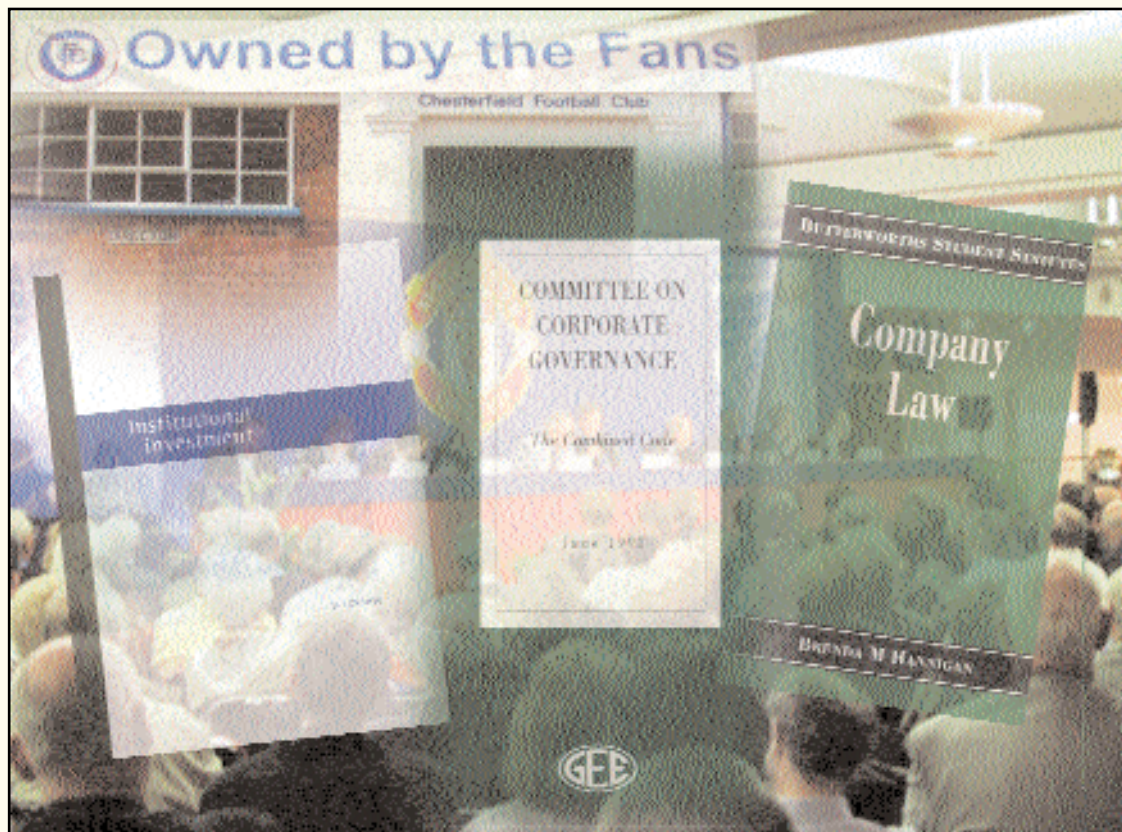


# The State of the Game

## The Corporate Governance of Football Clubs 2001

Sean Hamil, Jonathan Michie, Christine Oughton and Lee Shailer



Research Paper 2001/02  
for

**Supporters Direct**  
the supporters' trusts initiative

# The State of the Game

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# Preface and Acknowledgements

This report is the result of a huge exercise made possible only through the active co-operation from football club Secretaries and Chief Executives and by football supporters and the Secretaries of supporter shareholder trusts at clubs throughout England and Wales. To achieve a response rate to a lengthy postal questionnaire such as this of over forty per cent is a significant achievement, and we are immensely grateful to all those who took the time to complete and return the questionnaires.

We are also grateful for advice in preparing the questionnaires from various officials at the FA, the FA Premier League, the Football League and the Football Foundation, and in particular to Jamie Magraw, Kathryn Robinson, David Burns and Alastair Bennett respectively. The legal and other issues were discussed at a series of seminars held at Birkbeck and we are grateful to those who took the time to participate in these, and in particular to Lorraine Brown from Birkbeck's School of Law, Jeremy Orrell of Cobbetts, Nick Towle of Shareholders United, and Andy Walsh of IMUSA.

We are also grateful for helpful advice from Stephen Rowland of Baker & McKenzie.<sup>1</sup>

Although the four of us took the lead editorial roles, this report is very much a collective effort. In particular Brian Lomax, Trevor Watkins and Dave Boyle, all from Supporters Direct, and Steve Warby from the Football Governance Research Centre all contributed greatly to the design and administering of the questionnaires and to the editorial meetings. In addition, Brian Lomax wrote the section in the report on the role of supporter-directors and Barry Ward kindly contributed the guide to insolvency, administration and receivership that appears as an appendix to the report. This follows advice that Barry has given to Supporters Direct on these issues, and further detail is available from

Supporters Direct. We are also grateful to the Rt. Hon. Richard Caborn MP, the Minister for Sport, not only for having contributed the Foreword to this Report but also for his encouragement of and backing for Supporters Direct.

We would like to thank Jeremy Orrell and Adam Kaucher of Cobbetts solicitors of Manchester for their work on the report, including detailed comments on various aspects. This assistance was contributed as part of a wider research programme at Birkbeck being sponsored by Cobbetts solicitors, and also the Co-operative Union, the British Academy and Communicating Mutuality, on corporate governance and new business models. This programme of work led to the model rules for a football mutual that have since been made available to Supporters Direct, and currently includes a project on creating democratic employee shareholder trusts to improve the corporate governance of companies. We are therefore grateful not only to Jeremy Orrell and Adam Kaucher, but also to Cobbetts solicitors, as well as to the Co-operative Union, the British Academy and Communicating Mutuality for their support.

We have endeavoured to state law and practice as at 15th August 2001. Although some corporate governance and legal issues are addressed in this Guide this is not intended to be an exhaustive review and the reader is recommended to take appropriate professional advice in relation to any particular matters. If in doubt, please consult Supporters Direct.

*Sean Hamil, Jonathan Michie, Christine Oughton,  
Lee Shailer  
Birkbeck, 15th August 2001*

<sup>1</sup> Which was provided in his personal capacity.

# Foreword



**by the Rt. Hon. Richard Caborn MP,  
Minister for Sport**

I am very pleased to contribute this foreword to what will, I am sure, be an important contribution to the debate about the governance of football. That debate rightly involves the full spectrum of those involved with the sport in this country, including clubs, governing bodies and supporters. I have had experience of both sides of the fence, being both a longstanding fan of Sheffield United and a former director of the club.

One does not need to have had direct involvement in the running of a club to understand that there have been major changes in the game in recent years. Many of those changes have been wholly welcome, including unprecedented improvements in the quality of grounds and of television coverage. But the scope of football's activities has widened, and it is now a very big business. Commercial interests arguably play a more central role in decision-making at club and governing body level than ever before.

At the same time, clubs' customers – in common with those of other comparable businesses – now expect to be treated not only fairly, but in an open and transparent manner. In part, this reflects wider social change. But it is also a result of trends in the corporate governance of UK companies across the economy. This publication summarises that general trend, considers the actions of national governing bodies towards ensuring good practice through customer charters and other initiatives, and takes a

close look at how far football is matching its customers' expectations of good governance.

And then there are the fans. It became clear some years ago that many supporters were taking a closer interest in the way their clubs are run. New independent supporters' groups and fanzines not only demonstrated a critical – even irreverent – attitude to the sport's authorities, but they also gave voice to a very reasonable desire to help ensure that the sport is administered for the good of all. At the same time, many supporters were starting to indicate that they would like a greater say in the responsible running of clubs. In 1999, the Football Task Force endorsed the idea of supporters' trusts, and the Government subsequently announced the Supporters Direct initiative. Since its launch in September 2000, Supporters Direct has been operating with a great deal of success in partnership with fans' groups at well over a hundred clubs so far.

The close contacts forged by Supporters Direct with clubs and supporters' groups have greatly helped in the production of this report. I am sure that its conclusions will be noted with great interest by all with an interest in the running of the game, including supporters who are considering setting up new club-based trusts.

**THE RT HON RICHARD CABORN MP, July 2001**

# Glossary of Terms

**Annual General Meeting (AGM):** a company gathering, usually held after the end of each fiscal year, at which shareholders and directors can discuss the previous year's performance and the outlook for the future, directors are elected and other shareholder concerns are addressed.

**Alternative Investment Market (AIM):** a market regulated by the **London Stock Exchange**, but with rules not as strict (or expensive) as those on the main stock exchange. In particular, there is no minimum requirement for the proportion of shares that must be traded publicly.

**Annual Report:** an audited document issued annually by all publicly listed companies to their shareholders. Contains information on financial results and overall performance of the previous fiscal year and comments on future outlook.

**Articles of Association:** supplementary information to the **Memorandum** setting out in greater detail the internal administrative rules by which the company is to conduct its business.

**Audit Committee:** a committee recommended in the **Combined Code** for establishing formal and transparent procedures regarding financial arrangements.

**Auditor:** an accountant who audits the company accounts.

**Authorised Share Capital:** the amount of the company's share capital.

**Board of Directors:** the collective group of individuals elected (and in some cases appointed by the Board or its shareholders) by the shareholders of a company to oversee its management.

**Club Charter (Customer Charter):** requirement set by the FA Premier League that each club will have a written charter in which they set out club policy with regard to ticketing, merchandise and relations with supporters, season ticket holders, shareholders, sponsors, local authority, etc. A copy of the charter should be made available to the public, without cost.

**Combined Code:** a set of principles of good governance and good corporate practice incorporated into the listing rules of the **London Stock Exchange**.

**Company law:** the system of legal structures to regulate companies and their activities.

**Company Limited by Guarantee:** a company structure offering limited liability for its members and defined responsibilities for its directors.

**Company Minute Book:** a book containing all the minutes of proceedings of any general meeting of the company, kept at the company's registered office and open for inspection by any member without charge.

**Co-operative:** governing structure owned and run jointly by its members. Also called a Mutual.

**Corporate Governance:** the way in which companies are run, including the relationships between the shareholders, directors, managers and other stakeholders of a company.

**Director:** a person elected (and in some cases appointed by the Board or its shareholders) by shareholders to serve on the company's board of directors.

**Disclosure:** the public dissemination of material or market-influencing information.

**Extraordinary General Meeting (EGM):** shareholders' meeting called by the directors or shareholders representing not less than one tenth of the paid up capital carrying voting rights.

**Executive Director:** a member of a company's board of directors who is also an employee of the company.

**FA:** Football Association.

**Independent non-executive director:** a **non-executive director** who is independent from the company and other directors. For a non-executive director to be independent they must meet certain criteria, including that they should not be affiliated with the company in any other capacity, and they should not have had an association with the company for more than 9 years.

**Industrial and Provident Society:** a form of governance structure built on not-for-profit, democratic and community benefit principles which is registered with the Registrar of Friendly Societies. Also called a **mutual**.

**Insolvency:** a state in which a company cannot pay its debts as they fall due.

**Issued Share Capital:** the nominal value of the shares issued to shareholders.

**London Stock Exchange (LSE):** a market where the shares of listed public limited companies (PLCs) are traded.

**Memorandum of Association:** states the name and status of the company, and its statement of purpose or 'objects'.

**Mutual:** a governance structure owned and run jointly by its members. Also called a **co-operative**.

**Nomination Committee:** a committee recommended in the **Combined Code** as part of a formal and transparent procedure for the appointment of new directors to the Board.

**Non-executive director:** a person elected by shareholders to a company's board of directors who is not employed by the company.

**OFEX:** a regulated share market established in 1995 to provide a share-trading platform for unlisted and unquoted securities.

**PLC:** a public limited company.

**Proxy:** a person who is authorised by a shareholder to vote at general meetings of shareholders in their absence.

**Remuneration Committee:** a committee recommended in the **Combined Code** to ensure directors' pay is structured so as to link rewards to

corporate and individual performance, while avoiding paying more than necessary.

**Resolution:** formal decision by a Board, or the shareholders, authorising a particular act, transaction or appointment.

**Senior Independent non-executive director:** the **Combined Code** requires that there should be a strong and independent non-executive element on the Board, with a recognised senior independent non-executive director other than the chairman to whom concerns can be conveyed. The chairman, chief executive and senior independent director should be identified in the **annual report**.

**Share register:** a list of names of all shareholders.

**Shareholder:** a person or entity that owns shares in a company or mutual fund.

**Supporters Direct:** a Government funded initiative promoting supporter trusts as a vehicle for supporters to play a greater role in the running of the clubs they support.

**Supporter-shareholder trust:** a supporter trust that holds shares on behalf of its members.

**Supporting statement:** a 1000 word statement accompanying a resolution requisition by shareholders under the Companies Act 1985.

**Unincorporated Trust:** a form of governance structure that is constructed by a trust deed and not incorporated i.e. does not fall under the regulatory requirements of company house of the registrar of friendly societies.



# Executive Summary

The past few years have seen a shift towards greater requirements on the Boards of companies in Britain to operate in an open and accountable manner. Similar moves have occurred internationally. In Britain, all companies listed on the Stock Exchange are now expected to abide by the *Combined Code on Corporate Governance*, covering matters such as the role of independent directors. There are increasing expectations on institutional shareholders to hold the Board of Directors to account. Individual shareholders are also becoming more aware of their rights and more adept at asserting these rights. Even companies whose shares are not traded on the Stock Exchange are being affected by these changes.

The change for professional football clubs over the past few years has been far more drastic than for other companies. Alongside the general move towards enforcing better practice within companies, between the Board of Directors, shareholders and other 'stakeholders', football has become big business. Clubs have moved towards PLC status and several have floated on the Stock Exchange. Revenues from broadcasting and elsewhere have ballooned. Regulatory changes from Europe, such as the Bosman ruling, have had a major impact. How have the Boards of Directors of professional football clubs adapted to this new era? Have they kept pace? Are those clubs whose shares are traded on the stock exchange abiding properly with the *Combined Code*?

This report from the Football Governance Research Centre at Birkbeck, University of London, was commissioned by Supporters Direct to answer these questions. Supporters Direct was launched in 2000 to give legal and other assistance to supporters who want to play a greater role in the running of their clubs, including through the establishment of shareholder trusts. The holding of shares gives supporters certain rights to have their voice heard. Companies should in any case listen to their customers. And especially in a business like football where the clubs owe everything to their supporters. But sadly, this has not always been

the case. There have been well documented instances of directors showing complete contempt for the supporters. This research report therefore aims to do two things. Firstly, it reports on the current state of play, in 2001, of corporate governance in professional football clubs. And secondly, it advises shareholders on their rights and on how best to exercise these. In this way the report seeks not just to report on the current state of corporate governance, but also to contribute to bringing about a continual improvement, both by assisting clubs and individual directors where this has been requested, and by encouraging supporters to play a responsible role, collectively, as institutional shareholders.

All Premiership and Football League clubs in England and Wales were surveyed during June 2001. The results of this survey indicated a range of practices at clubs, some good, some less so. At each club, the 'customers' were also surveyed, allowing the perceptions of the Board – on issues such as how their customer charters were operating – to be compared with the perceptions of the customers themselves. In many cases the customers were also shareholders, having formed themselves into supporters trusts. This dual survey thus gives a unique picture of the state of the game in the summer of 2001.

Some clubs indicated that they would welcome assistance in the form of briefings on new developments and on how best to respond to these, and/or with training for new directors. The Football Governance Research Centre is in discussion with the football authorities on how best to collaborate in providing such support.

At most clubs the responses from the customers – the supporters – indicated that they welcomed the new opportunities that were opening up for them to play a greater role in ensuring good practice in the way their clubs are run. Sharing best practice, both in the way clubs are run and in the way that supporters can bring about improvements, was considered by many to be

vital. This research report is therefore being launched at a major national conference of Supporters Direct in September 2001. Supporters Direct will continue to assist supporters in the forming and developing of shareholder trusts. In co-operation with the football authorities and the other supporter organisations, Supporters Direct will also be working to ensure that football clubs continue to improve their relations with

the supporters and the local community. The survey results reported below indicate that in many cases progress has been made, but also that improvements can and must be made if the opportunities presented by the new commercialism in the game are to be used for the benefit of the game itself, its supporters and the communities that the game should be serving.

