdly and most importantly, the FA has shown itself repeatedly unequal to the task of regulating the national game effectively on its own or of reforming its own antiquated structures, despite calls from almost all angles to do so.

Quite simply, football is too important to be left to the FA in its current form.

Box 14 - Football and the economy

Football brings in around £1 billion to the Exchequer each year.⁷⁷ It was estimated in 2007 that English professional football's annual tax contribution to government was over £700m.⁷⁸ In the recent transfer window (January 2011), English clubs spent over £225m on players;⁷⁹ this is in stark comparison to other sectors which have very much had to tighten their belts during the recession. In 2006 it was estimated that dedicated football fans can spend nearly £100,000 on football in a lifetime, with around 40 per cent going on travel to away matches. 'Armchair fans' who typically have a TV sports package and a magazine subscription spend on average £283 a year or £14,716 over 52 years.⁸⁰

In 2010 it is estimated that local councils spent around £2.1m bidding for matches in England's failed world cup bid last year. Amongst the highest, Sunderland Council spent £421,584 and Bristol Council, £363,000.⁸¹

77 The Football Association response to the Culture, Media and Sport Select Committee Inquiry into Football Governance, 26 January 2011.

78 www.deloitte.com/view/en_GB/uk/news/news-releases/press-release/98523fc7711fb110VgnVCM100000ba42f00aRCRD.htm

79 www.businessandleadership.com/business/item/28148-english-football-clubs/

30 news.bbc.co.uk/1/hi/5339846.stm

81 www.bbc.co.uk/news/uk-england-11908445

The governance of English football – and the failings of the FA

The Football Association (FA) is the governing body of English football, sanctioning all competitive matches in England & Wales. Its authority is ultimately handed down to it from FIFA. The Premier League, Football League and Non-League pyramid are separate bodies with their own rules and regulations, however technically the FA has the final authority. The FA licences all the leagues played under its jurisdiction and if the FA were to withdraw a license for any club in any of these leagues, the club would not be able to participate in the respective league (as well as FA competitions such as the FA Cup).

However in practice the FA's authority is barely accepted by the different leagues. There is of course a place for proper subsidiarity, with appropriate governance falling at the appropriate level, but this is not the reason we have the current position where the FA's powers are almost entirely theoretical. This is an issue of legitimacy and authority, reflecting the weak governance and management of the FA.

Sports Minister, Hugh Robertson, has described football as the “worst governed sport in the UK”.⁸² This is probably an understatement. The FA is almost certainly the most dysfunctional body in British public life.

The FA's stated objectives are: ‘to lead the game in England with confidence; to build successful England national teams; and to protect football's status as the nation's favourite game’.⁸³

The Burns Review⁸⁴ elaborated further on these objectives as follows:

- governance of the game in England to the highest standards of integrity and consistency;
- the development of the game, including the promotion of all types of participation in all forms of the game and across all groups (i.e. gender, age , ethnicity);
- the promotion of higher standards of coaching and performance in all forms of the game;
- the maximisation of financial flows into the game in England;
- the further promotion of the FA competitions especially the strengthening of the position of the FA Cup as the premier domestic club knockout competition in the world;
- the effective representation and promotion of the interests of

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

83 Report and Financial Statements, 31 December 2008, The Football Association Limited.

84 FA Structural Review, June 2005.

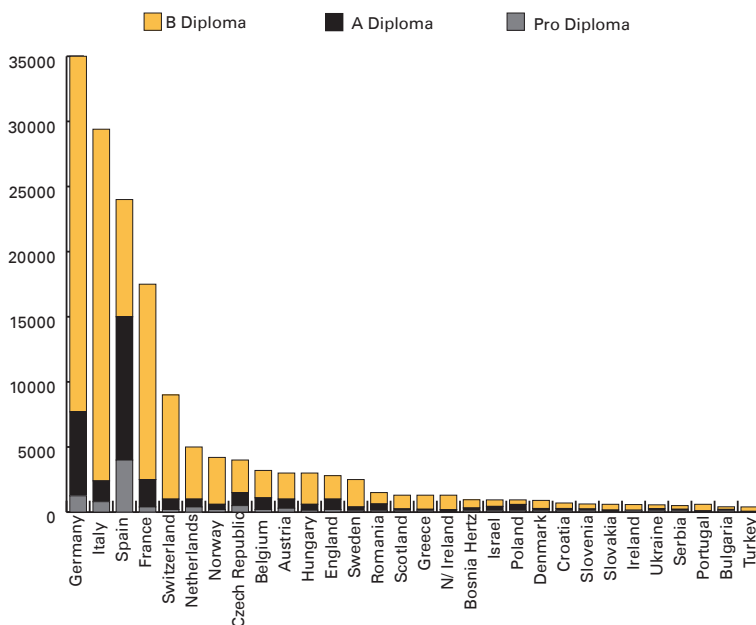
English football in international forums, especially UEFA and FIFA; and

