



**THE FOOTBALL ASSOCIATION
FINANCIAL ADVISORY COMMITTEE**

REPORT FOR 2005

TO

**THE FOOTBALL ASSOCIATION BOARD AND
THE INDEPENDENT FOOTBALL COMMISSION**

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1 Introduction

1.1 This is the third report of The Financial Advisory Committee (“the FAC”). The Report sets out progress on the FAC’s key projects for 2005, as identified in last year’s report, and describes issues the FAC proposes to consider in 2006.

1.2 The FAC has met on three occasions in 2005, and continues to focus on its policy to “*promote and protect the financial long term health and stability of clubs in their communities*” that was agreed at its inaugural meeting in August 2003. The FAC terms of reference are included as Appendix 1.

1.3 Those that have served on the FAC during 2005 are:

- Kate Barker, (Chair), The Monetary Policy Committee of The Bank of England – Independent Member;
- Dan Corry, Special Adviser, Department for Education and Skills – Independent Member;
- Javed Khan, Director of Finance, The FA Premier League (“FAPL”);
- Peter McCormick, Legal Advisor, FAPL;
- Peter Heard, Director, The Football League (“FL”);
- Nick Craig, In-House Solicitor, FL;
- Bill King, Chairman, The Football Conference (“FC”);
- Alan Turvey, Chairman, The Isthmian Football League (“IFL”);
- John Bagguley, Vice President, The Northern Premier League (“NPL”);
- Brian McCarthy, Director, The Southern Football League (“SFL”);
- Bill Coad, Football Association (“FA”) Council Member, Cambridgeshire FA.

2 Issues Considered in 2005

2.1 Introduction

- 2.1.1 As stated in its 2004 report, the FAC had agreed that 2005 was primarily to be a year of consolidating the initiatives developed in the course of 2004.
- 2.1.2 Whilst recognising that further work would be required to achieve the FAC's objectives, it was considered by the FAC and leagues that significant progress had been made in 2004 in the areas of financial regulation and governance.
- 2.1.3 Measures considered in 2004 included the development of the Fit and Proper Person Test, the introduction of sporting sanctions for those clubs entering an insolvency event and the enhancement of measures to control clubs' wages in line with their income. The Fit and Proper Person Test has now been in operation for over a year in all six leagues and has been widely accepted as a welcome development within the game.
- 2.1.4 In 2005 the FAC has considered various issues fundamental to its agreed policy referred to at 1.2 above. The key issues considered are shown below.

2.2 Governance: A Guide for Football Clubs

- 2.2.1 The FAC's terms of reference include the consideration of the adequacy of corporate governance at each level of the game. The FAC has overseen the preparation of a non-mandatory Guide ("the Guide") that sets out best practice principles to assist professional and semi-professional clubs in assessing the effectiveness of their governance procedures, and to put in place improvements where necessary.
- 2.2.2 The FAC considers it to be vital for the long-term health of the game that clubs are able to demonstrate accountability and transparency. The FAC decided that the Guide should not be mandatory, but should encourage the adoption of good governance procedures in the interests of each club and the game as a whole rather than being required by rules or formal codes of practice. It was felt that such an approach would be better welcomed by clubs.
- 2.2.3 The FAC sees the Guide as a significant step in its objective of improving the governance of clubs. A copy of the Guide has been sent to each club in the FAPL, FL, FC, IFL, NPL and SFL.

2.3 Security of Tenure of Grounds

2.3.1 A key issue for stakeholders in the game, in particular supporters, is the protection of clubs' grounds for future use. The issue was also raised in the Parliamentary All Party Football Group Report in February 2004 (page 15).

2.3.2 The FAC identified that there were two fundamental issues to be addressed in this area:

- (i) The protection of a ground for long-term use by the club, and the avoidance of owners asset-stripping; and
- (ii) How Leagues can best ensure that clubs have a consistent level of security of tenure that is sufficient to meet their fixtures each season.

2.3.3 The FAC's work in this area is ongoing. Work to date has included reviewing existing FA and League rules, identifying the current security of tenure of grounds by clubs and the roles of other bodies such as Sport England and The Football Foundation.

2.3.4 Initial findings on the two issues include:

- (i) The FAC recognises the need for clubs to have flexibility to adopt different structures of legal entity owning grounds where they may aid the long term preservation of grounds for clubs. The FAC identified that there may be justifiable business reasons as to why a ground is not owned by a club, such as the raising of development capital.

It was also recognized that any football legislation in this area ought to have legitimate aims and be reasonable and proportionately justified. It was noted that approximately 75% of clubs in the top six leagues no longer own the freehold of their ground and hence any football legislation in this area may have limited effect.

- (ii) The FAC recognised the differing security of tenure requirements of each League that included minimum lease/licence requirements of between one and ten years. The FAC considered that a consistent security of tenure requirement across the Leagues was not practical at this stage. In some cases a club's position may be weakened on the renewal of a lease if the landlord is aware that a club requires a minimum security of tenure in accordance with League rules.