## Chapter 1

# Introduction

**There was a move during the 1980s and 1990s to turn football clubs into public limited companies quoted on the stock exchange.<sup>1</sup> Such companies have an explicit corporate purpose to create financial value for their shareholders above all else. This process – of football clubs becoming PLCs – has been well documented elsewhere.<sup>2</sup>**

In some cases the main motivation was clearly to raise additional funds for the club, as at Celtic in 1994. In other cases, though, one of the motivations appears to have been to allow directors to sell a proportion of their existing shareholding for a personal profit. Whatever the motivation, one consequence of this process has been the opening up of share ownership in football clubs to supporters with potentially far-reaching implications for supporter democracy. Critically, an opportunity has been presented to fans to organise collectively as shareholders. This opportunity is not restricted to those football clubs where the company is stock exchange-listed. Many non-listed football companies have a very broad shareholder base, such as at Sheffield Wednesday. It is not whether the football company is listed which is the key point in terms of allowing supporters to play a role as a collective shareholder, it is the number of individual shareholders and the sum of their total holding which is critical.

Floating on the Stock Exchange has also brought with it new requirements on clubs regarding corporate governance, including complying with the *Combined Code on Corporate Governance* which is incorporated in the Stock Exchange's listing requirements. However, the work of Supporters Direct with supporter trusts indicated that there is widespread ignorance at football clubs regarding what their duties include, for example regarding what information clubs are required to provide to shareholders.<sup>3</sup> At least one club listed on the London Stock Exchange appears to be not simply in breach of the *Combined Code*, but actually ignorant of its requirements. In addition to the demands of the law and the *Combined Code*, the football authorities

themselves are putting increasing efforts into ensuring that all clubs follow good practice. This has included not just accounting and other business aspects, but also the requirement to adopt customer charters, to establish fans forums and so on. Again, feedback from Supporters Direct suggests that the response to these new governance initiatives has been mixed.

Supporters Direct therefore commissioned the Football Governance Research Centre to go beyond the anecdotal evidence gathered through their fieldwork with supporter groups, to undertake a comprehensive survey of all 92 clubs in the FA Premier League and Football Leagues. In addition to surveying these clubs, we sent separate questionnaires to the supporter groups at the clubs. This has given a far richer picture than could have been achieved by conducting either of these surveys in isolation; we have been able to gauge the effectiveness of these new initiatives from both sides of the corporate divide: both the company and their customers. What has added still greater value is that in many cases the customers are also shareholders, and active as shareholder groups. We have thus managed to build a unique picture, providing not only the first comprehensive report of corporate governance at football clubs, but also including perspectives from the key stakeholders.

1. Or on one of the other exchanges, as reported in Chapter 3 below.
2. See for example Conn (1999) and Michie (1999).
3. For example, of those responding, almost 25% of clubs said that they would not make available the shareholder list despite their legal obligation to do so; see Chapter 4 below.

## Introduction

Of the 92 questionnaires sent to clubs, 43 were returned, a response rate of 47 per cent.<sup>4</sup> This is an extremely good return for a lengthy postal questionnaire such as this, and we have expressed our gratitude to the clubs in our acknowledgements above.<sup>5</sup> For those clubs that did not return the questionnaire, we were able to obtain the answers to some of the questions from other sources. We also sent questionnaires to 110 supporter groups, of which 47 were completed and returned, a response rate of 43 per cent. The responses from both groups were collated and used throughout the report in such a way as to ensure that the respondents could not be identified and their confidentiality maintained.

Collecting the views of both clubs and supporter groups in this way thus offers a unique insight into the world of corporate governance at football clubs. For the first time both club officials and fans have a chance to give their perspective on the state of management practice at the football club and the relationships, positive or otherwise, they have with other stakeholders in the game. An immediate impression from the survey responses is the high level of misinformation and ignorance concerning company law from both clubs and supporters. Supporter shareholder groups are entitled to statutory rights, but to a large extent many of these are simply not used. As such, mechanisms that should enforce good practice are consequently not employed

and the chance for supporter shareholders to have an impact on the running of the club they support is lost; this impoverishes the entire game.

One of the most striking observations to come out of the survey is the difference in perceptions between club officials and supporter groups. This point is illustrated dramatically with the contrasting views regarding the effectiveness of the customer charters, fans' forums and general communication between supporters and club (see Chapter 3 below). Both statistically and anecdotally the survey uncovers more divergence of opinion than consensus – from how effective the charters and forums are, to how well they are advertised. Exceptions do exist: at some football clubs excellent governance practice admits supporter groups into a model of consensual management and this operates to the overall benefit of the club. However the general picture is one of club officials indicating the relative ease they have in disclosing information and maintaining dialogue with the fans' groups and shareholders, while the supporters view the picture in a far less positive light.

The lack of enforcement of statutory rights and the overwhelming feeling that supporters do wish to play a role in the running of the club, leads the report to recommend supporter groups to endeavour to 'realise' their stake in the club by acquiring a shareholding and using shareholder rights. Furthermore, the report suggests that the supporter trust, and in particular the supporter trust formed as an Industrial and Provident Society, is the way to achieve this.

The survey also indicates that listed clubs and clubs formed or owned by PLCs are not fully complying with the provisions of the *Combined Code*. Again exceptions do exist, with some clubs not only meeting the requirements of the *Code*, but surpassing it. However, on the whole the report urges clubs to review their governance structures and for those structured as listed PLCs in particular to make every effort to comply with the provisions of the *Combined Code*.

4. The response rate for FA Premiership clubs was 65 per cent.
5. Only two clubs actually refused to co-operate. The rest either did not respond, or else promised to return the questionnaire but failed to do so on time. In some cases this failure was undoubtedly due simply to pressure of work and the length of the questionnaire, given that the promises came from directors who have been extremely co-operative with Supporters Direct. The only Premiership club to refuse to co-operate was Manchester United. Given their failure to comply with the *Combined Code on Corporate Governance* this should perhaps come as no surprise.

## Chapter 2

# Corporate Governance

**Corporate governance encompasses the system of laws, codes and regulations that govern the way in which corporate organisations – including football clubs – behave and operate. The system of corporate governance defines the rights and roles of different participants in an organisation – the shareholders, the Board of directors, employees and other stakeholders – and the relationships between them.**

In the case of football, two important sets of stakeholders are football supporters and the local communities in which football clubs are based. Corporate governance structures are important because they directly influence the way in which owners, directors, managers, players, supporters and the local community interact to determine company/club objectives, and the way in which the company or club behaves in its quest to meet those objectives.

The system of corporate governance is made up of a wide range of laws, regulations and codes that govern the behaviour of different participants in a club and therefore the behaviour of the club itself. The point of all these regulations is to safeguard the rights and interests of owners and other stakeholders. Good corporate governance systems aim to ensure high levels of transparency, accountability, competency and corporate responsibility, all of which are essential to good corporate performance.

The importance of corporate governance can be gauged from the fact that in recent years successive UK governments have established five major enquiries/reviews of corporate governance structures (Cadbury, Greenbury, Hampel, The Company Law Review and the Myners Review). In addition, the Institute of Chartered Accountants in England and Wales established the Turnbull Committee whose recommendations came into force for listed companies in January 2000. This concern with corporate governance is not confined to the UK. In 1998 the Organisation for Economic Cooperation and

Development (OECD) set up a Task Force comprising all 29 OECD member governments to produce a set of *Principles of Corporate Governance*. The *Principles* were adopted by OECD ministers in June 1999. This marks something of a watershed in that for the first time there is an agreed international benchmark on corporate governance. The effects of these reports and recommendations on corporate governance are discussed in more detail below. Here, the important point to note is that the system of corporate governance is changing as the recommendations of successive reports are translated into practice. The trend has been very much towards promoting greater transparency, accountability and corporate responsibility. In particular, it is possible to discern a growing acceptance of the importance of protecting the rights of minority shareholders and of engaging stakeholders – which would include football supporters and local communities – in the corporate governance process.

These general changes in the system of corporate governance have been accompanied by two specific changes in the way football is governed. The first of these is the stock market flotation of a number of clubs and the circumvention of the Football Association's Rule 34. As football became popular towards the end of the 19th century the Football Association foresaw the potential conflict between, on the one hand, the desire of the owners of clubs to extract profit and, on the other hand, the wider community's interest in the club's sporting and cultural activities (Conn, 1997). To preserve the sporting and cultural dimension of football, the FA introduced Rule

## Corporate Governance

34 which prevented owners from extracting significant profit from the game by restricting the payment of dividends to five per cent (subsequently increased to fifteen per cent in 1981) of the face value of shares and preventing the payment of directors (Conn, 1997, p. 35). This was designed to ensure that clubs were run as 'clubs' rather than businesses. The rule remained an important part of the system of corporate governance of football until 1983 when the FA allowed the rule to be circumvented in the stock market flotation of Tottenham Hotspur.

Rule 34 represented a stumbling block to the stock market flotation of clubs because ownership of shares in a company whose dividend payments would be restricted was an unattractive proposition. If the flotation of Tottenham was to be a success, the club needed to find a way to distribute the club's profits to shareholders without limit. The football club became a subsidiary of a new holding company which was expressly not subject to the FA's rules, and which was then floated on the Stock Exchange. The effect was to bypass Rule 34: with the football club a subsidiary of the holding company, the profits of the football club could be transferred to the holding company and then paid out in the form of dividends, without limit. Instead of enforcing Rule 34 and preventing this circumvention, the FA allowed its own rules to be violated. After a number of clubs had floated in this way, the FA abandoned Rule 34 altogether (Brown, 2000).

The stock market flotation of clubs marked a significant change in the corporate governance of football. Football clubs could now ostensibly be run just like any other business. However, as shown below, the business of football is characterised by a number of peculiarities that call into question the appropriateness of the traditional stock market model of corporate governance. Not least, the fact that the vast majority of clubs, even in the Premier League, do not make a profit.

The second recent development in the corporate governance of football clubs is the formation and growth of Supporter Trusts. Supporter Trusts are legal entities that represent the interests of supporters in the running of a football club. The first democratically run Supporter Trust was established at Northampton Town FC in 1992. The Northampton Town Supporters' Trust was formed to save the club from bankruptcy and to ensure that the club would be properly managed in the future. The Northampton Town Supporters' Trust had raised a significant amount of money to help bail the club out but were unwilling to hand over their cash to the existing management who were ultimately responsible for the poor financial position of the club. The Northampton Town Supporters' Trust's contribution to the club was accompanied by a 7 per cent shareholding and the election of a director to the Board.<sup>1</sup>

The Northampton Town Supporters' Trust served as an important example of how supporters might gain a democratic say in the running of their club. The case also raised the question of how the model of supporter trusts might be effectively applied to other clubs. Joint work by Michie (1999), Jaquiss (2000) and others (Hamil *et al.*, 2000) through Birkbeck's Football

1. The history of the trust has been documented in full by Lomax (1999) and Frampton, Michie and Walsh (2001) and so will not be repeated here.
2. This work has been generously funded by Cobbetts solicitors, The Co-operative Union, and the British Academy. It forms part of a wider research programme being funded within Birkbeck's School of Management & Organizational Psychology into new forms of corporate governance including through mutualisation. This includes a project looking at how the lessons from supporter shareholder trusts might be used to democratise employee shareholder trusts and encourage these to play a role in the corporate governance of companies. This larger research programme is funded by Cobbetts solicitors, the British Academy, and Communicating Mutuality.

Governance Research Centre resulted in the development of a general model of corporate governance for football clubs.<sup>2</sup> The model was based on the formation and incorporation of Supporter Trusts registered as Industrial and Provident Societies. These ideas were developed at three conferences held at Birkbeck during 1999 and 2000 and won the approval of the Rt Hon Chris Smith MP – the then Secretary of State for Culture, Media and Sport – who agreed to establish *Supporters Direct*, a dedicated unit, funded by the government, to provide legal and practical advice to supporters seeking to play a greater role in the running of their clubs via the formation of a Supporter Trust. Supporters Direct was established in September 2000 and in its first year has helped establish Supporter Trusts at numerous clubs, some of which have achieved elected directors to the club Board. The supporter trust movement thus represents a significant development in the corporate governance of British football, providing a new legal mechanism via which supporters can engage with their club.

## 2.1 The System of Corporate Governance

The corporate governance system for football clubs comprises four main elements: the law; voluntary codes; regulations set by the football authorities and policy measures initiated by the Department of Culture, Media and Sport, most notably the Supporters Trust initiative.

### 2.1.1 The Legal System

Football clubs in Britain have adopted various organizational forms, from Private Limited Companies to Public Limited Companies quoted on the Stock exchange, to Members' Societies. All are directly controlled by law. Company law is binding in the sense that it is enforceable through the judicial system. As well as company law, the behaviour of organisations (including football clubs and the football authorities) is

Figure 2.1 The System of Corporate Governance for Football Clubs



governed by competition law – which has measures to control monopolies and mergers policies and restrictive practices, such as price fixing; consumer law – which sets requirements for consumer protection; and employment law – which governs labour contracts, including players' contracts, and employment rights.

Company law outlines the duties and responsibilities of directors and the rights of shareholders and other stakeholders. The Company Law Review Steering Group established by the government has just completed an extensive review of company law. The *Final Report* and recommendations were published in July 2001 and will form the basis of company law reform to be enacted in the life of the current parliament. There are a number of recommendations that if put into practice would have a significant impact on the corporate governance of football clubs. First, the *Final Report* recommends that it should be a statutory requirement of the duties of directors to recognise the importance of relations with stakeholders, such as customers, and the impact of their (directors') actions on the community. If this recommendation is written into the statute books, directors of all football clubs will be *legally* obliged to

recognise the importance of relations with supporters, the local authority and the local community. Second, the report recommends strengthening the protection of the rights of minority shareholders against unfair prejudice. Again, if this recommendation is followed through it will afford supporters and supporter trusts (that are normally minority shareholders) greater protection in law. Third, the review recommends that shareholder resolutions (with the necessary level of support) should be circulated by companies free of charge.

These recommendations would represent a welcome improvement to the corporate governance of football. The final recommendation of the review that is likely to affect football clubs concerns the current obligations on private companies to hold Annual General Meetings, present accounts in general meetings, appoint auditors and appoint a company secretary. At present private companies must do all of these, unless they elect *not* to do so by a ballot at a general meeting. The Company Law Review proposes waiving these requirements for small private companies unless the company positively chooses to abide by them. This would represent a retrograde step for football governance. Football clubs tend to operate on the verge of viability and many clubs have run into financial difficulty because of poor accountancy practice and a lack of transparency in the business affairs of club. Those who have an interest in the affairs of the club often find it difficult to find out what is going on. Dispensing with the requirements to hold AGMs and present annual accounts would exacerbate this problem and make it more difficult for supporters, the local authority and the local community to know what is happening. This recommendation also flies in the face of the work of the Football Association which is currently trying to promote good business practice at its member football clubs, including spreading best accounting and corporate governance practice. It is to be hoped that this recommendation of the Company Law Review is not put into practice. However, if current requirements are relaxed, it is

important that the football industry has its own code of corporate governance practice that retains current requirements regarding AGMs, presentation of annual accounts and the appointment of a company secretary and auditors.

### 2.1.2 *Codes of Corporate Governance*

In addition to legal requirements, there are various voluntary codes of practice that many companies choose to comply with, such as the 1998 *Combined Code of the Committee on Corporate Governance* which sets standards of corporate governance for PLCs listed on the London Stock Exchange based on recommendations from the Cadbury and Greenbury Committees. Other codes include the *OECD Principles of Corporate Governance* which were adopted by OECD Ministers in June 1999 and the Turnbull Committee recommendation, adopted in September 2000, that listed companies undertake an annual assessment of business risks. The *OECD Principles* are particularly relevant for football clubs as: they apply to all limited liability companies, not just listed companies; they are grounded in the principle of equitable treatment; and they formally recognise the role and rights of stakeholders. In addition to these codes, many organisations have written their own codes to promote good corporate governance practice throughout their sector. For example, the Cooperative Union, which represents cooperative and mutual forms of organisation, introduced its *Corporate Governance: Code of Best Practice* in July 1995.