- the achievement of the highest standards by the representative teams, especially the senior men.

As far as the national team is concerned, it does not have to be argued that the FA has not lived up to its promise (since 1966 Germany have won five trophies, Italy three, France three, and Spain two; even Greece and Denmark have won one each, while England have not managed *any*).

Compared to other European national regimes, the FA has also consistently underinvested in youth development and general coaching. Only 2,796 coaches held UEFA’s B, A and Pro badges in England in June 2010 (at a ratio of 1:812, coaches to players) compared to 23,995 in Spain (1:17), 29,420 in Italy (1:48) and 34,790 in Germany (1:150).⁸⁵ Some would argue it is little wonder England has not won a trophy since 1966!

Figure 2 – Comparison of football coaches with UEFA coaching diplomas in each European country



Source: UEFA Club Licensing Benchmarking Report Financial Year, 2009.

85 www.guardian.co.uk/football/2010/jun/01/football-coach-shortage-england

In contrast, the FA spent £757 million on Wembley Stadium,⁸⁶ going £300 million over budget to build a national stadium which England, almost alone among footballing nations, is deemed to require. The stadium has been a disaster from almost every perspective; and without this white elephant the game would have at least £20-30 million per year to invest in youth development.

Flawed governance structures

Much of the explanation for the poor management and failure to deliver on objectives is to be found in the FA's flawed governance. There are four major flaws:

1. Poor representation of the national game

The FA's governing body (the Council) is elected at the annual AGM, and is made up of shareholders, which include county FAs, leagues and clubs. There are 116 councillors, who elect the main national game representatives for the main board from among their number. The professional game representatives are selected and sent by the two leagues (Premier and Football).

The FA's main board consists of an independent chairman, the FA General Secretary and ten members: five representing the professional game (three from the Premier League, two from the Football League) and five representing the amateur or national game.⁸⁷

The FA Council is made up of the following: a President, a Chairman, two vice chairmen (one from national and one from professional game), one Senior Vice-President, 17 'Life Vice-Presidents' (usually from county FA's), six Vice-Presidents, 10 Divisional Representatives, 52 Association Representatives (generally based on counties of England, but also including organisations such as the Army and Oxford and Cambridge Universities and 'Independent Schools'), seven representatives of the Premier League, eight representatives of the Football League, two from the Football Conference and one each from the Isthmian League, Northern Premier League, Southern League, Professional Footballers Association, League Managers' association, Referees' Association, Race Equality Advisory Group, Disability Equality Advisory Group and a Supporters Representative.⁸⁸ Councillors are all chosen by the bodies which send them (e.g. county FAs).

Players, referees, managers, coaches and supporters are ultimately represented indirectly with opportunity to influence decisions hugely compromised.

86 www.telegraph.co.uk/news/1408332/757m-Wembley-deal-finalised.html

87 www.thefa.com/TheFA/WhoWeAre/TheOrganisation/Player/TheDecisionMakers

88 www.thefa.com/TheFA/WhoWeAre/TheOrganisation/Player/TheFACouncil

2. Poor organisational structure

Responsibilities within the FA are spread across the board, the Council, the various (up to 20) committees of the Council and the executive staff of the FA.

As Lord Burns summarised in 2005, “the lack of clarity of responsibility, the difficulty in reaching decisions, and the substantial frustration and tension that exists as a consequence, together undermine the authority and effectiveness of the organisation.”