2.3.5 The FAC's work will continue in this area in 2006 with possible proposals including:

- Leagues to maintain up to date data on the security of tenure held by each member club.
- Possible requirements for clubs to provide advance notice of any potential change in the freehold or leasehold interest of their ground.
- Other Leagues to introduce a requirement consistent with those currently in FAPL and FL rules requiring League approval before a relocation is permitted.¹
- Where a new rule is introduced or already exists, clubs that do not currently have security of tenure should comply with the rules of their League within an agreed timescale.
- Leagues should encourage clubs that have advised of a change in the leasehold interest to a ground to consider the risks of not adopting the provisions of the Landlord and Tenant Act 1954 that provides for the right of renewal.

Note: Some of the above proposals are already established in certain of the Leagues.

2.4 Change in Club Ownership

2.4.1 At its March 2005 meeting, the FAC considered the possibility of regulating the change in majority ownership of clubs and agreed to obtain external legal opinion on such regulation. It was noted that, at present, there is no formal regulation of such changes within the top six leagues.

2.4.2 In the light of a number of recent changes in ownership of clubs, members believe it is relevant to examine this issue at the present time and to assess whether regulation is both a) possible and b) necessary to help protect the long-term future of clubs.

¹ See FAPL Rule I5, FL Regulations Appendix 1, part 3a 3

2.4.3 Legal advice was considered by the FAC at its October 2005 meeting. The legal advice focused on the legitimate aims of any proposed rule in this area.

2.4.4 After full consideration of this advice, the FAC agreed that further work needed to be undertaken before conclusions over the possibility of any regulation in this area could be reached. This work will be undertaken in 2006 and the findings reported to The FA board. The options for The FA would appear to be either putting in place some form of regulation or, alternatively, to explain clearly why action is not feasible.

2.5 English Football: A Framework for Cashflow Analysis

2.5.1 The FAC commissioned an analysis of the key cash flows for English professional football (i.e. The FA, FAPL and their clubs, FL and their clubs and The Football Foundation) covering the 2003/2004 season, being the most up to date figures publicly available. This was the third and final year such an analysis was undertaken, with a view to establishing and understanding trends in material cashflows.

2.5.2 The key findings in the 2003/2004 season included:

- English football generated £2.9bn of inflows (2002/2003 £2.4bn) and applied £2.75bn of outflows (2002/2003 £2.4bn).
- Over 25% of the inflow (£0.8bn) was generated from broadcasters, consistent with the previous season, with matchday activities generating £0.7bn, up from £0.6bn in 2002/2003.
- Financiers provided £0.8bn to English football (2002/2003 £0.3bn).
- A record investment of £0.3bn was made in football facilities, (2002/2003 £0.26bn) principally by The FA in Wembley and by FAPL clubs.
- The largest recipient of football's outflows was the government in the form of taxation (including payroll taxes and VAT) at £0.6bn, amounting to 22% of outflows for the season.
- Net of tax, players received an estimated £430m, in line with 2002/2003, and representing less than 20% of the total outflows from English football.
- Payments to agents amounted to less than 2% of the total outflows for the second successive season.

Note: the above figures exclude cashflows between the football bodies such as distributions to clubs by The FA, FAPL and FL

2.5.3 The FAC agreed that the information contained in the analysis would provide a valuable tool in informing ongoing debate regarding the overall cash flows within the game.

2.6 Mutuels

2.6.1 In 2004 the FAC examined the possibility of rule changes to be put in place in Leagues (where necessary) to permit clubs to be mutuels. It transpired that only one league, the FL, specifies the corporate structure that a member club must have – its articles state that ‘a member club must be incorporated under the Companies Act.’²

2.6.2 Mutual organisations are governed by the Industrial and Provident Societies Act and not the Companies Act. A mutual entity, such as an Industrial and Provident Society (“IPS”), cannot be a member of the FL.

2.6.3 The provisions of the Industrial and Provident Act currently do not permit a mutual organisation to enter insolvency arrangements, but legislation to allow such arrangements is believed to be a possibility.

2.6.4 Based on the current legislation, the FL expressed a reluctance to amend its articles to allow an IPS to become a member of the League. The reasoning is that, unlike a club incorporated under the Companies Act, in the event that an IPS runs into financial difficulties it cannot enter administration to allow the club to formulate a rescue package.

2.6.5 There is therefore a risk that an IPS club may be forced to close and be unable to preserve its ongoing membership of the FL, resulting in the loss of that club to the League as a whole.

2.6.6 It is clear, however, that FL article 4.1 has not prevented Supporters Trusts from being able to secure overall ownership and control of a club through the acquisition of all or majority of the share capital of the club company that is the member of the FL.

2.6.7 In 2005 the FAC exchanged correspondence with Supporters Direct on the matter and considered the position further. The FAC understands that there has not been any change in legislation to allow an IPS to enter into insolvency arrangements.