The *Combined Code* and the *Turnbull* guidance have been adopted by the London Stock Market Listing Authority as part of the rules that companies listed on the Stock Exchange must adhere to. However, they operate on a voluntary basis, in the sense that listed companies do not have to comply with them. Rather, companies must either comply with the code, or explain in a public statement their reasons for not complying. Similarly, the *OECD Principles* are intended



to serve as a benchmark for companies (in this case all limited liability corporations) and governments. Because companies are under no statutory obligation to comply with these codes, they lack teeth and many companies choose to ignore them. For example, a recent survey conducted by the Responsible Investment Unit of the Co-operative Insurance Society (CIS) found that 60 per cent of FTSE-100 companies did not comply with the *Combined Code's* requirements on remuneration committees).

The value of codes is that they provide a clear standard and, therefore, a guide to companies about what is good corporate governance practice. The football industry at present lacks a code of best practice and one of the effects of this is that clubs do not always know what 'good practice' is, or in some cases, what is required of them by law. A code for the football industry would lead to clarity both in respect of 'good practice' and legal obligations. The value of introducing a corporate governance code of good practice for football is illustrated by the fact that 80 per cent of the clubs responding to our survey stated that they would find a guide to corporate governance useful.

#### 2.1.3 **Regulation by the Football Authorities**

Clubs are also subject to regulation by the football authorities – the Football Association, the FA Premier League or the Football League, FIFA, and UEFA. Regulation by the football authorities takes the form of terms and conditions of membership and associated codes of conduct. Compliance is monitored by the football authorities who may impose sanctions for non-compliance. However, unlike company law, clubs that do not comply with the regulations stipulated by the footballing authorities are not subject to prosecution under criminal law. It is not uncommon for the football authorities to set regulations that complement statutory requirements of company, consumer or competition law, and that therefore affect the system of corporate governance. For example, until 1983 the

FA Rule 34 limited the amount of profit directors could extract from clubs. More recently, the FA Premier League has required clubs to set up Customer Charters – a written statement of each club's policy on ticketing, merchandise and the club's relations with stakeholders, including its supporters and local authority. The FA Premier League's policy on customer charters is set out in Section J Rule 14 of the *Handbook* which includes a statement about the provisions for consultation with stakeholders:

'14. A Club's policy with regard to its stakeholders should:

- 14.1 provide for consultation with them on a regular basis through forums, questionnaires and focus groups and by the publication of current policies on major issues in an easily digested format;
  - 14.2 promote supporter and community liaison and provide for the establishment of liaison structures where none exist.'
- (*The FA Premier League Handbook, 2000-2001*, p. 41)

The Football League was to vote at its 2001 AGM on a proposal to establish written customer charters but the motion was withdrawn for re-drafting for presentation at a later date. At present the Football League does not require its members to have a written customer charter. The effectiveness of the FA Premier League's customer charter is assessed using results from our survey in Chapter 3 below.

#### 2.1.4 **Supporter Trusts and Shareholder Activism**

Supporters Direct provides free legal and practical advice to supporter groups and shareholders on how they can best achieve a voice within their club. This includes establishing a supporter trust organisation that is normally registered as an Industrial and Provident Society. The trust provides a mechanism for

the collective voice of supporters to engage with the directors of the club. The aim of the supporter trust is to gain a collective shareholding and elected directors on the board. The precise legal structures differ from club to club but in general, where shares are available, legal mechanisms are established that transfer the voting rights to the trust.

### 2.2 Why Corporate Governance Matters

Corporate governance matters because it affects both corporate performance and the welfare of the wider community in which companies operate. Different systems of corporate governance strike different balances between the interests of the various stakeholders in a company: the owners (shareholders); the board of directors (managers); employees; customers (or in the case of football, supporters) and the local community. Traditionally the UK system has placed emphasis on the rights of shareholders and the creation of shareholder value – which is a mixture of the dividend payments shareholders receive and the increase (decrease) in the capital value of their shares. Particular emphasis has been placed on the potential conflict of interest between ‘owners’ and ‘managers’ arising from the fact that shareholders (owners) receive payments in terms of distributed profits and capital gains, while managers (executive directors) receive payments predominately in terms of salaried income. In view of the fact that most shareholders simply own shares, take no part in the running of the company and have very little information about most of the decisions taken by the directors, there is a temptation for the managers of the company to run the company in their own interests, rather than the wider interests of shareholders and stakeholders. For example, managers may decide to increase their own salaries at the expense of lower profits and dividends. Similarly, there

may be many other areas where the decisions taken by the board favour the interests of the directors over those of owners and other stakeholders.

One way of minimising this conflict of interest is to ensure full disclosure of accounting information and make the decisions of managers (particularly decisions over directors’ pay and remuneration) as open and transparent as possible. The *Combined Code on Corporate Governance* and the associated Turnbull guidance are designed to improve transparency and accountability to ensure that corporations operate in the interests of shareholders and other stakeholders, for example by requiring remuneration committees consisting only of independent non-executive directors.

Attaining more information about a company’s financial and risk position is the first step to better corporate governance. However, information without action is unlikely to produce improvements in governance. It is therefore important that shareholders and other stakeholders take an active interest in their companies. Part of the problem with the Anglo-American system of ‘Stock Market’ corporate governance is that most shareholders do not take an active role and do not vote at, or even attend, annual general meetings. The Myners (2001) review of the role of institutional investors, such as pension funds, has advocated a code to encourage such investors to monitor the performance of the companies they invest in, and to play a more active role by exercising their right to vote. Research has shown that where shareholders do take an active interest, the performance of the companies is improved. The US institutional investor CalPERS (a Californian based investment company) operates a website (the *CalPERS Shareholder Forum*) that provides information to investors on ‘ongoing proxy battles, shareholder litigation, and institutional shareholder activism’

(OECD, 2000, p.12). The website also details the voting behaviour of CalPERS at all the companies where it is an investor. Empirical evidence has shown that when CalPERS reports negative information about a company the share price of that company suffers an initial loss; however, the longer term performance of such companies is improved. A recent academic study has also confirmed the beneficial effects of shareholder activism on corporate performance:

'The effectiveness of activism as an influence mechanism may depend on the governance context. Ownership structure ... and boards of directors ... are potential monitoring mechanisms. Activism by institutional investors is likely to be particularly effective in obtaining managers' compliance in the presence of other owners and directors favourable to institutions. Ownership by other activist institutions (typically pension funds like CalPERS) can leverage activism, as the actions of one activist institution are likely to be supported by other activist institutions.' (David *et al.*, 2001, p. 147)

Encouraging activism by a range of stakeholders is therefore beneficial. Successive reviews of corporate governance have advocated the importance of protecting and enhancing the rights of minority shareholders and other stakeholders. Increasingly, taking account of the interests of other stakeholders is becoming part of good corporate governance practice that improves the long-term performance of companies. This thinking lies behind the development of the OECD *Principles*. As Nestor (2001) notes:

'To begin by stating the obvious, the reason the 29 most developed nations of this world decided to draft a set of principles on how companies should be governed lies precisely with the increasing

impact of private corporate behaviour on our collective welfare ... Increasingly, equity markets discount the way companies are treating their customers, employees and communities in which they operate. Active owners with a longer-term view of shareholder value are making themselves heard ... Businesses are also working to improve their reporting practices in the social and environmental fields.' (Nestor, 2001, p. 2)

The flotation of football clubs on the stock market and other share markets (AIM, OFEX) has meant that ostensibly these clubs are open to more public scrutiny and shareholder activism. However, the peculiar economics of professional sports leagues means that most football clubs – and the listed clubs are no exception – make a loss. In the year 1999/2000 – the latest for which figures are available from Deloitte & Touche (2000) – 18 Premier and Football League clubs were listed on share markets. Only 6 of these clubs made a pre-tax profit. As the latest Deloitte and Touche financial report makes clear, 'football (with few exceptions) is not really an investment proposition' (Deloitte and Touche, 2001, p. 11). Football clubs are not an attractive proposition for financial and institutional investors and given the low returns, it is unrealistic to expect institutional shareholders, who in the best of circumstances are not known for their activism, to take an active interest in the way football clubs are run. In short, if there is to be greater transparency and wider public scrutiny of the way clubs are run it is not likely to come from institutional shareholders. However, the supporter trust movement has opened the way for a new source of stakeholder and shareholder activism – supporter trusts. Supporter Trusts work by providing a collective voice for football supporters as stakeholders, and ideally by electing representatives to serve as directors on the board of the club.

It is not necessary for a supporter trust to own shares, but share ownership brings with it ownership rights. Where shares are available for purchase there are significant advantages to supporters owning shares, and further advantages to their pooling their shareholding in a shareholder-supporter trust. Most football supporters only hold modest amounts of shares and therefore individually they have little say in how their club is run. However, collectively, supporters often own a significant stake in their club. In order to make their voice heard it is advantageous to pool their shareholding in a trust that democratically represents the views of its members. In this way, clubs that are listed on the stock market are obliged under the combined code to establish a dialogue with such shareholders, unless they choose publicly to state why they have decided not to follow the code in this regard. At the same time, enlightened non-listed clubs should comply with the OECD *Principles* of good corporate governance (which apply to all limited liability companies) and appreciate that they have a corporate responsibility to engage with the supporter trust. The supporter trust movement represents a significant step forward in terms of improving corporate governance at football clubs: it provides a collective voice for supporters and an excellent vehicle via which clubs can engage with their key stakeholders. These advantages are maximised when the trust becomes fully engaged in the running of the club via trust elected directors on the board.

### 2.3 Football: Peculiar Issues of Corporate Governance

A central question in the corporate governance of football clubs concerns the extent to which football clubs can be treated just like any other business. If football is just like any other business, it should arguably be governed like any other business. However, two sets of factors distinguish football from other kinds

of business. The first concerns the relationship between the club, its supporters and the local community. The second concerns the peculiarities of the economics of sports leagues and the viability of football clubs.

#### 2.3.1 Clubs, Fans and Communities

The relationship between a football club and its supporters is *not* the same as the standard relationship between a business and its customers. Football clubs benefit in three ways from the peculiar relationship between the club and its supporters – or what in other lines of business would be referred to as a business-customer relationship. First, football supporters by their nature are extremely loyal customers and football clubs enjoy a type of brand loyalty that confers on them all the advantages of a local monopoly. If Safeway raises its prices, customers may switch to other supermarkets. If a football club raises ticket prices, its fans cannot simply switch allegiances. This supporter loyalty creates monopoly power that enables clubs to raise ticket prices above the general rate of inflation. Similarly, if the facilities or service at the ground are found wanting, football supporters are unlikely to be deterred from showing up to support their team.

Secondly, football supporters contribute to the ‘output’, ‘production’ or ‘value’ generated by clubs, over and above the money they spend on tickets or merchandise. By turning up at the ground and supporting their team they increase the likelihood that their team will win. This positive effect of the supporters on the performance of the team is reflected in different ‘win’ rates for home and away matches. By increasing the win rate at home, match-going fans improve the league performance of the team, which in turn increases the amount of money the team receives from sponsorship and the ‘facility’ and ‘merit’ payments associated with television income. In economic parlance, this is a classic case of joint

production, where the customers are part of the production process. Supporters also add value by increasing the attractiveness of televised matches, as matches played in front of packed stadia, with the active participation of supporters are more exciting to watch and will therefore attract more subscribers than matches played in front of half empty stands.

Thirdly, supporters have frequently contributed significant sums of money to help bail out failing clubs or improve facilities. This type of 'customer' behaviour is not normally observed in other lines of business. In a similar fashion, local communities, often through their local authority contribute money towards the development of football grounds and stadia. The contribution of money from supporters and local communities means that football clubs face 'soft budget constraints' in the sense that the directors of the club know that if they face financial difficulty there is a chance of raising funds from supporters or the local community. In corporate governance terms, the directors of football clubs face less financial constraints than the directors of a normal business who are unable to call on customers and the local community to bail them out.

Taken together, these peculiarities in the relationship between a club and its supporters mean that football supporters are more than just customers. Together with the local community, they are a particular kind of stakeholder and this special relationship between club, supporters and community should be recognised through formal governance mechanisms that allow supporters and communities to be involved in the running of their football clubs.

### 2.3.2 *Viability of Football Clubs*

The second way in which football clubs differ from standard businesses has to do with the peculiar economics of sports leagues and the viability of football clubs. Because football is as much a 'league' product as it is a product of the individual clubs, there

needs to be a certain degree of cooperation in order for the league to function. Unregulated leagues have a tendency to become unbalanced, in the sense that leading clubs earn more income and can spend more on players which in turn strengthens their position, while lagging clubs earn less money, have to sell players or cut back expenditure, which weakens their position. To correct for this inherent tendency, virtually all professional sports leagues redistribute income from leading to lagging clubs. The advantage of this system is twofold. Firstly, it makes the league more balanced and the outcome of matches less predictable and therefore more exciting to watch. Secondly, it helps prevent clubs at the bottom of the league from going out of business. This is imperative in sports leagues where the league must have a set number of clubs in order to operate throughout the season.

This leads on to the second point about the economic viability of football clubs. Despite rising revenue from the sale of broadcasting rights, rising ticket prices and increases in attendance, most football clubs make losses. The reason is straightforward: increased income is spent on bidding up players' wages. Players are able to command high wages because they have a monopoly on their talent. As a result, the vast majority of football clubs do not make a pre-tax profit. The latest Deloitte and Touche report (2001) shows that in 2000 only 6 out of the 20 Premier League Clubs, and only 15 out of the 72 Football League clubs (Deloitte and Touche, 2000), made a pre-tax profit. Most football clubs operate on the borders of viability. In any other industry where the vast majority of companies made losses, it would be normal to observe a shake out of firms and the sector would reduce in size as companies went out of business. This threat of bankruptcy is often said to be a powerful mechanism for engendering good corporate governance. In the football 'industry' this mechanism simply does not – and indeed should not – work. Firstly, there must be a fixed number of clubs for leagues to operate; and



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secondly, ailing clubs tend to be bailed out by combinations of supporters, local communities and 'investors' who buy the club not so much as an investment, but to save it. Given that this is the case it is questionable whether standard business models

of governance, and in particular the stock market model, are appropriate for football clubs. There is clearly a need to look at alternative models of governance that recognise the special role played by supporters and local communities.

## Chapter 3

# Football Clubs and Supporter Shareholder Trusts

**This chapter describes the system of corporate governance as it applies to football clubs whether they are private limited companies, listed public limited companies or subsidiaries of listed PLCs. As discussed in Chapter 2, governance and regulatory issues apply at a number of levels.**

Firstly, there are a vast array of legislative requirements that clubs, as companies, must comply with. These are set out primarily in the Companies Act 1985 (collectively known as 'company law'). Secondly, there are the regulatory requirements stipulated by the Football Association, the FA Premier League and the Football League. To play in a League, clubs must abide by the articles laid down in that League's constitution, such as requirements to submit financial records and reports.<sup>1</sup> Thirdly, companies are now under pressure to follow various codes or guidelines that promote best practice. For companies listed on the London Stock Exchange, these requirements are set out in the *Combined Code* on corporate governance, covering issues such as the roles of non-executive directors and audit committees. At the same time, the pressures on clubs to improve management practice has been gathering momentum regardless of whether or not the club's shares are traded on a market. The results of our survey of clubs and supporter groups provide the first comprehensive picture of the state of corporate governance in football clubs.

### 3.1 Memorandum and Articles of Association

All companies must have a Memorandum of Association and Articles of Association. The Memorandum of Association is the main constitutional document for the company and determines what activities it can be involved in. It provides its most

basic details, such as its name, objects, powers and business purposes. This document also notes the company's authorised (but not the issued) share capital and the category of shares into which this is divided. In the case of a limited company there will be a statement confirming that the liability of its members is limited (to any unpaid amount in respect of the member's shareholding in respect of a company limited by shares or to the extent of the amount specified in the Memorandum of Association in respect of a company limited by guarantee).

The Articles of Association deal with the conduct of the internal administration of the company. This document addresses an array of topics which would ordinarily include share capital and class rights; allotment, transfer and transmission of shares; appointment and removal of directors, directors' powers, meetings of directors, and directors' remuneration, expenses and other interests; meetings of members (including the business to be transacted, quorum requirements, the exercise of voting rights and the appointment of proxies); general administration (eg notices, minutes, winding-up); and financial administration (eg accounts and dividends).