3. Producer capture

Effectively, representation on the FA’s Council and board is entirely skewed towards the producer (i.e. clubs and leagues) interest. The fans, who ultimately pay for almost all elements of football, do not elect anyone to board, are not represented on the committees which make policy and do not have a seat on the board. This means the interests of the 10 million (estimate⁸⁹) stakeholders who watch and pay for football can, if necessary, be entirely disregarded when major decisions have to be made.

In addition, it has been argued that the FA has suffered a major loss of control over the game since it sanctioned the establishment of the Premier League in 1992. Despite the fact that the Premier League only has rights to 3 of the 10 positions on the FA Board, they enjoy disproportionate influence as they receive and distribute a significant share of the revenues, which enter the English game. Any major self-administered change to the FA rules or licensing regime effectively needs the assent of both FA and Premier League.

4. Conflicts of interest

The issue of producer capture is most troubling when it touches on the inherent conflict between the FA’s role as both manager and regulator of the national game. When it comes to long term reform of football, including some of the proposals in this paper, such as the introduction of a more comprehensive financial fair play regime, or proposals to give supporters more representation, there may well be (and have been,

according to Lord Triesman in the recent inquiry evidence sessions)⁹⁰ conflicts for the Premier League and Football League between their short term commercial interests and their wider responsibilities as stewards of the national game.

In relation to the regulatory functions of the FA, the position of the Premier League and Football League is akin to having a group of bankers and hedge fund managers sitting on the Executive Board of the FSA or the BBC, Sky and ESPN having representatives on the board of Ofcom.

Essential reform

The Burns Review highlighted most of the flaws in the governance of the FA and proposed a series of structural reforms. His approach was gentle, reminiscent of Parliament's approach to Lords reform. For example, members of the Council and board would be permitted to see out their terms before being replaced. Nonetheless, it is perhaps no surprise that six years on, little progress has been made towards the changes proposed in the Burns Review.

This does not augur at all well for any self-administered reform of the FA or of professional football. In fact that there can be no confidence in such reform taking place until at the very least there is resolution to the conflict inherent in the FA's regulatory responsibilities.

Burns made two important proposals:

- the appointment of two independent non-executive directors onto the board; and

90 'The former Secretary of State asked the three organisations to prepare a joint response to his questions, and I thought that was absolutely right. It would be very good if it was possible to come to some amicable agreement about how to carry forward the regulation of the game. The Football League was completely willing to engage in that with the Football Association; Lord Mawhinney was completely willing to do so; the Premier League was not. After some period of trying to persuade everybody to come together to do it, the Premier League produced-I think we have probably all read it-its own response to Andy Burnham. The Football League then produced a response to Andy Burnham and the FA, which had been doing very considerable amounts of work on football regulation for some time past and discussing it with all the partners, produced a document that was submitted to the FA board, having been discussed with a number of other people. The professional game representatives on the FA board took perhaps a maximum of two minutes to say that the document should not be submitted and to issue a board instruction that a response should be made simply referring the Secretary of State to the wisdom of the professional league, and in particular the Premier League. I thought that was a grave disappointment and, Mr Chairman, just in case it is helpful, I have brought the response that we would have made.' Lord Triesman in reply to the question: 'Lord Triesman, when the former government engaged with football bodies on football governance, your response to the then Secretary of State was to refer him to the responses submitted by the Premier League and by the Football League. Why did the FA not submit its own?' from Mr Sanders (taken from 'House of Commons, Oral Evidence, taken before the Culture, Media and Sport Committee, Football Governance, Tuesday 8 February 2011').

- a clear split between the FA's regulatory and management responsibilities.

However, the Burns proposals surely do not go far enough as they still leave regulation as a subsidiary function reporting into a board dominated by the Premier and Football Leagues (see Figure 3). The minimum requirement must be for the Regulatory function of the FA to be separated entirely from management and to report directly to the Council. Also, it should be required that within 18 months, independent FA directors should outnumber non-independent FA directors.

This should be coupled with reforms to give supporters and other stakeholders significant representation on the Council.

Failing these reforms, the FA cannot be trusted to self regulate and the government will need to look at other models of sports regulation which create the necessary accountability for the national game. Other countries have achieved this extra level of accountability either through varieties of independent sports commissions or through a sports law. A number of international models are reviewed in the Appendix.

