

# CLIFFORD CHANCE

## KICKING OFF REFORM: LANDMARK ENGLISH FOOTBALL GOVERNANCE BILL PROGRESSING THROUGH PARLIAMENT

The Football Governance Bill (the "Bill") had its second reading in Parliament this week, as the UK Government continues its momentum to establish a new Independent Football Regulator ("IFR") and implement new rules on the governance and decision making of English football clubs and their ownership. We recap the key changes that are expected and the role and powers that the IFR will have to ensure that football clubs and competition organisers comply with the new rules of the game.

### NEW RULES OF THE GAME

The Bill will introduce a range of reforms focussed on: safeguarding the heritage of English football; improving the financial sustainability of clubs; and ensuring financial resilience across the leagues. Subject to any amendments to the Bill during its legislative passage, the IFR will be established to provide oversight and enforcement in the following areas:

- A new statutory test for owners and officers of clubs: Owners and officers will need to demonstrate that they are fit and suitable to be involved in the running of a club. There will also be a requirement that new owners satisfy a source-of-wealth test and have sufficient financial resources available to ensure the proper financial management of the club.
- Financial resilience and sound decision making: The IFR will require clubs to demonstrate sound financial practice by implementing fundamental practices such as contingency planning, multi-year forecasting and monitoring whilst also introducing appropriate mitigation measures. This will be the case where the management of a club's finances or the extent of their available financial resources is putting the club's future at risk and is deemed to be inappropriate/insufficient in relation to the activities that the club carries on or seeks to carry on.
- Fan engagement and heritage protections: Clubs will be required to regularly engage with supporter groups on "key strategic matters" relating to a club's heritage and identity. All regulated clubs will be required to have the majority of their supporters approve key changes to the club's identity – such as crests, the club's name and home shirt colours (think Cardiff City's owner changing their home shirt colour from blue to red, despite the club being

### Key issues

The Bill will introduce a range of reforms in the following areas:

- A new statutory "suitability" test for owners and officers.
- Financial resilience and sound decision making of clubs.
- Fan engagement and heritage protections.
- New competitions.
- Distribution of broadcast revenue.
- New Football Club Corporate Governance Code.

The IFR will have extensive information-gathering powers, including the ability to:

- Conduct unannounced inspections (dawn raids) of a club's business premises.
- Compel clubs or competition organisers to provide information.

The IFR will also have significant enforcement powers, including the ability to:

- Impose significant financial penalties on clubs and individuals for non-compliance.
- Censure individuals for non-compliance.
- Disqualify owners and officers from their involvement in clubs.
- Revoke a club's operating licence.

known as "the Bluebirds"). Clubs must also obtain the IFR's approval before selling or relocating their home ground.

- New competitions: The Government's proposal provides the IFR with the power to review new competitions and ban English clubs from participating in certain competitions. To this end, the IFR will have regard to the sustainability of the competition; the sustainability of the clubs competing; whether the competition is fair, open and merit-based; and whether it harms, or would harm, the heritage of English football.
- Distribution of broadcast revenue: The IFR will have the power to require specified competition organisers to enter into mediation in connection with the distribution of broadcast revenue. If those organisers cannot agree how broadcast revenue should be distributed, the IFR will be able to step in and decide the issue. These powers are expected to be welcomed in some quarters given the ongoing impasse between the Premier League and English Football League ("EFL") as to the distribution of revenue.
- New Football Club Corporate Governance Code: The IFR will be tasked with publishing a code of practice relating to the corporate governance of regulated clubs. The Bill only references the anticipated corporate governance code at a high level, but it is expected that this will include requirements on the internal structures within clubs, including the nature, constitution or functions of the organs of the club and how these organs should interact with one another. Clubs will be subject to periodic reporting requirements to demonstrate their compliance with the code.

The new rules established by the Bill are expected to apply to the top five English men's leagues (Premier League, EFL and National League). The rules will apply to the organising bodies of these leagues (e.g., Premier League and EFL) as well as football clubs, their owners and their officers/senior managers.

## **THE IFR – AN OFF-FIELD REFEREE WITH TEETH**

The Government envisages that the IFR will work closely with clubs and prioritise advocacy over enforcement. The IFR will not be able to impose sporting sanctions (such as point deductions) on clubs, and, while it will have significant enforcement powers (such as revocation of operating licences), it is intended that these will be used only as a backstop in circumstances where advocacy has "*proven ineffective, or in more urgent or serious cases of non-compliance*". The importance of not "over-regulating" the sport was re-emphasised in Parliament during its second reading, and, in theory, it is intended that intervention should be a last resort for the IFR, when other stages of engagement have failed, and competition organisers or clubs remain in non-compliance.

The backstop powers that the IFR is expected to have include the ability to issue figurative yellow cards (e.g., warning notices and censuring of individuals) and red cards (e.g., disqualification of owners and officers and suspension/revocation of a club's operating licence).