The Companies Act 1985 contains a standard form of Articles for companies limited by shares known as Table A. Companies often adopt these, whether in whole or in part, but are not required to do so. Many companies will have Articles drafted for them to cover particular needs they may have. Issues which are often addressed include pre-emption rights on the transfer of existing shares by shareholders; entitlements to take up a *pro rata* percentage of shares on any share issue; and special share rights to protect a minority (through

1. The Football League Handbook (Season 2000-2001), p. 145, section 4, 16.2; The FA Premier League Handbook (Season 2000-2001), p.18, Section D, 5-9.

## Football Clubs and Supporter Shareholder Trusts

negotiation a variety of rights can be addressed including those on appointment of a director, entitlements on share issues and/or transfers and rights of veto in respect of particular matters; these are also often addressed in a separate shareholders' agreement). Further, companies who have shares listed on a share exchange (eg the London Stock Exchange, AIM or OFEX) will need to comply with the additional requirements of that share exchange.

These two documents provide the basic information regarding the governance mechanisms of the club. Attaining sight of the Memorandum and Articles of Association is the first step in understanding how the club is run. They are essential documents for supporter shareholders wishing to ensure good practice in the governance of their club. Under company law clubs are obliged to provide these documents to shareholders on request for a nominal cost (currently 5p); alternatively they are publicly available from Companies House for a small cost.

Clubs were asked in the survey if they would provide copies of the Memorandum and Articles of Association to shareholders who requested them and Table 3.1 provides their responses. The vast majority of clubs, 76.7 per cent, would provide a copy and most claimed they would not impose a cost to do so. Of the clubs

Table 3.1 **Provision of Memorandum and Articles of Association to shareholders\***

Club survey	Percentage of respondents			
	Yes	No	N/A	Missing Answer
<b>Club provides MAA to shareholders who request it</b>	<b>76.7</b>	<b>11.6</b>	<b>7.0</b>	<b>4.7</b>
<b>Would there be a cost to provide MAA</b>	<b>9.3</b>	<b>62.8</b>	<b>23.2</b>	<b>4.7</b>

\*Figures in this table and all subsequent tables may not sum exactly due to rounding

that would impose a charge, no club in the survey stated this would be over £10. The 11.6 per cent of respondents that stated they would refuse to provide a copy of the Memorandum and Articles to a shareholder who requested it and those who have charged more than 5p for it, are in breach of company law.

### Summary

- Supporters wishing to acquire a shareholding should acquire a copy of the club's Memorandum and Articles of Association either from the club or Companies House
- Clubs should provide the Memorandum and Articles to shareholders and supporters on request free of charge or for the prescribed fee

### 3.2 Shares, Shareholding and the Share Register

A shareholding, however small, gives the shareholder a stake in the company and has various entitlements resulting from this. These include the right to:<sup>2</sup>

- requisition general meetings (subject to having the relevant shareholding qualification);
- requisition resolutions (subject to having the appropriate shareholding qualification);
- inspect various company registers (including those relating to share ownership, mortgages, directors and directors' interests);
- inspect directors' service contracts or a summary of their terms;
- inspect the register of substantial interests in shares (public companies only);
- inspect minutes of general meetings;

2. In the case of shareholders holding more than 25% of the voting capital of the company, there are additional issues covered by company law which require their consent (eg a voluntary liquidation, amendments to Memorandum and Articles of Association etc).



- (g) inspect contracts (or written memorandum of its terms) relating to the purchase by the company of its own shares and any variations thereof;
- (h) not be unfairly prejudiced as a shareholder;
- (i) attend and vote at shareholder meetings;
- (j) receipt of the annual accounts;
- (k) apply to the DTI to investigate the affairs of the company and/or its membership (although generally the Secretary of State has the discretion whether or not to undertake an investigation).

Supporter groups are encouraged to obtain a shareholding to promote good governance. Shares in companies whose shares are traded on a recognised share exchange can be acquired through a broker but for private limited companies supporters groups are likely to acquire shares in one of two ways:

- (a) **Private acquisition** – this is reliant on a number of factors including finding a shareholder willing to sell some or all of their shares, negotiating an appropriate price and complying with any provisions on share transfers contained in the company’s Articles of Association (there may be provisions requiring shares to be offered first to existing shareholders and/or the directors might be able to block a transfer). It is customary for the terms of the purchase to be reflected in share purchase documentation containing, where appropriate, warranties, indemnities and covenants in relation to the title to the shares and the affairs of the company. A prospective purchaser would generally take professional (eg legal, financial and tax) advice and assistance before entering into the transaction;
- (b) **New share acquisition** – to issue shares the company will have to comply with various legal requirements including obtaining appropriate board and/or shareholder approvals and complying with the financial services legislation which governs offers of shares to the public. Depending upon the

size of the investment the investor would normally expect to have the terms of the investment covered by a share subscription/investment agreement which would include, where appropriate, warranties, indemnities and covenants in relation to the title to the shares and the affairs of the company. A prospective investor would generally take professional (eg legal, financial and tax) advice and assistance before entering into the transaction.

In our survey 72.1 per cent of clubs who responded indicated they have the authority to issue shares. Some clubs reported the existence of formal restrictions on share dealing, such as pre-emption rights and the Board having the right of veto over new shareholders:

Table 3.2 **The authority of the Board**

Club survey	Percentage of respondents		
	Yes	No	No answer
<b>Were the Board authorised to issue shares?</b>	<b>72.1</b>	<b>23.3</b>	<b>4.7</b>
<b>Were any shareholders’ pre-emption rights in operation?</b>	<b>18.6</b>	<b>-</b>	<b>-</b>
<b>Did Board have the power of veto on share dealing?</b>	<b>32.6</b>	<b>-</b>	<b>-</b>
<b>Were other restrictions on shareholding in place?</b>	<b>4.7</b>	<b>-</b>	<b>-</b>

Most shares that are issued are ordinary shares but there are other types of shares that can be issued by the company if permitted in the Articles of Association or by a resolution of its shareholders. Other classes include Preference shares for which annual dividends will normally be paid to the holder before other types of shares; non-voting shares; and redeemable shares

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where the company has the option, or may be required, to buy back shares on fixed dates:

Table 3.3 **Types of shares in the club**

Club survey	Percentage of respondents
	Yes
Ordinary shares	97.7
Preference shares	9.3
Non-voting	4.7

Shares can be transferred or sold in both private and public limited companies. For companies that are listed on an exchange, the market ordinarily handles the sale of shares; for private companies change of share ownership is done by private agreement between buyer and seller. Details of share ownership are recorded in the company share register. Shareholding information for any incorporated company will be available from Companies House for a small fee, but the information provided will not be up to date as it is only a snapshot of the company when it last submitted its Annual Return. A more reliable picture can be provided from the share register at the company's registered office. Every company must have a share register and it is the responsibility of the company secretary to ensure that the following is kept up to date and indexed in such a way that information can be easily found:

- Names and addresses of members
- Date of members' registration
- Date a member ceased to be a member
- Class of shares owned<sup>3</sup>

The company is in breach of the law if the above information is not kept up to date.<sup>4</sup> There are a number of rights enshrined in company law that shareholders have concerning the share register. A shareholder of the club is legally entitled to inspect the

register without charge.<sup>5</sup> Shareholders are also entitled to request a copy of the register. The club is required to produce this within 10 days of receiving the instruction, although the company is entitled to impose a charge (at the statutory rate) for such a service. If the request is refused or a copy not sent within the time limit, the company's officers are liable for a fine and continued default can lead to a daily fine. In the case of a refusal by the club to a request to inspect the share register or have one sent to a shareholder, a court can order a company to comply.<sup>6</sup> Given that providing the share register to shareholders is a statutory requirement it is somewhat surprising that almost a quarter of club secretaries would refuse such a request:

Table 3.4 **Club's policy to provide access to or copies of the share register**

Club survey	Percentage of respondents			
	Yes	No	No response	N/A
Club to provide access to copies of share register	67.4	23.3	4.7	4.7
Charge to provide share register	11.6	53.5	2.3	32.6

One club refused a supporter request because the secretary felt this contravened data protection laws, whilst another charged the supporter group £50 for a copy. One club said it would cost £500 to supply a copy of the share register due to the large number of

3. Ryan (1999) *Butterworths Student Statutes: Company Law*. 3rd edition, p. 243.
4. Ryan, p. 244.
5. Ryan, p. 219.
6. Ryan, p. 136.

shareholders. However, clubs can only charge at the statutory rate, currently £2.50 for the first 100 entries, £20 for the next 1000 entries and £15 for every subsequent 1000.

### 3.2.1 *Transmitting Shares*

The ownership of shares can be transmitted from one person to another if a shareholder dies or becomes bankrupt. In the first instance the deceased's shareholding becomes vested in the personal representative handling the deceased's estate. Once the new beneficiaries of the shares are known, the personal representative should inform the company secretary so the register of members may be updated and new share certificate(s) issued.<sup>7</sup> Shares cannot be cancelled by the company, even if the holder cannot be traced.<sup>8</sup> However, some companies have special provisions in their Articles requiring such shares to be made available to other shareholders for purchase in the event of death or bankruptcy and the Articles would need to be checked to determine whether or not this is the case.

#### **Summary**

- Club secretaries must comply with their legal responsibilities by allowing shareholders to exercise their rights of inspection and by providing relevant information/documentation at no more than the prescribed fee
- Clubs should make shares available to supporter groups by issuing new shares and/or encouraging existing shareholders to make some or all of their shares available; issuing new shares to supporters benefits the club financially

### 3.3 **Directors, Secretaries and the Board**

Companies and Boards of directors have numerous responsibilities; these responsibilities can be seen as a series of levels that regulate their activities. This

section looks at the different roles of directors, secretaries and Boards of clubs. These roles are then analysed with information from the surveys.

Legally, private companies are required to have at least one director and one secretary; for PLCs the minimum is two directors and one secretary. Companies are required to keep a register of the directors and secretary at the registered office which, like the share register, is open to inspection by any shareholder without charge. Companies are required to record any changes in the particulars of the company secretary or directors in the register and also inform Companies House within 14 days of the change.<sup>9</sup> Failing to do so means the officers of the company are in breach of the law.

Shareholders are also entitled to inspect copies of directors' service contracts or memorandum of employment terms.

The directors have fiduciary duties in relation to the company. In summary, this means that directors must act in good faith in the interests of the company, they must not make a profit out of their position as director unless the company permits them to do so and they must not put themselves in a position where the interests of the company conflict with their personal interests or duty to a third party.

Collectively, directors are responsible for the running of the company. Although roles may be delegated to executives and other officers of the company,

7. Companies House (April 2001), *Share Capital and Prospectuses*, p. 15.
8. Companies House (April 2001), *Share Capital and Prospectuses*, p. 17.
9. Ryan, p. 205 and Companies House (April 2001), *Directors and Secretaries Guide*, p. 14.

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ultimately, it is the Board that is responsible for the following executive duties:

- Preparation of the company's accounts (for limited companies)<sup>10</sup>
- Application of appropriate accounting standards<sup>11</sup>
- Preparation of directors' report<sup>12</sup>
- Presentation of the accounts and the auditor's report to the AGM (unless exempted by special resolution) and to Companies House
- Presentation of Annual Returns to Companies House
- Notice of changes of the registered office, changes in the particulars of directors and secretary, and copies of resolutions passed, to be sent to Companies House<sup>13</sup>
- For PLCs, directors must ensure that the company secretary has the knowledge, experience and training to be capable of executing the duties of a company secretary

There are different types of directors:

**Executive:** a member of a company's board of directors who is also an employee of the company.

**Non-executive:** a director who is not employed by the company.

**Independent non-executive:** a non-executive director who is independent from the company and from other directors. For a non-executive director to be independent they must meet certain criteria, including not being affiliated with the company in any other capacity, and not having had an association with the company for more than 9 years.

**Senior independent non-executive:** the *Combined Code* requires that a senior independent non-executive director other than the chairman be identified to allow shareholders to raise issues in the event that they prefer not to do so with the chairman.

**Associate or Divisional:** technically, these are not statutory directors but senior employees who have

been given this title for management and/or other operational purposes.

The basis upon which directors are appointed is dealt with primarily by the Articles of Association. Ordinarily, directors are elected by shareholders by a simple majority or appointed by the existing Board (but subject to re-election at the next AGM). Other than the basic restrictions set out below, anyone can be a director. For instance, unless otherwise stated in the company's Articles of Association or in a shareholders' agreement there is no level of share ownership that automatically guarantees membership of the Board. Minority shareholders/investors frequently require the right to have a director as a condition for their investment and such rights could be set out in the Articles or in a shareholders' agreement, but by default there is no legal requirement for directorial shareholding. Restrictions that prevent someone becoming a director include:<sup>14</sup>

- A person must not have been disqualified by a court from acting as a company director (courts may give special permission for some directors to continue to operate)
- The person must not be an undischarged bankrupt
- For a PLC listed on the stock exchange, a person must not be over the age of 70 unless specifically approved by a general meeting of the company<sup>15</sup>

Our survey reveals a substantial difference between supporters and club secretaries regarding whether

10. Ryan, p. 141.
11. Ryan, p. 143.
12. Ryan, p. 146.
13. Companies House (April 2001), *Directors and Secretaries Guide*, pp.12-15.
14. Companies House (April 2001), *Directors and Secretaries Guide*, p.3.
15. This is the basis on which Sir Roland Smith has continued to be Chairman of Manchester United PLC.

directors submit themselves for re-election. This may be partially accounted for by the fact that a large proportion of supporter groups (19.2 per cent) simply did not know the answer to the question.

**Table 3.5 Re-election of directors**

Do directors submit themselves for re-election <sup>16</sup>	Percentage of respondents			
	Yes	No	Missing response/ don't know	N/A
<b>Club survey</b>	<b>72.1</b>	<b>27.9</b>	–	–
<b>Supporter survey</b>	<b>46.8</b>	<b>31.9</b>	<b>19.2</b>	<b>2.1</b>

Although not a requirement in company law it is good practice for directors to offer themselves for re-election at regular intervals and at least every three years. 72.1 per cent of respondents to the survey stated that their directors were re-elected and 56 per cent of respondents stated that directors were re-elected every three years or more frequently. However, a significant percentage of clubs do not appear to be following best practice in this regard.

**3.3.1 Disclosure of Directors' Interests and Contracts**

Company law does not forbid directors from having an interest in contracts with the company. However, to comply with Section 317 of the Companies Act 1985 the interest must be disclosed at the first opportunity and any disclosure and/or voting requirements in the Articles will also need to be complied with. Further, Section 320 of the Companies Act 1985 prohibits substantial property transactions between a company and a director without the prior approval of shareholders. Directors are obliged to disclose all interests, shareholding or otherwise in the company.<sup>17</sup> The company must keep an up to date register of directors' interests which can be inspected by shareholders. If the company grants to a director a right to subscribe for shares in the company, the

register must record the following information:

- The date on which the right is granted
- The period during which it is exercisable
- The consideration for the grant
- The description of shares or debentures involved, the amount involved, and the price to be paid for them<sup>18</sup>

In addition, shareholders are entitled to inspect copies of the directors' service contracts or memorandum of employment terms.

The survey results again reveal substantial differences in perception of supporter groups and club secretaries:

**Table 3.6 Public disclosure of directors' pay and contracts**

Does the club have public disclosure of directors' pay and contracts?	Percentage of respondents			
	Yes	No	Missing response/ don't know	N/A
<b>Club survey</b>	<b>37.2</b>	<b>46.5</b>	<b>16.3</b>	–
<b>Supporter survey</b>	<b>12.8</b>	<b>57.4</b>	<b>27.7</b>	<b>2.1</b>

Both surveys revealed bad practice in terms of transparency regarding directors.<sup>19</sup>

16.

How often do directors submit themselves for re-election				
Club survey		Percentage of respondents		
Annually	Bi-annually	3 years	Other	Missing response/N/A
2.3	16.3	37.2	7.0	37.2

17. Ryan, p. 225.  
 18. Ryan, p. 227.  
 19. The high level of 'missing answers' and 'don't knows' may also reflect a lack of openness.