It is the recommendation of this report that the minimum government intervention must be a time-limited Act which provides powers for the Minister of State to take all necessary action to reform the governance of the FA and to ensure the introduction of a comprehensive licensing regime.

■ **Appendix** **Government and sport - how other governments are effective**

Governments around the world take varying approaches to the governance of sport from the highly interventionist, such as France, to the more non-interventionist, including the US, UK and Germany. Some countries, such as Australia, specifically recognise sport as a public good and legislate accordingly in order to establish a strong strategic framework. National sports laws are not uncommon and Table 6 lists some of the major countries to have established such a law.

Table 6 – Examples of countries where government has enacted a specific ‘Sports Law’

Examples of countries where government has enacted specific ‘Sports Law’ statutes and sporting regulations
France
Spain
Australia
South Africa
Italy
Greece
Finland
Romania
Portugal
Belarus
Estonia
Russia
Ukraine

Below we set out the approach to sporting governance in four major competitor nations to the UK.

Australia

Australia is widely regarded as a country which consistently punches above its weight in a variety of sports. Sport is seen in Australia very much as a public good and as such the government will not only provide taxpayer money for its development, but also take an active role in the process of how this is spent.

The government effectively delegates strategic management of sport to The Australian Sports Commission (ASC). Set up in 1981, the commission is responsible for all sport funding and for providing strategic guidance for sporting activity in Australia. The ASC works closely with many sports organisations, state and local governments to regulate sport and to ensure it is accessible to all. The commission is obliged to develop a strategic plan for the coming four years which must not only be passed by the Sports Minister, but, 'each strategic plan...shall be laid before each House of the Parliament within 15 sitting days of that House after approval by the Minister of the plan'.⁹¹ Clubs in many sports are also given financial help through government initiatives such as tax exemption status through the Income Tax Assessment Act in 1997. Aside from the visible success achieved by Australia in a range of sporting activities, the ASC also has a strong record of ensuring that the best Australian athletes are trained in Australia rather than travelling overseas.

The ASC can also take decisive action to intervene in a national sport when it is considered necessary. In 2003 for example, after extensive publicity surrounding alleged mismanagement and corruption in the football governing body (Soccer Australia) as well as the poor performance of the Socceroos (Australian Football team), failing to qualify for the 2002 World Cup, the Independent Soccer Review Committee produced a report, popularly known as the Crawford Report. Resistance to reforms proposed by the Report was largely overcome by the threat by the Australian Sports Commission to withhold funding from Soccer Australia. The report led to the resignation of the Soccer Australia Board en masse and to reforms to the governance structure to make it more democratic.

Spain

Spain also adopts a relatively interventionist approach to sport, although in relation specifically to football, the outcomes have arguably been more mixed.

The Sports Act, drafted in 1990⁹² ensured government regulates sports and there is a body, the National Sports Council,⁹³ which is the

91 Australian Sports Commission Act 1989, as amended, January 2010.

92 www.csd.gob.es/csd/informacion-en/legislacion-basica/ley-del-deporte/

93 www.csd.gob.es/csd/informacion?set_language=en&cl=en

administrative arm that manages the government competencies in sport. The National Sports Council not only oversees how sport is run and steps in when things are not going well, but it also designs the government's sports policy.

The initial interventions in football were unfortunate. Under the 1990 Sports Act, most 'professional' sports clubs (Football and Basketball are the only professional sports as stated in the Sports Act), which were member associations were forced to become limited companies in 1992 on the grounds of excessive debt. There was an outcry from the supporters of the clubs, and the result has been that the financial situation has become much worse since the change. The debt of the two professional divisions in Spain in 1989 before all clubs became limited companies was €156m, and the figure in the UEFA 2009 Benchmarking Report (latest data available) was around €1bn.⁹⁴ In 2009, only Barcelona, Real Madrid and relegated club Numancia made a profit;⁹⁵ Spanish clubs' debt is only second to English clubs' debt.⁹⁶

The Spanish government is about to draft a new law to regulate professional sports which will eliminate the obligation for clubs to be incorporated as a limited company and will establish a body in which the different stakeholders in the clubs will overview the finances according to specific guidelines to clubs of what they can and cannot do and with power to sanction those not complying.