² See FL article 4.1

2.6.8 The FAC acknowledges the important role Supporters Trusts have played in the survival of several clubs that have encountered severe financial difficulties. The FAC understands that Supporters Direct is working with HM Revenue & Customs on various matters. In the event of changes in primary legislation relating to the ability of an IPS to restructure in the event of insolvency, the FL has indicated that it will reconsider its position. The FAC is therefore awaiting developments in the legislation of this area.

3 The FA's Financial Advisory Unit ("FAU")

3.1 Although it is a body distinct from the FAC, much of the work covered by the FAU underpins the overall objectives of the FAC itself. The FAC therefore considers it appropriate to refer in this report to the work carried out by the FAU in the course of the year.

3.2 Work undertaken by the FAU in 2005 includes:

- Supporting the FAC in the development and implementation of its policy initiatives (see Section 2 above).
- Continuing the review programme of clubs in the FL, FC, IL, NPL and SFL (see 3.3 below).
- Working with the FAPL and UEFA in the development and implementation of the UEFA licence regime.
- Updating the best practice brochures on various financial issues of interest to clubs at all levels, including those on PAYE, Corporation Tax and VAT. Copies were circulated to clubs and placed on The FA's website, TheFA.com.
- Liaising with the National Minimum Wage Department of HM Revenue and Customs regarding the application of minimum wage legislation to payments by clubs to players. The application of national minimum wage to payments to players is an important issue for semi-professional clubs. Guidance notes were prepared, circulated to semi professional clubs and placed on TheFA.com.
- Working with clubs that are subject to insolvency proceedings and liaising with their respective Leagues.

3.3 The FAU's club review process has now been in operation for five years. All clubs in the FC and its feeder Leagues have been visited on at least one occasion. It is anticipated that the vast majority of clubs in the FL will have been reviewed by the end of 2006.

3.4 The FAU is in the process of obtaining feedback from each League on the review process. A survey of clubs is also being undertaken. The findings are to be considered during 2006.

4 Proposed FAC Agenda for 2006

4.1 In 2006 the FAC wishes to build on the significant progress made in previous years. Further work will be undertaken on initiatives introduced to date and subjects that may be regarded as work in progress, some of which are topical. These include:

- Monitoring the operation and effectiveness of the Fit and Proper Person Test across each league and considering whether any changes are necessary.
- Reviewing the application of the football creditor rule and sporting sanctions. For instance, looking at whether a consistent approach is taken throughout the leagues.
- Assessment of the feasibility of regulation concerning a change of club ownership.
- Further consideration of issues concerning protecting grounds and security of tenure.
- Licensing considerations. In 2005 the FAC has monitored developments in UEFA licensing. During the year the FA and FAPL continued to work with UEFA in the development and implementation of UEFA licensing that operates at the highest level of the game. In September 2005 UEFA announced significantly greater financial requirements for clubs applying to enter UEFA competitions from season 2008/2009. The additional requirements are currently being considered by the FA and FAPL. Findings will be shared with the FAC as part of any discussions on the merits, or otherwise, of the development of a club licensing system in England.

4.2 Possible new initiatives to be considered include:

- Issuing of guidance to clubs on the subject of money laundering/Proceeds of Crime Act.
- To consider the release of further best practice/guidance brochures.

5 Summary and Conclusion

- 5.1 The initiatives considered by the FAC in 2005 build on measures introduced in earlier years. The FAC believes that the measures introduced by the FAC and the Leagues to date comprise a framework that will help address some of the governance and financial issues affecting the game.
- 5.2 The effectiveness of the initiatives introduced to date are difficult to measure immediately and will develop over time. It is heartening to note that in 2005 only three clubs entered into insolvency events compared to four in 2004 and sixteen in 2003.
- 5.3 Progress has been made, but the FAC acknowledges that there is still work to be done in some areas to meet its objectives. The challenges faced are reflected in its agenda for 2006.
- 5.4 May I take this opportunity to commend the FAC and its constituent Leagues for their achievements to date. Also may I acknowledge both the hard work of the FAU and of those officers at clubs at the various levels of the game, who work to implement the improvements in governance and finance.

Kate Barker

Chair

On behalf of The Financial Advisory Committee

Appendix One

Terms of Reference of The Football Association Financial Advisory Committee ('FAC')

The Terms of Reference established for the FAC are as follows;

To review and assess the adequacy of financial controls in football. In exercising this, the committee shall consider the following;

- (a) The adequacy of corporate governance at each level of the game
- (b) The overall financial health of clubs
- (c) The manner in which any applicable policy for dealing with insolvent clubs has been observed
- (d) Consideration and regulation of material transactions
- (e) Applications from a club to significantly change their interest in their stadia

The committee shall report to the Board.

NB – These Terms of Reference were established as an FA Council Standing Order (Number 52).