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Table 3.7 Governance on the club's Board

Club survey	Percentage of respondents			
	Yes	No	Missing response/ N/A	Don't know
Does the club have director pay voted on at the AGM?	9.3	55.8	25.6	7.0
Does the club have public disclosure of directors' contracts?	37.2	46.2	11.6	4.7
Does the club have transparent procedure for new director appointments?	41.9	46.5	4.7	7.0
Does the club have public disclosure of directors' attendance records?	11.6	76.7	4.7	4.7

Table 3.8 Governance on the club's Board

Supporter survey	Percentage of respondents			
	Yes	No	Don't know <sup>20</sup>	N/A
Does the club have director pay voted on at AGM?	4.3	68.1	23.4	4.3
Does the club have public disclosure of directors' contracts?	12.8	57.4	27.7	2.1
Does the club have transparent procedure for appointing new directors?	8.5	68.1	21.3	2.1
Does the club have public disclosure of directors' attendance records?	2.1	61.7	34.1	2.1

### 3.3.2 General Level of Disclosure

Over half the respondents to the supporter survey gave the club a 'not effective' rating for their general level of disclosure to both fans and shareholders:

Table 3.9 Effectiveness of club at disclosing information

Supporter survey	Percentage of respondents					
	Not at all effective	Not very effective	Quite effective	Very effective	Don't know/ Missing response	N/A
How effective is club at disclosing information to shareholders?	23.4	29.8	17.0	8.5	19.1	2.1
How effective is club at disclosing information to fans?	34.0	25.5	23.4	10.6	6.4	-

The club's perspective reveals a very different picture, with most respondents registering little or no difficulty in disclosing information about the club to either fans or shareholders:

Table 3.10 Difficulty club faces disclosing information

Club survey	Percentage of respondents				
	Not at all difficult	Not very difficult	Quite difficult	Very difficult	N/A
Disclosing information to shareholders	44.2	39.5	7.0	-	9.3
Disclosing information to fans	34.9	48.8	11.6	2.3	2.3

20. Missing responses were assumed to be equivalent to 'Don't know'.

One premiership club noted ‘a healthy exchange of views on a regular basis’; another stated it had an informative and mutually beneficial relationship with supporters and shareholders. Clubs reporting these positive relationships were clubs who had actively adopted and maintained fans’ forums that allowed them to develop a good consultative relationship with the supporters.

When asked to describe the club’s relationship with a variety of supporter groups many reported a range of responses according to the particular group, from good to difficult and supportive to confrontational and welcoming to hostile. If supporters and shareholder groups could unite this might make communication clearer and information more transparent.

**Summary**

- Shareholders have a right to inspect the register of directors, register of directors’ interests in shareholdings and debentures, and copies of directors’ service contracts or memorandum of employment terms
- Clubs should ensure that directors co-opted to the Board stand for re-election and that all directors stand for re-election periodically

**3.4 Minutes of General Meetings, Annual Returns and Company Accounts**

Company law requires that minutes shall be taken of all general meetings of shareholders and these shall be kept in the company minute book at the company’s registered office.<sup>21</sup> Shareholders are entitled to inspect the book without charge and, if they request it, be presented with a copy within 7 days of the request (subject to a prescribed fee, amounting to 10p per 100 words).<sup>22</sup> Company officers are in breach of company law if they refuse or fail to abide by these conditions.<sup>23</sup>

Company law requires that companies must deliver annual returns to Companies House. An annual return is a snapshot of the following company information at a single moment in time:

- Name of the company
- Registered number
- Type of company
- Registered office address of the company
- The address where certain company registers are kept
- Principal business activities
- Name and address of company secretary
- Name and particulars of directors
- Nominal value of total issued share capital
- Names and addresses of shareholders with the number and type of shares they hold

Likewise, unless they have an exemption in place, all companies must deliver audited accounts for the financial year to Companies House. Late deliveries of the accounts are penalised by a fixed rate fine. The content of the company’s accounts is prescribed by law and by various statements of standard accounting practice. Generally, a set of accounts should include the following:

- A profit and loss account (or income and expenditure account if the company is not trading for profit)
- A balance sheet signed by a director
- An auditor’s report
- A directors’ report
- Notes to the accounts

21. Ryan, p. 265-6.  
22. Ryan, p. 267.  
23. Ryan, p. 268.

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This information is publicly available for a small charge on request from Companies House.<sup>24</sup>

### 3.5 Compliance with Codes of Corporate Governance

Many clubs have their shares listed and/or traded on one of the stock exchanges, either on the London Stock Exchange, the Alternative Investment Market (which provides a market for smaller companies) or the OFEX facility (which is an unregulated trading platform):

Table 3.11 **Listed Clubs** <sup>25</sup>

STOCK EXCHANGE	AIM	OFEX
Aston Villa	Aberdeen	Arsenal
Celtic <sup>1</sup>	Birmingham City	Bradford
Leeds Sporting (Leeds United)	Burnden Leisure (Bolton Wanderers)	Gillingham
Heart of Midlothian	Charlton Athletic	Manchester City
Leicester City	Chelsea Village	Rangers
Manchester United	Nottingham Forest	
Millwall Holdings	Preston North End	
Newcastle United	Watford	
Sheffield United	West Bromwich Albion	
Southampton Leisure		
Sunderland		
Tottenham Hotspur		

<sup>1</sup> Celtic shares were listed on AIM until September 1998

In June 1998 the Committee on Corporate Governance issued the *Combined Code* which provides a breakdown of the principles of good governance and a code of good practice. Companies listed on the London

24. However, eligible small companies and some medium-sized companies are exempted from some requirements of the Companies Act and certain categories of small companies do not need an audit.

25. Soccer Investor (2001).

26. The results in Tables 3.12 - 3.15 are based on responses to the survey supplemented with information extracted from the latest annual reports.

Stock Exchange are required to comply with the *Combined Code*. Tables 3.12 to 3.15 below reveal the responses of English clubs who are listed on the London Stock Exchange.<sup>26</sup>

Table 3.12 **There should be a formal, transparent procedure for the appointment of new directors to the board**

Code Provision:	Percentage of clubs following best practice	Percentage of clubs not following best practice	Percentage of missing answers
There is a nomination committee	40.0	50.0	10.00
Nomination committee presents a report to be voted on at the AGM	20.0	70.00	10.0
The nomination committee has access to independent advisors separate to those used by the Board	10.0	50.0	40.0

Table 3.13: **Companies should establish a formal and transparent procedure for developing policy on executive remuneration**

Code Provision:	Percentage of clubs following best practice	Percentage of clubs not following best practice	Percentage of missing answers
There is a remuneration committee	90.0	10.0	-
The remuneration committee presents a report to be voted on at the AGM	30.0	30.0	40.0
The remuneration committee has access to independent advisors separate to those used by the Board	50.0	10.0	40.0



Table 3.14 **The Board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company’s auditors**

Code Provision: audit committee	Percentage of clubs following best practice	Percentage of clubs not following best practice	Percentage of missing answers
<b>There is an audit committee</b>	<b>100.0</b>	<b>–</b>	<b>–</b>
<b>The audit committee presents a report to be voted on at the AGM</b>	<b>20.0</b>	<b>30.0</b>	<b>50.0</b>
<b>The audit committee has access to independent advisors separate to those used by the Board</b>	<b>40.0</b>	<b>–</b>	<b>60.0</b>

Table 3.15 **General good practice on the Board**

Code Provision: directors	Percentage of clubs following best practice	Percentage of clubs not following best practice	Percentage of missing answers
<b>All directors must submit themselves for re-election at regular intervals</b>	<b>80.0</b>	<b>–</b>	<b>20.0</b>
<b>There are non-executive directors</b>	<b>100.0</b>	<b>–</b>	<b>–</b>
<b>No less than one third of the Board should be non-executive directors</b>	<b>100.0</b>	<b>–</b>	<b>–</b>
<b>There are independent non-executive directors</b>	<b>80.0</b>	<b>–</b>	<b>20.0</b>

**Summary**

- To ensure best practice LSE listed clubs should follow the principles of the *Combined Code* more

- closely, rather than choose to opt out
- The provisions regarding nominations, remuneration and audit committees need to be more systematically applied
- Where a PLC listed on the Stock Exchange fails to comply with any part of the *Code*, each instance of non-compliance must be reported

The *Combined Code* has been adopted by the London Stock Exchange as part of their listing requirements. For companies not listed on the London Stock Exchange there is no requirement to abide by the code, although clearly it is widely regarded as representing good practice. As such, Tables 3.16 to 3.19 below reveal the responses of all PLC clubs listed on the LSE, AIM and OFEX.<sup>27</sup>

Table 3.16: **There should be a formal, transparent procedure for the appointment of new directors to the board**

Code Provision: nominations committee	Percentage of clubs following best practice	Percentage of clubs not following best practice	Percentage of missing responses
<b>There is a nominations committee</b>	<b>23.5</b>	<b>70.6</b>	<b>5.9</b>
<b>Nominations committee presents a report to be voted on at the AGM</b>	<b>11.8</b>	<b>76.5</b>	<b>11.8</b>
<b>The nomination committee has access to independent advisors separate to those used by the Board</b>	<b>5.9</b>	<b>70.6</b>	<b>23.5</b>

27. The results in Tables 3.16 - 3.19 are based on responses to the survey supplemented with information extracted from the latest annual reports.

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Table 3.17 Companies should establish a formal and transparent procedure for developing policy on executive remuneration

Code Provision:	Percentage of clubs following best practice	Percentage of clubs not following best practice	Percentage of missing answers
There is a remuneration committee	94.1	5.9	–
The remuneration committee presents a report to be voted on at the AGM	23.5	47.1	29.4
The remuneration committee has access to independent advisors separate to those used by the Board	35.3	17.6	47.1

Table 3.18 The Board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors

Code Provision:	Percentage of clubs following best practice	Percentage of clubs not following best practice	Percentage of missing answers
There is an audit committee	100.0	–	–
The audit committee presents a report to be voted on at the AGM	23.5	47.1	29.4
The audit committee has access to independent advisors separate to those used by the Board	29.4	17.6	52.9

Table 3.19 General good practice on the Board

Code Provision:	Percentage of clubs following best practice	Percentage of clubs not following best practice	Percentage of missing answers
All directors must submit themselves for re-election at regular intervals	64.7	11.8	23.5
There are non-executive directors	100.0	–	–
No less than one third of the Board should be non-executive directors	100.0	–	–
There are independent non-executive directors	70.6	5.9	23.5

### Summary

- To ensure best practice all listed PLC Clubs should follow the principles of the *Combined Code* more closely

### 3.6 Customer Charters

The FA Premier League requires its clubs to have – and to publicise – a customer charter. The requirement for clubs to have a customer charter in the Football League is not enforced, with clubs left to adopt one or not. Our club survey indicates that the customer charter is widely adopted, easy to comply with, and both useful and effective at clubs. 83.7 per cent of clubs claimed to have a customer charter and only 4.7 per cent registered any difficulty with complying with it. Approximately two thirds of clubs found the charter useful and effective.

Table 3.20 **Customer Charters**

<b>Club survey</b>	<b>Percentage of respondents</b>					
			<b>Yes</b>	<b>No</b>		
<b>Does club have a customer charter?</b>			<b>83.7</b>	<b>16.3</b>		
<b>How difficult is it for the club to comply with customer charter?</b>	<b>Not at all difficult</b>	<b>Not very difficult</b>	<b>Quite difficult</b>	<b>Very difficult</b>	<b>N/A</b>	<b>Missing responses</b>
	<b>23.3</b>	<b>48.8</b>	<b>4.7</b>	<b>0.0</b>	<b>16.3</b>	<b>7.0</b>
<b>How useful is the customer charter?</b>	<b>Not at all useful</b>	<b>Not very useful</b>	<b>Quite useful</b>	<b>Very useful</b>	<b>N/A</b>	<b>Missing responses</b>
	<b>2.3</b>	<b>4.7</b>	<b>51.2</b>	<b>18.6</b>	<b>16.3</b>	<b>7.0</b>
<b>How effective is the customer charter?</b>	<b>Not at all effective</b>	<b>Not very effective</b>	<b>Quite effective</b>	<b>Very effective</b>	<b>N/A</b>	<b>Missing responses</b>
	<b>–</b>	<b>9.3</b>	<b>58.1</b>	<b>7.0</b>	<b>16.3</b>	<b>9.3</b>

Table 3.21 **Customer Charters**

<b>Supporter survey</b>	<b>Percentage of respondents</b>					
			<b>Yes</b>	<b>No</b>	<b>Don't know/ Missing response</b>	
<b>Does club have a customer charter?</b>			<b>46.8</b>	<b>31.9</b>	<b>21.2</b>	
	<b>Not at all effective</b>	<b>Not very effective</b>	<b>Quite effective</b>	<b>Very effective</b>	<b>Don't know</b>	<b>N/A</b>
<b>How effective is the customer charter?</b>	<b>14.9</b>	<b>12.8</b>	<b>21.3</b>	<b>2.1</b>	<b>14.9</b>	<b>34.0</b>

The picture becomes less rosy when the supporter survey is analysed. Only 31.9 per cent of supporter groups responded that their club had a charter. Of the supporter groups, 27.7 per cent of groups thought it was not at all, or not very effective as opposed to the 23.4 per cent who thought it was effective to some extent. In both questions the large size of the ‘don’t know’ category is a matter for concern, given the requirement to publicise the customer charter.

### 3.7 Stakeholders, Shareholders and Trusts

Supporter groups organise in different ways to achieve different ends: fans’ forums, Independent Supporters Associations, Shareholders Associations, Supporters Clubs, and Supporter Trusts all have their own particular structures serving different needs, but for supporter groups whose aim is to play a more responsible role in the management of the club the best form of governance structure is a supporter trust.

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Table 3.22 Importance to group of promoting fans in the running of the club

Supporter survey	Percentage of respondents				
	Not at all important	Moderately important	Very important	Crucial	N/A
Importance to group of promoting fans in the running of the club	8.5	10.6	17.0	63.8	–

The remainder of this chapter argues that Supporter Trusts set up as Industrial and Provident Societies offer the best form of organisation for supporter groups.

Football clubs can be seen as organisations where different groups have legitimate stakes<sup>28</sup> in the club – directors, investors, supporters, the community and shareholders can all be seen as stakeholding groups. Each stakeholder has an interest in the organisation and at times these interests clash. For instance, investors may concentrate on the financial aspects whereas fans' concerns tend to be of a not-for-profit, community-based nature. Tensions arise not only in the sense that interests are different and sometimes conflicting, but in that only some of the stakeholders have their stakes enfranchised, whereas others, such as supporters, are often left marginalized from the management process. Shareholders for instance are enfranchised under company law with directors having a fiduciary duty to act on behalf of shareholders. Supporters, however, have no effective statutory regulation to help them 'realise' their stake. Yet as Table 3.22 shows supporter groups do emphasise the importance of promoting fans in the running of the club.

### 3.7.1 Fans' Forums

All Premiership clubs are required to have a fans' forum according to the Customer Charter, but for Football League clubs the forums are discretionary.

According to the supporter survey, the effectiveness of these forums varies:

Table 3.23 Existence of fans' forum

Club survey	Percentage of respondents		
	Yes	No	Don't know/ Missing response
Does the club have a fans' forum	72.1	23.3	4.7

Table 3.24 Existence of fans' forum

Supporter survey	Percentage of respondents		
	Yes	No	Don't know/ Missing response
Does the club have a fans' forum	61.7	29.8	8.5

- '...there is a healthy tension between the club and the forum and a respect for each other. Both acknowledge a dependency on the other and the trick is to work continuously on improving communications and progressing in a positive way'
- '...irregular and infrequent and [the club officials who run the meeting] were openly dismissive and aggressive'
- the club '...appeared hostile to fans in terms of exchanging information about ownership of the club, its subsidiaries, holding company etc.'
- at one Division Two club it was reported that the forum was fine until the fans' group disagreed with club policy and then communication was terminated

28. The term 'stake' here is used in the widest sense as '...any group or individual who can affect or is effected by the achievement of the organization's objectives' Freeman (1984, p. 46).