France

In France the government takes a strongly interventionist approach to sport and football in particular which mirrors its general attitude in business.

The two main forms of regulation are firstly legislation which cover structures which govern professional sports at federal and local levels, including taxation levels; secondly, labour laws concerning the professionalism of athletes. Government also performs a counselling and support role for sport federations.⁹⁷

Finances in football are monitored very closely with a high level of accountability. The National Board for Management Control (*Direction Nationale du Contrôle de Gestion* [DNCG]) is the body responsible for making sure clubs do not go into debt and measures are taken to ensure this including assessing every player transfer before it can take place. The DNCG is an autonomous body from government, under the Ligue de Football Professionnel, which was set up in 1984 after government

94 UEFA Club Licensing Benchmarking Report Financial Year 2009.

95 fourfourtwo.com/news/spain/54621/default.aspx

96 UEFA Club Licensing Benchmarking Report Financial Year 2009.

97 Supporters Direct, 'What is the feasibility of a Supporters Direct Europe?', 2009.

threatened to intervene if the Ligue did not sort out its finances. The DNCG reviews the accounts of all the teams in the top five divisions in France; those found to have broken the rules can be penalised with a number of punishments including transfer embargos and a limit on first team players.⁹⁸ There is also a strict assessment process by the Ligue for investors in French clubs. With this strict regulation, and the limitations placed on the “benefactor model” the clubs are reliant on commercial and TV revenue in particular which has not proved very popular with fans.

Germany

The German government takes an anti-interventionist approach to regulating sport, more closely resembling the UK. There is no specific ‘Sports Law’ at federal level and responsibility for football governance lies almost exclusively with the Deutscher Fussball Bund (DFB – German Football Association).

The autonomy of the DFB (and other national associations within their respective sports) is regarded by German society as being of fundamental importance. Where government involvement is for the common good, however, there have been examples of flexibility in this non-interventionist approach, with the political world assisting sporting authorities in, for example, their efforts against drug-taking.

However, the anti-interventionist approach in Germany cannot be extrapolated to the UK, because German football has fundamentally better governance. In Germany a clear distinction is made between the regulation of the game, which resides with the DFB, and the day-to-day management, which the DFB delegates to the DFL (German Football League) via a comprehensive formal contract setting out both parties’ rights and obligations. The contract governs the flow of funds between the two in relation to TV rights and remuneration for the release of players for internationals. It also gives the DFB chairman the right to attend, but not vote at, meetings of the league’s executive organs.

Just as fundamentally, German supporters are assured an active role in the governance of the game both at the club level and the DFB. Since all German professional clubs (with just two historical exceptions) are majority controlled by the fans (i.e. their members), the fans participate directly around the management tables at both of the games’ governing bodies. The rule that guarantees the fans this position, the so-called 50+1 rule (stating that where a club spins off its professional football activities into a limited company, 50 per cent of the voting rights, plus one further vote, must remain with the parent members club) is enshrined in the

98 http://en.wikipedia.org/wiki/Direction_Nationale_du_ContrpercentC3per centB4le_de_Gestion

articles of both the DFB and DFL and is overwhelmingly supported by the clubs themselves, who recognise the value of such integration in their fan community.

This system of checks and balances and, moreover, the principle of majority control by the members, produces a healthy working relationship between DFB and DFL (German Football League), as is reflected, for instance, in the public perception of the German FA.

Generally, German football stakeholders are very happy with the structure of the DFB and the clubs. In a DFB survey in 2009, 74 per cent of those surveyed were of the opinion that the Association worked hard for football youth development (in 2004 it was 64 per cent and in 2002 it was 59 per cent); 58 per cent believe that the DFB takes care of ensuring fair play in the Bundesliga (49 per cent and 48 per cent were the figures in 2004 and 2002); 56 per cent credit it with promoting girls' and women's football and to 53 per cent agreed that it stands for social responsibility. All in all, 55 per cent agreed that the DFB had 'a good image' (five years previously this figure was 44 per cent and two years before that, 40 per cent).