- Power to disqualify owners and officers. This is expected to apply only where an owner or officer fails to meet the new owners' and officers' test or in instances of the most egregious infringements.
- Senior manager responsibility for compliance. The IFR will specify certain functions that are the responsibility of officers/senior managers to ensure that their club fully complies. For specific relevant infringements, in the event

of non-compliance by a club, owner or officer, the IFR will be able to impose financial penalties and issue censure statements against the relevant officers/senior managers designated as having responsibility for that area (essentially, "naming and shaming" them for their shortcomings and holding them personally responsible). The IFR can impose maximum financial penalties of 10% of the total revenue of the club on an owner and, for officers who are not also the owner of the club, the higher of 10% of their remuneration or £75,000.

- Suspension or revocation of a club's operating licence. Clubs which compete in England's top five leagues will be required to operate under a licence. In order to obtain and retain an operating licence, clubs will be required to comply with specified conditions such as having adequate financial and non-financial resources and acting in the best interests of fans when making important decisions. The IFR will monitor compliance with these conditions on a continuous basis. In the case of the most egregious and persistent infringements of licence conditions, or a failure to satisfy the threshold requirements for a full licence, the IFR will be able to suspend or revoke a club's licence. However, this is expected to only be used as a very last resort for the most serious types of infringements and where a club or competition organiser has not taken heed of the IFR's prior warning notices or engaged with the IFR more broadly.

### Information-gathering powers

The IFR will also have extensive information-gathering powers as set out below. As with the financial penalties relating to relevant infringements, the IFR will have the ability to impose fines for information-related misdemeanours of up to 10% of the total revenue on a competition organiser or club and up to 10% of the remuneration of an officer (for individuals who are not also the owner of the club, penalties will be capped at the higher of 10% of their remuneration or £75,000).

- Unannounced inspections (dawn raids) with sanctions for non-compliance. The IFR will also have the power to undertake "dawn raids" with a warrant. In other words, the IFR will be able to enter a club's business premises to access information that could potentially be relevant to its investigation. The standard for the IFR to undertake dawn raids is analogous with other regulators, such as the Competition and Markets Authority ("**CMA**"): dawn raids may be undertaken where there are reasonable grounds for suspecting that an infringement has taken place.
- Statutory information requests to compel a club or competition organiser to provide information.
- Penalties for non-compliance. In addition to a power to "name and shame" individuals, the IFR will be able to impose financial penalties on a club, an owner and/or an officer for: (a) failing to comply with or respond to an information request; (b) providing false or misleading information; and (c) obstructing an investigation by, for example, destroying or falsifying information or otherwise impeding a dawn raid.

### ROLE OF THE COMPETITION APPEAL TRIBUNAL

There will be a mechanism for clubs, competition organisers and individuals to appeal against IFR decisions, either by way of an internal review by the IFR itself or through an appeal to the Competition Appeal Tribunal ("**CAT**").

The CAT, which is well versed in hearing regulatory appeals given their experience of dealing with appeals against decisions taken by the CMA, will be the final arbiter for disputes which remain unresolved.

Decisions with the most severe consequences may be reviewed on their merits by the CAT, meaning that the CAT will step into the shoes of the IFR and review the issue afresh. Such merits-based appeals are expected to be reserved for decisions with the most significant implications for a club or individual, such as revoking a club's operating licence or determining that a person is not suitable to be an owner or officer of a club.

All other appeals to the CAT will be subject to the normal standards of judicial review, with appellants needing to demonstrate that the IFR's decision is irrational, procedurally unfair or illegal. This is a high bar, and judicial review proceedings before the CAT are rarely successful.

The CAT's jurisdiction to determine these issues is particularly interesting in the context of an increasing trend of challenges to decisions by football regulatory bodies, such as FIFA, who have been the subject of challenge including on competition law grounds. In a recent headline case, in which this firm acted for the successful parties, a major blow was struck against FIFA's attempts to cap the fees that football agents can charge for their services, with an English arbitral tribunal deciding that key elements of FIFA's Football Agent Regulations would, if implemented in the UK, constitute an illegal agreement and an abuse of a dominant position in breach of UK competition law (a full briefing on that decision is available [here](#)).

## **WHAT NEXT?**

The Bill is making its way through the Parliamentary stages, having had its second reading this week.

It remains possible that the IFR will be in place by mid-2025, but, with a General Election looming, delays to the Government's legislative agenda are possible. However, given the cross-party support for an independent football regulator, there is an inevitability to the Bill coming into force.

The IFR will undoubtedly transform governance and compliance for clubs and competition organisers. Even though the IFR will be expected to only take enforcement action when all other avenues have been exhausted, there remains the potential for serious sanctions against clubs, competition organisers and individuals who get it wrong.

Given the potentially thorny issues arising from the IFR's information-gathering powers, it will be important for those in charge to understand how the Bill will affect their duties. To this end, active engagement with the IFR during any consultation period that precedes the Bill coming into force will help ensure that they are well equipped to comply with the new rules of the game.

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