Table 3.25 Club difficulty in communicating with fans

Club survey	Percentage of respondents				
	Not at all difficult	Not very difficult	Quite difficult	Very difficult	N/A
How difficult does the club find disclosing information to fans?	34.9	48.8	11.6	2.3	2.3

Table 3.26 Supporter rating of club effectiveness in communicating with fans

Supporter survey	Percentage of respondents				
	Not at all effective	Not very effective	Quite effective	Very effective	Don't know/ Missing response
How effective is the club at having a dialogue with fans	25.5	21.3	31.9	17.0	4.2

Table 3.27 Cross-tabulation between club disclosing information and existence of a fans' forum

Supporter survey		Does club have fans' forum		
		Yes	No	Don't know/ Missing response
How effective is club at disclosing information to fans?	Not at all effective	17.0	14.9	2.1
	Not very effective	14.9	8.5	2.1
	Quite effective	17.0	14.3	2.1
	Very effective	10.6	-	-
	Don't know	2.1	2.1	-
	Missing response	-	-	2.1

Table 3.28 Cross-tabulation between club's effectiveness at having a dialogue with fans and existence of a fans' forum

Supporter survey		Does club have a fans' forum		
		Yes	No	Don't know/ Missing response
How effective is club at having a dialogue with fans?	Not at all effective	8.5	14.9	2.1
	Not very effective	14.9	6.4	-
	Quite effective	23.4	4.3	4.2
	Very effective	14.9	2.1	-
	Don't know	-	2.1	-
	Missing response	-	-	2.1

## Football Clubs and Supporter Shareholder Trusts

Given that the effectiveness of the fans' forums appears to rest heavily on the relationship between supporters and club officials it is worth looking at the wider issue of communication, with the surveys showing a significant contrast between the perceptions of clubs and supporters.

Matching the existence of a fans' forum with how effective the club is at disclosing information to and consulting with fans reveals a positive association.

### Summary

- Clubs should establish fans' forums, but these need to be properly advertised, and current practice improved upon
- The effectiveness of fans' forums is dependent on the attitude of club officials
- Fans' forums are an inadequate mechanism for supporters to play a responsible role in the running of their club as there is no method of enforcing good practice

### 3.7.2 *Supporter Groups*

There are a variety of different types of supporter groups:

Table 3.29 **Types of supporter groups**

Supporter survey	Percentage
<b>Independent Supporters Association</b>	<b>31.9</b>
<b>Official Supporters Club</b>	<b>17.0</b>
<b>Shareholders Association</b>	<b>4.3</b>
<b>Fanzine</b>	<b>4.3</b>
<b>Supporter Trust</b>	<b>29.8</b>
<b>Exiles Group</b>	<b>4.3</b>
<b>Other</b>	<b>8.5</b>

Different supporter groups have different purposes. Some groups such as Fanzines and Official Supporter Clubs record little interest in acquiring significant influence in the club in terms of a shareholding for instance. Others such as Supporter Trusts and Independent Supporters Associations push for a more active role in terms of shareholding in the club they support. Most groups' respondents state that it is important for the group to obtain a supporter elected director to the Board and/or acquire a shareholding on behalf of its members or group:

Table 3.30 **Supporter group objectives**

Supporter survey	Percentage of respondents				
	Not at all important	Moderately important	Very important	Crucial	N/A
<b>Importance to group of obtaining supporter elected director to the board</b>	<b>19.1</b>	<b>21.3</b>	<b>17.0</b>	<b>36.2</b>	<b>6.4</b>
<b>Importance to group of acquiring a shareholding for individual members</b>	<b>36.2</b>	<b>19.1</b>	<b>19.1</b>	<b>12.8</b>	<b>12.8</b>
<b>Importance to group of acquiring a shareholding for group</b>	<b>23.4</b>	<b>19.1</b>	<b>17.0</b>	<b>31.9</b>	<b>8.5</b>

Supporter groups have adopted a variety of constitutions:

Table 3.31 **Types of supporter groups constitutions**

Supporter survey	Percentage
<b>Industrial and Provident Society</b>	<b>21.3</b>
<b>Company Limited by Guarantee</b>	<b>10.6</b>
<b>Cooperative</b>	<b>2.1</b>
<b>Supporters Club</b>	<b>34.0</b>
<b>Unincorporated Association</b>	<b>23.4</b>
<b>Other</b>	<b>7.1</b>

The constitutions can be broadly split into two types: those that are incorporated either under the Companies Act or Industrial and Provident Societies Act and those that are unincorporated. Unincorporated organisations such as Supporters Clubs and Associations have the ability to amend their constitutions easily. While this is an advantage in terms of the flexibility it gives the group, it can also present a threat in that constitutional changes can be made that could be detrimental to the group's central aims and objectives. In this sense the unincorporated constitutions can be somewhat unstable; they have little external regulation and so do not have to submit annual accounts or annual returns (other than to their own members) and there is no central body to offer guidance or check constitutional amendments. Incorporated organisations such as Industrial and Provident Societies (IPs), Companies Limited by Guarantee (CLGs) and Cooperatives offer a more stable form of structure for supporter groups. There is a central regulator: for Industrial and Provident Societies and Cooperatives this is the Registrar of Friendly Societies; for Companies Limited by Guarantee it is the Registrar of Companies. Supporter groups incorporated under these governance structures have to submit annual returns and accounts, and register changes in their constitutions with the registrar.

### Summary

- The majority of supporter groups attach importance to acquiring a shareholding and having a supporter elected director to the Board

### 3.7.3 *Supporter Trusts and Industrial & Provident Societies*

The IPS Trust is a relatively new form of supporter organisation that is suitable for the task of gaining ownership, representation and influence in the club. The idea of a trust is that it is a democratic, accountable and inclusive method of organising supporters for the purposes of playing a more active

role in the management of the club. Trusts are constituted as Industrial and Provident Societies. The CLG offers a number of advantages for supporter groups: limited liability for members; defined responsibility for directors; freedom for directors to delegate responsibility; a constitutional requirement not to return profit to members; and flexibility in terms of its aims and objectives. However, for supporter groups its chief failing is that it could be converted into an investment vehicle if the members wished to cash in. Given the community oriented nature of supporter groups and the not-for-profit nature of their aims, the mutual structure (Industrial and Provident Society) offers the most appropriate form. Supporters Direct now offers supporters groups a template constitution that they can adopt and adjust to fit the particular circumstances of a group.

Once a trust is registered as an IPS with the Registrar of Friendly Societies, its actions and conduct will be regulated by the provisions of the Industrial and Provident Societies Acts. As such, there are certain requirements that the trust has to meet, and other things that it cannot do. In particular, the Registrar will not register any amendment to the Rules that is not in accordance with the democratic and community benefit principles established in the Trust's constitution.

The IPS has to file annual reports to the Registrar. It has to appoint qualified auditors, and audited accounts have to be presented to the trust's AGM and to the Registrar. Supporter groups should also be committed to producing financial reports to every meeting of the trust. As a mechanism of good practice, groups should co-opt a couple of independent Trustees, unconnected with the Trust, who can act as monitors of the trust's actions. There must be an annual general meeting. The basic machinery for the day-to-day running of the trust is done by a management committee who are elected by the members. However, the constitution is flexible enough for additional roles and functions (like sub-

## Football Clubs and Supporter Shareholder Trusts

committees or an executive committee) to evolve if appropriate or necessary. Everything that an IPS trust does is guided and controlled by its Constitution. The Constitution guarantees that the trust must operate for the benefit of the community that it serves; the members and officers will not profit from the trust; all changes to the rules are monitored by the Registrar of Friendly Societies, and rule changes that fall foul of the constitution or the legal requirements for a trust will not be registered.

The objectives of an IPS, as set out in the constitution, can include: strengthening the bonds between the club and the community, and to represent the interests of the supporters and the community in the running of the club; benefiting the community through the promotion of football as a recreational activity; helping to provide, maintain and preserve facilities for the enjoyment of professional football; and helping to promote coaching schemes for all in the community. The IPS constitution provides the mechanisms to attain legitimate objectives including the following: the power to acquire an interest in the club (i.e. shares), the power to establish, promote, and maintain any lawful fundraising scheme and the power to hold and exercise proxies for shares in the club. The profits of the trust can only be used to maintain prudent reserves and on expenditure to achieve the trust's objectives. If the IPS trust ceases to exist or is dissolved by the membership, any assets remaining after the satisfaction of all debts and liabilities will be transferred to the following: a sporting charity or charities operating in the area; one or more societies established for the benefit of the community operating in the area; or one or more societies established for the benefit of the community, according to the membership's wishes.

An IPS Trust belongs to its membership. Every member will own one share ensuring that the trust remains truly democratic. Unlike the shares of a company incorporated at Companies House these cannot be traded, withdrawn or transferred. These shares carry no right to interest, dividend or bonus. Once individual membership ceases, the share registered in the name of that member will be cancelled and the amount subscribed for the value of the share becomes the property of the trust. Membership can be open to any person, corporate body or firm who is a supporter of the club, or has an interest in the game of football in the area, and who agrees to be bound by the rules of the trust. The constitution contains the mechanisms for the expulsion of members under appropriate circumstances and reserves the committee's right to refuse membership applications.

Supporters organising as trusts in a professional and businesslike manner earns them respect and helps foster a cooperative relationship. At some clubs the establishment of the trust has itself provided a way of allowing directors and supporters to put problematic past relationships behind them and work together. In such circumstances the trust operates as a mechanism for allowing the supporter/club relationship to develop on a new footing.

### Summary

- IPS trusts are legal entities that can hold shares in the football club; are democratic, accountable and inclusive; and are regulated to ensure they retain their not-for-profit, democratic and community-oriented focus
- IPS trusts provide the most effective mechanism for both supporters and the club to work together and develop the club



## Chapter 4

# Shareholder Activism

**Being a shareholder confers certain rights. Environmentalists have long been aware of this fact and have used the right of shareholders to attend company Annual General Meetings (AGMs) and direct questions at the board of the company to further their campaigns.**

This has allowed them to challenge directors of companies such as Shell and the mining company RTZ on their firms' environmental record. It is widely acknowledged that this simple tactic of raising questions at company AGMs has been highly influential in focusing directors' attention on the need to address major environmental challenges and has led to significant policy changes. This has been achieved by holding directors to account in a public forum, and publicising this through the media.

There is evidence that such pressure can actually lead to superior financial performance. In July 2001, the *Financial Times* reported on:

'...mounting evidence that [shareholder] activism works: the performance of companies improves and along with it investment funds' performance. Wilshire Associates, the US-based compiler of stock indices, points to what it calls the "Calpers effect". Companies that have been singled out for criticism by the California pension fund have seen their share price rise substantially over the following five years. In a poll carried out by McKinsey, the management consultancy, investors around the world said they were prepared to pay higher prices for shares in companies with good corporate governance.' ('The Institutional Investor Starts to Stir' by Simon Targett, *FT*, 23rd July 2001)

Given the potential for shareholder activism, it is disappointing to note two key facts that emerge from our surveys of supporter groups and football clubs:

- Firstly, the vast majority of supporter groups and supporter shareholder trusts are unclear as to the full extent of their rights, and hence the potential influence they might be able to wield at their football club
- Secondly, many company secretaries of football companies are not meeting best practice guidelines, or in some cases even basic statutory requirements, as they relate to the facilitation of the exercise of shareholder rights

How these rights can be utilised is the subject of this chapter, including around the company AGM, the submission of resolutions, and the role of elected supporter directors.

### 4.1 The Company AGM

A key forum for the exercise of shareholder rights is the company Annual General Meeting (AGM). Section 366 of the Companies Act requires all public companies to hold such a meeting. Pensions & Investment Research Consultants highlights three reasons why the company AGM is a key forum for exercising good corporate governance:

- It is vital that shareholders have a formal means to hold company boards to account for the stewardship of the company's businesses
- The AGM should also enable shareholders to make representations on a range of governance matters for discussion and approval by their fellow owners
- It should be seen as a democratic mechanism for a company board to secure a shareholder mandate

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for key policy proposals and practical matters on the way the company is governed (PIRC, 2000, p. 2)

All shareholders have a right to attend their company's AGM. Indeed, the Board have a duty to make the AGM accessible. This is made clear both in the Stock Exchange's Committee on Corporate Governance *Combined Code on Corporate Governance*, 1998 and in the Institute of Chartered Secretaries & Administrators' *Guide to Best Practice for Annual General Meetings*.<sup>1</sup>

In the case of football companies where there are large numbers of small shareholders who are likely to be at their workplace during normal working hours, it is clearly not convenient to hold the company AGM other than at weekends or in the evenings. The survey indicates that a high proportion of football companies do indeed hold their AGMs in the evening:

Table 4.1 Club survey: Day of AGM\*

Regarding the last AGM of the football company, was it held:	(%)
(i) On a weekday	90.7
(ii) At the weekend	7.0
(iii) N/A	2.3

\* Figures in this table and all subsequent tables may not sum due to rounding

Table 4.2 Club Survey: Time of AGM

Regarding the last AGM of the football company, was it held:	(%)
(i) At lunchtime	4.7
(ii) In the evening	53.5
(iii) During work hours	39.5
(iv) N/A	2.3

1. The choice of location, date and time of the AGM should have regard to what is likely to be convenient to shareholders generally (ICSA, 1996), p. 9.

The Celtic Trust – the supporter shareholder trust at Celtic PLC – have requisitioned a resolution to the forthcoming 2001 PLC AGM requesting that future AGMs be held on a Saturday. The Manchester United supporter shareholder group submitted a resolution to this effect for the 2000 AGM and were persuaded by the Board to withdraw it on the grounds that this and the other matters contained within the resolution could be resolved through discussion. However, the Board subsequently responded that they would not move the AGM to a weekend, as the institutional investors would not like it, despite the fact that the institutional investors do not in any case attend.

As important as timing is location. An obvious convenient location is the football club ground, and this is indeed the main venue for football company AGMs:

Table 4.3 Club survey: Location of AGM

Regarding the last AGM of the football company, was it held:	(%)
(i) At the ground	79.1
(ii) Within two miles of the ground	7.0
(iii) Between two and ten miles from the ground	11.6
(iv) N/A	2.3

Note that the 97.7 per cent response from clubs that they hold their AGMs within ten miles of the ground represents only those clubs that responded. While the response rate was almost 50 per cent – which is extremely high for a postal survey of this nature – this still leaves many clubs for which we obtained responses only from the supporters and not from the Boardroom. Thus, for example, in December 2000 Newcastle United PLC held their AGM in the City of London. The board argued that this was to make it easier for institutional investors to attend the meeting. Supporter groups argued that the real motive was to make it more difficult for large numbers of supporter-shareholders to attend the meeting. Previous AGMs

had witnessed hundreds of supporter shareholders in attendance, many of whom had raised difficult questions for the board.

A key purpose of the AGM is the exchange of information between directors and shareholders. In order for this to happen the AGM must have the format of a proper working meeting, with a reasonable amount of time set aside for questions and discussion:

Table 4.4 Club survey: Length of AGM

Regarding the last AGM of the football company, how long did it last:	(%)
(i) 1 hour or less	32.6
(ii) 1-2 hours	51.2
(iii) 2-3 hours	14.0
(iv) N/A	2.3

Table 4.5 Supporter survey: Length of AGM

Regarding the last AGM of the football company, how long did it last:	(%)
(i) 1 hour or less	19.1
(ii) 1-2 hours	40.4
(iii) 2-3 hours	14.9
(iv) 4 hours or more	2.1
(v) Don't know	17.0
(vi) N/A	6.4

Another indicator of the openness of the company is whether or not the AGM was open to the press. As the table below illustrates, the majority of football companies did invite the press to attend their meetings, although a surprising number did not:

Table 4.6 Club survey: Attendance of the press at AGM

	Yes (%)	No (%)	N/A
Were the press invited to the AGM?	62.8	34.9	2.3

Another key indicator of the effectiveness of the AGM as a vehicle for communicating information to shareholders is whether or not a formal presentation is made by the board on key issues. As the following table illustrates, less than a quarter of clubs indicated that they did so:

Table 4.7 Club survey: Presentations (eg. Powerpoint) at AGM

	Yes (%)	No (%)	N/A
Was any form of presentation made to the shareholders?	20.9	76.7	2.3

One of the 'Principles of Good Governance' outlined in the *Combined Code*<sup>2</sup> is 'Constructive Use of the AGM':

- 'Boards should use the AGM to communicate with private investors and encourage their participation'

Similarly the ICSA<sup>3</sup> state that:

- 'We attach great importance to Boards maintaining an active and constructive shareholder communications policy, both by following the minimum requirements of the Companies Act 1985 and by voluntarily maintaining principles of best practice in the handling of shareholder affairs. *It is best practice* for all Boards to provide adequate time for shareholder questions at AGMs. Although there is no right under the Companies Act (1985) for shareholders to raise questions at the AGM, they do have a right at common law to debate matters, which are the business of the meeting. It is through that route that shareholders normally raise questions with the management.' (Emphasis in original)

2. Committee on Corporate Governance (1998), *The Combined Code*, Part 1, Section 1C2, p. 11.

3. ICSA (1996), p. 16.

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The results of the survey indicate that most football companies believe that they are making adequate allowance for the asking of questions at the AGM:

	Yes (%)	No (%)	N/A
<b>Does the company encourage questions at the AGM?</b>	<b>90.7</b>	<b>4.7</b>	<b>2.3</b>

Table 4.9 indicates that most supporter groups had not availed of the opportunity to raise their concerns via a question at the AGM; this may reflect the fact that many supporter groups do not have the right or do not attend AGMs.

	Yes (%)	No response(%)
<b>Did your supporter group ask a question at the football company AGM?</b>	<b>36.2</b>	<b>63.8</b>

Where environmental campaigners have used the company AGM to raise questions, many directors have complained that this has taken the form of an inquisition rather than a constructive attempt to elicit information. However, this does not appear to be a concern for most football club company secretaries, with only 9.3 per cent characterising supporter group questions as 'aggressive'.

Supporter groups were less satisfied; of those who had raised questions at the AGM, over 30 per cent felt the attitude of the board was dismissive.

This is consistent with answers to other questions in the survey which indicate that supporter groups, and supporter shareholder groups, are largely dissatisfied

Table 4.10 Club survey: Shareholder questions at AGM

What was the tone of the shareholder questions at the last AGM of the football company?	(%)
(i) Aggressive	9.3
(ii) Moderately constructive	18.6
(iii) Constructive	55.8
(iv) Extremely constructive	7.0
(v) N/A	9.3

Table 4.11 Supporter survey: Attitude of the Board at AGM

What was the tone of the Board at the last AGM of the football company towards questions?	(%)
(i) Dismissive	36.2
(ii) Moderately constructive	17.0
(iii) Constructive	10.6
(iv) Extremely constructive	8.5
(v) N/A	27.7

with the level of information disclosure, as Table 4.13 illustrates.

## 4.2 Consultation

The Table at the top of the next page reports how difficult clubs found it to achieve various objectives, including disclosing information to and consulting with shareholders and fans.

We then asked the supporter groups how effective they thought their clubs were in achieving these various objectives. In some respects there is a remarkable degree of consistency, suggesting perceptiveness on the part of the supporter groups and honesty on the

Table 4.12 Club survey: How difficult did Clubs find the following

	Percentage of respondents				
	Not at all difficult	Not very difficult	Quite difficult	Very difficult	N/A
<b>A. Maintaining the solvency of the company</b>	<b>9.3</b>	<b>25.6</b>	<b>48.8</b>	<b>14.0</b>	<b>2.3</b>
<b>B. Maintaining a balance between the interests of business and fans</b>	<b>11.6</b>	<b>39.5</b>	<b>30.2</b>	<b>18.6</b>	<b>0.0</b>
<b>C. Providing independent non-executive directors on the Board</b>	<b>25.6</b>	<b>27.9</b>	<b>4.7</b>	<b>4.7</b>	<b>37.2</b>
<b>D. Disclosing information to shareholders</b>	<b>44.2</b>	<b>39.5</b>	<b>7.0</b>	<b>0.0</b>	<b>9.3</b>
<b>E. Consulting with shareholders</b>	<b>39.5</b>	<b>39.5</b>	<b>9.3</b>	<b>2.3</b>	<b>9.3</b>
<b>F. Disclosing information to fans</b>	<b>34.9</b>	<b>48.8</b>	<b>11.6</b>	<b>2.3</b>	<b>2.3</b>
<b>G. Consulting with fans</b>	<b>34.9</b>	<b>48.8</b>	<b>14.0</b>	<b>0.0</b>	<b>2.3</b>
<b>H. Publicising the Club's position on policy issues e.g. through the Club programme</b>	<b>51.2</b>	<b>41.9</b>	<b>4.7</b>	<b>0.0</b>	<b>2.3</b>

part of the clubs. Thus for example, almost 50 per cent of supporters groups thought that their clubs were either not very or not at all effective at maintaining a balance between the interests of business and fans.

While it is disturbing that at so many clubs, this is the view, it is at least encouraging that almost 50 per cent of clubs admitted that achieving such a balance was indeed either quite or very difficult.

Table 4.13 Supporter survey: How effective is the club at the the following

	Percentage of respondents					N/A
	Not at all effective	Not very effective	Quite effective	Very effective	Don't know/ Missing response	
<b>A. Maintaining the solvency of the company</b>	<b>17.0</b>	<b>14.9</b>	<b>29.8</b>	<b>29.8</b>	<b>8.5</b>	<b>-</b>
<b>B. Maintaining a balance between the interests of business and fans</b>	<b>17.0</b>	<b>31.9</b>	<b>27.7</b>	<b>14.9</b>	<b>8.5</b>	<b>-</b>
<b>C. Providing independent non-executive directors on the Board</b>	<b>42.6</b>	<b>12.8</b>	<b>8.5</b>	<b>6.4</b>	<b>29.8</b>	<b>-</b>
<b>D. Disclosing information to shareholders</b>	<b>23.4</b>	<b>29.8</b>	<b>17.0</b>	<b>8.5</b>	<b>19.1</b>	<b>2.1</b>
<b>E. Consulting with shareholders</b>	<b>29.8</b>	<b>23.4</b>	<b>17.0</b>	<b>4.3</b>	<b>23.4</b>	<b>2.1</b>
<b>F. Disclosing information to fans</b>	<b>34.0</b>	<b>25.5</b>	<b>23.4</b>	<b>10.6</b>	<b>6.4</b>	<b>-</b>
<b>G. Consulting with fans</b>	<b>25.5</b>	<b>21.3</b>	<b>31.9</b>	<b>17.0</b>	<b>4.2</b>	<b>-</b>
<b>H. Dialogue with shareholding fans</b>	<b>21.3</b>	<b>19.1</b>	<b>25.5</b>	<b>6.4</b>	<b>25.5</b>	<b>2.1</b>
<b>I. Publicising the football club's position on major policy issues e.g. through the club programme</b>	<b>17.0</b>	<b>23.4</b>	<b>34.0</b>	<b>14.9</b>	<b>10.6</b>	<b>-</b>

## Shareholder Activism

It can be seen that some rather disturbing conflicts emerge between the clubs and supporters. In general, clubs report no great difficulty in providing information to and consulting with fans. Yet according to the supporters, the clubs in general are not very – or not at all – effective in doing so. Interestingly, even on the quite specific point about providing independent non-executive directors on the Board, supporters report that the clubs are not at all effective. Certainly it is true that even Manchester United PLC have struggled in this regard and, despite warnings from the supporter shareholder group, the PLC failed to nominate a senior independent non-executive director in time for their November 2000 AGM. Worse than their failure to comply was their failure to admit to this non-compliance.<sup>4</sup>

### 4.3 Independent Shareholder Resolutions

A resolution is an agreement or decision made by the directors or members (shareholders) of a company. In order for the resolution to become binding on the directors and shareholders it must first be considered as a resolution at a general meeting of the company and affirmed by a vote of shareholders. The process by which a resolution is submitted to a company AGM is governed by Section 376 of the Companies Act 1985. The Act applies equally to private limited companies and stock exchange quoted companies. Before laying out the key tasks to be carried out when seeking to submit a resolution it is useful to first outline the key elements addressed in Section 376:

- A company has a duty to give to members of the company entitled to receive notice at the next AGM (e.g. all shareholders), notice of any resolution which may be properly moved
- The number of members (shareholders) necessary for such a requisition is either not less than 100 members (holding shares in the company in which

there has been paid up an average sum, per member, of not less than £100) or any number representing not less than one twentieth of the total voting rights of all the members<sup>5</sup>

- A company is not bound to give notice of a resolution or to circulate a statement unless:
  - A. A copy of the requisition signed by the requisitioner (by at least 100 shareholders) is deposited at the registered office of the company.
  - B. This must be done not less than six weeks before the meeting if it is the AGM (different rules apply to EGMs).
  - C. There is deposited with the requisition a sum reasonably sufficient to meet the value of expenses and giving effect to it.

This means that a company can charge for the circulation of a resolution and its statement, but this would be highly unusual. Certainly in the cases of the resolutions requisitioned by the Shareholders United

4. If a Stock Exchange listed PLC fails to comply with any aspect of the code they must report this in their Annual Report. In their 2000 Annual Report, Manchester United did admit to failing to comply with the code with respect to environmental issues. However, they made no admission of the fact that they were also failing to comply with the code with respect to nominating a senior independent non-executive director. This despite the fact that the supporter-shareholder group had warned the Board that they were required so to do and were failing in this regard.
5. In the case of the football club, it is likely the supporter will be more easily able to gather the support of 100 members holding an average £100 in nominal value of shares. However, in the case of a smaller club where a supporter trust holds shares in its own rights, it may be that the trust controls (whether on its own or in conjunction with individual supporters) 5% of the total voting rights. We assume here that supporter trusts will be working on the basis of submitting resolutions through the 100 shareholders route rather than the 5% shareholding route.

supporter group at Manchester United PLC (in 1999) and the putative Newcastle United supporter trust group at the Newcastle United PLC AGM in December 2000, no charge was made. But a club seeking to be obstructive could attempt to charge for the cost. This would however be generally regarded as extremely bad practice. Certainly if any supporter shareholder group is threatened with this they should consult Supporters Direct for advice.

Exercising their rights as shareholders to requisition a resolution can be an important tool through which to enhance standards of corporate governance at their club. Two good examples of this occurred at Manchester United and Sheffield Wednesday.

The Manchester United supporter group Shareholders United put down a resolution to the 1999 Manchester United PLC AGM asking the PLC to establish a dividend re-investment scheme. The PLC subsequently introduced the scheme.

In 1998, with the club in financial crisis, a Sheffield Wednesday Shareholders Association was formed. Tolerated very reluctantly at first the group tabled a motion of no confidence in the then board of directors at an extraordinary general meeting. This proved the catalyst for a number of changes at the club, including the introduction of new shareholders and board members, and the formation of a supporter trust – The Owls Trust – which is in the process of taking an 8 per cent shareholding in the club. The relationship between the shareholders association, the Wednesday Independent Supporters Association (WISA), and the Owls Trust on the one hand, and the club on the other, is now characterised by partnership rather than conflict.

Nevertheless, when deciding to submit a resolution, it is important to be aware that boards of directors tend to regard this as a direct challenge to their judgement

and authority. One supporter group reported that when they attempted to submit a resolution at their club they were told to ‘shut up’.

However, there is no excuse for this negative attitude from the Board. As PIRC observes:<sup>6</sup>

- ‘... shareholder resolutions are an integral part of the corporate governance process. They enable shareholders to take the initiative on issues which directors may be unwilling to address or where directors may face a conflict of interest
- Shareholder resolutions provide shareholders with a mechanism through which they can address other members of the company, and they allow shareholders to focus on a particular area of concern without the wholesale challenge of voting against directors or selling their shares
- PIRC does not view shareholder resolutions as a no-confidence vote in the board (unless that is specified) but judges them on the merits of the specific issue addressed
- We consider that the current regulations on the requisitioning of resolutions are unnecessarily burdensome, and therefore in general support resolutions which seek to waive imposition of costs on requisitionists’

#### 4.4 Submitting a Resolution

A supporter trust wishing to submit a resolution will require the support of at least 100 shareholders. It should therefore:

1. Ascertain how many of its members are shareholders in the football company in their own right. The most effective way to do this is

6. PIRC (March 2001) *PIRC's Shareholder Voting Guidelines 2001*. London: Pensions & Investment Research Consultants (PIRC). p 18.

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to have a section on the trust membership application form requesting this information.

- Secure a copy of the share register of the company which owns their football club.

It is important to note that any shares held in common by the Trust will count as only one shareholding. Similarly, it is important to note that those who hold their shares in a nominee account at a stockbrokers, for ease of sale purposes, not only give up the voting rights associated with these shares as they pass to the nominee account holder, but also give up the right to requisition a resolution.

Section 356.1 of the Companies Act stipulates that all companies must keep a register of shareholders' names that 'shall during business hours [section 356.2 stipulates that this should be for a period of at least two hours] be open to the inspection of any member [shareholder] of the company without charge, and of any other person on payment of the appropriate charge.' Sections 356.3 and 356.4 stipulate that any shareholder must be sent a copy of the register within 10 days of request at a maximum fee of 10p per 100 words. However, 23.3 per cent of clubs admitted to being in breach:

Table 4.14 Club survey: Access to share register

	Yes (%)	No (%)	No response	N/A
<b>Does your football club provide access to the share register to any shareholder that requests it?</b>	<b>67.4</b>	<b>23.3</b>	<b>4.7</b>	<b>4.7</b>

The fact that nearly a quarter of club secretaries who responded were presumably unaware of the responsibility to provide access to the share register would appear to support the contention that there is, at the very least, some significant confusion in football companies regarding their wider responsibilities to

minority shareholders. There are other such examples. Cannon & Hamil (2000, p. 42) point to the case of Everton where in 1999 a group of shareholders was involved in an attempt to force an extraordinary general meeting (EGM). For some time they were stymied in exercising their perfectly legal rights by the Everton football company, in part because key administrative figures in the company appeared confused about their obligations to minority shareholders.

Given the negative attitude of most Boards to resolutions from supporters, it is vital that the resolution requisition form is drafted correctly and that trust members complete the forms in the correct manner. Those signing the form need to provide five key pieces of information on the form:

- Name: it is helpful that the name listed is exactly as on the football company register; a common error is to list a middle name on the share register but not on the requisition form.
- Address: the address on the requisition form needs to be the same as on the share register.
- Number of shares held.
- Signature.
- Date of signing.

Provided these forms are submitted in their proper form and in good time, then the club should circulate the resolution to all shareholders prior to the AGM. It is possible that the club secretary will raise some objection to the wording of the resolution. In some cases there may be a legitimate objection, although in other cases such objections have been made quite wrongly. Either way, though, it is clearly best to get the wording agreed with the company secretary before embarking on the collection of signatures. If you feel that the club is being obstructive then please feel free to consult Supporters Direct for legal or other advice, whether on the wording of resolutions or any other aspect. One aim of supporter trusts, and indeed of Supporters



Direct, is to achieve representation on club Boards through elected Directors. This may therefore be an appropriate subject for a resolution to the Board and, if necessary, the AGM. This has already been achieved, with successful results, at a number of clubs. The first supporter director was elected less than ten years ago, at Northampton Town FC. The following Section, regarding the work of elected directors, was written by Brian Lomax who was the elected supporter director on the Board of Northampton Town FC from 1992-99 and is now a Director of Supporters Direct.

#### **4.5 Strategies on the Board**

The two major objectives of a supporter trust are to acquire, and thereafter maximise, a shareholding within the club, and to obtain elected representation on the club's Board of directors. This may be a single directorship or, as at Lincoln City, may develop into a controlling interest in the club. This section is directed at those who have succeeded in getting at least one directorship.

The newly-elected Board member will soon discover that every club situation is unique. The Board may be under the total control of a single owner who has over 75 per cent of the shares. In a private limited company, this renders all other Board members powerless other than through the goodwill of the owner, who is usually but not invariably the chairman. In these circumstances, Board meetings may be infrequent, meaningless or both; but if the owner/chairman has the club at heart and has management skills, he or she will seek to involve other Board members by a process of delegation of specific areas of responsibility. This creates a much healthier atmosphere than the arid dictatorship occasionally encountered.

Healthier still, in human terms if not financially, is the

situation where no Board member has a majority shareholding. This makes dialogue and consensus obligatory, and is likely to improve the quality of decision-making except where one rigid alliance holds control. In the more fluid situation, the newly-elected Board member would be well advised to spend the first few weeks making and building positive and constructive relationships with fellow directors. This should include ascertaining their specific areas of interest and expertise, and establishing areas of common ground for future co-operation. One director may be particularly keen on youth development, another on commercial issues, and so on. The Supporter Trust will have views on all areas of the club's life, and it is their representative's duty to express and promote these views within the Board. At the same time, it needs to be remembered that the representative also has the duty to convey the views of the Board to the supporters, and thereby promote two-way communication. The representative must earn respect and credibility both within the Trust and within the Board, if he or she is to function effectively, and this requires interpersonal skills as well as knowledge, commitment and expertise. You must be a good listener as well as a talker and give due weight to views other than one's own.

So far we have used the word 'representative', and it is important to observe the distinction between representative and delegate. A delegate, at worst, is a mere mouthpiece for the views of others. A company director should never be only that, because he or she has a legal duty to use their judgment to promote whatever is best for the company. Also, a mere mouthpiece is never likely to earn or acquire the respect of their fellow directors, and hence become effective. Sometimes it will be necessary to stick to a principle even at the cost of personal popularity, whether with the other directors or with Trust members. But short-term unpopularity can become long-term respect if the representative makes sure to explain and

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justify the stance adopted in terms of its benefit to the football club. Populism is not enough.

In the long term this turns out to be a process of mutual education for the Board and the fans, dismantling the shallow and easy prejudices which each may have had for each other when there was no proper process of communication. Boardroom snobbery should be an early casualty of this process, though this depends on the intelligence and calibre of other directors. Equally, supporters should be given the opportunity in regular open meetings to learn in detail about the constraints under which the Board operates. Fans may wish to see the team improved, but not at the cost of the club's solvency and stability. A Board and supporter body educated in this way will find it much easier to work in constructive partnership than before.

An elected director will, of course, find it easier to operate effectively if he or she has a colleague who can be relied upon to second any proposition. The lone elected director will have to forge a variety of alliances with others on particular subjects if the views of the Trust are to be taken on board by the club.

It is above all essential that an elected director never forgets where he or she has come from. The oft-repeated story of the director seduced by boardroom status and privileges is unfortunately true in some cases. To avoid this happening – or appear to happen – it is essential that an elected director holds regular open meetings with the fans. Also, especially on matchdays, it is crucial for the director to balance time spent with fellow directors and with supporters, before, during and after the game. Matchday behaviour is highly visible, so you will neglect this at your peril. To spend all one's time with supporters is to neglect important informal discussions in the boardroom which often lead to decisions, so it is your duty to be there

(appropriately dressed). But to be there all the time is equally unwise and will soon lead to widespread adverse comment.

Confidentiality is a key issue, and one that often causes traditional directors to fear or resist the concept of elected supporters' representatives. This fear is largely groundless, as the intellectual and professional calibre to be found within the supporter base of any club whether large or small, substantially exceeds that which exists in the Boardroom. But of course the pressure for disclosure on the fans' representative is greater. It is never legitimate to discuss players' wages and contracts, or impending transfers in or out, in public; but issues of general policy or the club's overall Budget are, and should be, common currency. There are grey areas, and if you are ever in doubt, please do not hesitate to contact Supporters Direct.

It may occasionally be necessary to use the local press or media to highlight matters of principle or the mass view of supporters if the Board prove totally unreceptive. This should, however, only ever be pursued as a last resort where all available internal methods of negotiation have been tried and failed.

The role of the elected director is, in the words of the prayer book, an 'honourable estate', and if carried out effectively and with integrity will have a beneficial effect stretching to all concerns of the club. These benefits should be equally apparent to directors and supporters alike. We close with a few suggestions which, while not relevant in every case, are worth considering by any newly-elected director.

- 1) You should *add value* to the Board. Identify and make available to them your own areas of expertise. You may be pleasantly surprised at how much responsibility you are given on the Board's

behalf. Areas of particular interest and relevance to supporters might include Equal Opportunities, Anti-racism, Access for Disabled Supporters, and Football in the Community. These represent whole areas of the club's life which often attract very little interest from traditional directors, but which can bind the club into its community and thus reposition and enhance its public profile to the benefit of all, as well as recruiting a new generation of fans.

- 2) Every club, large and small, has an army of staff and volunteers who, for decades in many cases, have given their time free or at a pittance to facilitate matchday organisation simply for the love of the club. They too are frequently ignored or taken for granted by the directors. Everyone likes their efforts to be appreciated, so spend some time every matchday with stewards, programme sellers, etc. and make sure they know their contribution is valued by the club. Travel to away

games can be an issue. You may be given the opportunity to travel on the team coach, but may be reluctant to be thought to be accepting 'freebees'. Do not reject this opportunity. It is important that the players and the manager know that the supporters' representative is an important figure in the club, and it will help you to get player guests to come to Trust meetings and functions if you get to know them personally. At the same time, do not trade on your position. Only go sometimes, and travel at least as often on the supporters' coach, paying your way. The fans will appreciate the opportunities for the one-to-one discussions that this time provides.

With these and, I am sure, many other thoughts in mind, you will be an able and effective member of the Trust and the club. It may take up 10-20 hours a week of your own voluntary time, but you will enjoy it, and the genuine appreciation you receive will keep you going when tired or jaded.

## Chapter 5

# Conclusion

**The July 2001 recommendations from the Company Law Review (Company Law Review Steering Group, 2001) are discussed in Chapter 2 above, where it is argued that the recommendations would generally represent a welcome improvement to corporate governance of companies in Britain, including of football clubs.**

However, the final recommendation of the Review that is likely to affect football clubs concerns the current obligations on private companies to hold Annual General Meetings, present accounts in general meetings, appoint auditors and appoint a company secretary. At present private companies must do all of these, unless they elect *not* to do so by a ballot at a general meeting. The Company Law Review proposes waiving these requirements for small private companies unless the company positively chooses to abide by them. This would represent a retrograde step for football governance.

Football clubs tend to operate on the verge of viability and many clubs have run into financial difficulty because of poor accountancy practice and a lack of transparency in the business affairs of club. Those who have an interest in the affairs of the club often find it difficult to find out what is going on. Dispensing with the requirements to hold AGMs and present annual accounts would exacerbate this problem and make it more difficult for supporters and the local community to know what is happening. This recommendation also flies in the face of the work of the Football Association, which is currently trying to promote good business practice at its member football clubs, including spreading best accounting and corporate governance practice. It is to be hoped that this recommendation of the Company Law Review is not put into practice. However, if current requirements are relaxed, it is important that the football industry has its own code of corporate governance practice that retains current requirements regarding AGMs, presentation of annual accounts and the appointment of a company secretary and auditors.

Our survey results have led us to make various recommendations in the text for both clubs and supporter groups to adopt. There may be a case for collecting some of these together in the form of two sets of principles for good governance for football clubs and supporter groups. For clubs, such a set of principles could incorporate elements from the existing guidelines and codes of best practice regarding governance, such as the Company Law Review Final Report and the *Combined Code*, but could in addition include some of the points emerging from the survey. These would include those areas where clubs appear at present to be unclear as to the law, for example in making available the share register, and also those areas where the clubs' perceptions of current practice appear to be at odds with those of the 'customers', such as the effectiveness of fans forums, and the provision of information more generally.

The value of codes is that they provide a clear standard and, therefore, a guide to companies about what is good corporate governance practice. The football industry at present lacks a code of best practice and one of the effects of this is that clubs do not always know what 'good practice' is, or in some cases, what is required of them by law. A code for the football industry would lead to clarity both in respect of 'good practice' and legal obligations. The value of introducing a corporate governance code of good practice for football is illustrated by the fact that 80 per cent of clubs responding to our survey stated that they would find a guide to corporate governance useful.

One of the outcomes from this review of corporate governance of football clubs will therefore be a consultation exercise involving the football authorities, clubs and supporter groups on whether the development of such a code for football would indeed be both useful and practicable.

It has also been suggested that it would be useful to clubs and supporter groups to receive an annual update of this report, repeating the surveys each year. While this would be a major undertaking, if it were to contribute to the continued improvement in the governance of football clubs, including the proper

involvement of supporter trusts, then this would certainly be time well spent. We will therefore also be consulting with the football authorities and others on this proposal, to initiate an annual survey and audit of football clubs' corporate governance practices.

In the meantime we hope that the current report will itself assist in improving the governance of clubs, assisting supporter trusts to become more fully involved in the life of their clubs, and ensuring that football clubs take proper account of the interests of supporters and their local communities.

Appendix:

# A Guide to Insolvency, Administration and Receivership

By Barry Ward

**Unfortunately the press and others tend to confuse terminology in insolvency. This has the effect of leaving the general public and supporters bemused as to what is really going on. The following abridged explanation will give you a general understanding as to who the parties concerned are and their roles.**

## **Official Receiver**

The Official Receiver is a civil servant who deals specifically but not exclusively with bankruptcy (individual insolvency) and compulsory liquidations (corporate insolvency). The Official Receiver suffers from being blamed for everything and is often described as being in control of certain matters which are totally outside of his scope such as administrative receiverships and administrations.

## **Administrative Receiver**

An administrative receiver is an insolvency practitioner (confusingly not the Official Receiver) appointed by a floating charge holder (someone who has security over the assets of the company). His duties in the main are to his charge holder and not to the general body of creditors, the members or any other interested parties such as the supporters. His powers of running the business however are similar to that of an administrator but for a different purpose, namely the repayment of amounts due to his charge holder.

## **Administrator**

An administrator is appointed by the court, usually following an application by the directors, creditors or the company itself. Often this route is considered when there is no charge holder but also when the charge holder has indicated he wishes only to have a passive role. This is very significant in the case of football clubs when as often as not the charge holder which is often a bank does not wish to be seen as the villain of the piece. (The appointment of an administrator and his functions are dealt with in detail below.)

## **The Liquidator**

A voluntary liquidator can be appointed by the members if the company is solvent and by the creditors if the company is insolvent. This latter course is triggered when the directors consider the company to be insolvent and summon a meeting of members and creditors to confirm the winding up and the appointment or otherwise of a nominated liquidator. In the case of a compulsory winding up, until and unless an outside liquidator is appointed by the creditors or the Secretary of State, the Official Receiver (see above) acts as liquidator. It is not envisaged that liquidation offers a route for rescue but it may in exceptional circumstances provide a conduit for a new entity to arise from the ashes.

## **What is a petition?**

As regards football clubs the first hint of trouble is often the advertisement of a petition for a compulsory winding up which has amongst other undesirable effects the freezing of the bank account. The petition will have been presented by an unsatisfied creditor who has taken steps to demonstrate that the business is insolvent, and in consequence requests that it be wound up by the court. This will often be a government department – such as the Inland Revenue or Customs and Excise – or specifically in the case of a football club a player or manager with unsatisfied contractual rights. If the petition is granted, a winding up order is made and initially the Official Receiver is appointed in respect of the company's affairs. A meeting of creditors or the Secretary of State may appoint an outside liquidator subsequently.

### **What if the club goes into administration?**

Administration is one of the formal insolvency routes first proposed in the Insolvency Act 1986, the main aim of which was to provide the mechanism for rescuing businesses or at least allowing a company to realise assets in a better way than liquidation. There had been considerable criticism of the fact that there was no equivalent of the American rescue procedures, with only receivership being available which really only benefits the secured creditor appointing the administrative receiver (see above). In football terms both the Football Association and the various leagues were unhappy with either the liquidation or receivership route, and although not embracing the administration procedure did recognise its value in saving football clubs. This is because one of the main purposes for an order is 'the survival of the company and any part of its undertaking as a going concern'.<sup>1</sup>

#### **Procedure**

The procedure is instigated on the petition of one or all of four parties – either the company, its directors or one or all of its creditors or by a clerk to the magistrates court in respect of certain fines<sup>2</sup> (this latter case is unlikely to apply to a football club). For the court to make an administration order the parties will have to satisfy the court that the football club 'is or is likely to become unable to pay its debts' and that the making of an order under this Section 'would be likely to achieve one or more of the purposes set out'.<sup>3</sup>

It should be noted that administration cannot be applied to any corporate or other body other than a company formed or registered under the Companies Act 1985 or any earlier Act. So for instance if a football club was formed as a Friendly Society or charitable trust the administration route cannot be considered. Similarly administration cannot be used if the company is already in liquidation.

As regards presenting the petition, the company and its directors who can be treated synonymously for this purpose are likely to be the only persons able to put the company into administration as creditors have one insurmountable problem. In order to obtain an order the creditors must be in a position to have prepared an independent report on the company's affairs to supplement the application.<sup>4</sup> It is an unlikely scenario that creditors will be allowed sufficient access to the company's affairs to enable this to be carried out. In essence therefore the directors are the ones who normally present the petition for an administration. This of course can cause an immediate conflict with the creditors and with those with an interest in the football club such as the supporters who may have diametrically opposed views to those currently running it.

Usually an application to the court is confidential and the first real opportunity that creditors and third parties have of knowing the aims of the administration and the actions to be taken by the administrator is the report sent in advance of the creditors meeting to consider his proposals. This should be held within three months of the making of the order or such longer time as the court allows.<sup>5</sup> In practice this means that the administration is shrouded in secrecy until such time as the administrator wishes to go public. Although this may cause frustration it is not necessarily unfair or improper as there may be a number of sensitive issues that need to be kept confidential, particularly with a football club where there is intense press and supporter interest.

It is important to point out that the administrator when appointed takes on the role of running the business but the board of directors still continue to have certain statutory duties but no operational ones. The administrator does have the power to appoint or dismiss directors. He does not need to seek the help of any group to assist him in running the

administration. At the creditors meeting, the creditors if they so wish may consider modifications to the administrator's proposals although these have to be approved by the administrator.<sup>6</sup> If the creditors do not agree to the proposals or any modifications then the administrator must ask for the order to be discharged which means the company reverts to its previous state.<sup>7</sup> The creditors may also wish to appoint a creditors committee but in effect this committee is of little practical standing and acts as no more than a reporting channel for the administrator's actions.

Notwithstanding the above it is to be hoped that the administrator will take a very positive view on the future trading of any football club and that he would consult with the supporters and the creditors. However, he has no obligation to do so and once his period in office has come to an end he can either hand back the club to its existing directors, request that the Shell company be wound up and/or ask for a voluntary arrangement to distribute the funds in his possession.

### ***How can the supporters assist the administrator and vice versa?***

Although there is no requirement for the administrator to take any notice of any party it would not help his cause if the supporters and creditors who often can be one and the same are ignored. The practical approach is for the supporters to form one body whose spokesman can ask for an early meeting with the administrator and request details of his proposals – for example, is it his intention to trade for a period and return it to the existing ownership or to sell the assets of the football club? A positive approach by the supporters through sensible and co-ordinated views could be of assistance and could crystallise his mind on the appropriate route. In fact he may indeed be interested in disposing of the assets to a properly constituted group representing the supporters provided they offer a realistic price based on his own valuation of the club.

It should also be borne in mind that the administrator can be faced with numerous problems which the supporters may be unaware of including dealing with the Football Association and the respective league and possibly the Professional Football Association.

He should endeavour to achieve the aims set out in the proposal which hopefully will be to the financial benefit of creditors but he may have problems with football related debts which have arisen through custom and not by law and are pre-preferential ie paid before any other liabilities. These are debts due to other football clubs and footballing bodies and the contractual claims of players and management and coaching staff. This is a unique scenario in football which can be enforced by the prevention of clubs signing new players or indeed being allowed to play. With such problems on his mind do not expect total courtesy for well meaning but in his view irrelevant enquiries.

Assuming that the administration objectives have been met the administrator will apply for his release and this should leave the club in whichever guise it emerges as a solvent entity able to trade on.

A concise guide to the work of the insolvency profession is produced by R3 (Association of Business Recovery Professionals). This publication is currently being updated and the new edition should be released at the end of 2001. They can be contacted on telephone 020 7831 6563. Further details on this or any other matter contained in this brief summary are available through Supporters Direct.

1. The Insolvency Act 1986, Section 8(3).
2. IBID, Section 9(1).
3. IBID, Section 8(1).
4. The Insolvency Rules 1986, Section 2.2(1).
5. The Insolvency Act 1986, Section 23(1).
6. IBID, Sections 24 & 25.
7. IBID, Section 25.



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