The State of the Game
The Corporate Governance of Football Clubs 2002

Simon Binns, Sean Hamil, Matthew Holt, Jonathan Michie, Christine Oughton, Lee Shailer, Katie Wright

Research Paper 2002/03 for Supporters Direct
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We are also grateful to Professor Derek Fraser for contributing the Foreword to this report, as well as to other members of the IFC for useful discussions.

We would like to thank Gordon Taylor and the PFA for their assistance in funding the production of this report.

Above all we wish to thank all those who took the time to complete and return the questionnaires, both from clubs and from supporters’ trusts. We hope that by pooling and analysing these returns, this report will at least begin the process of providing the sort of information that many clubs and supporters’ trusts called for in their questionnaire replies.
Preface

Gordon Taylor
Chief Executive, Professional Footballers Association

I was pleased to speak at the July 1999 Birkbeck conference that brought together those with a genuine interest in developing and improving football as an important part of the social and cultural fabric of our country. I spoke then of the need for clubs to see their first priority as being to their supporters, not shareholders, and that ultimately the successful clubs are the ones that are centred in their local communities.1

I would argue that this approach is even more important today - and will be absolutely crucial in the coming months for those football clubs struggling in England and Scotland. Those clubs will need to rely on the support, including financial, from their fans as well as local businesses. But with the advent of Supporters Direct, the fans have made clear that they will want something in return - a genuine say in the running of their clubs. And businesses will only put in new money if they see that the clubs are being properly and responsibly run.

The PFA is already assisting clubs in trouble and we will be happy to work with Supporters Direct and others in attempting to put these clubs on a sustainable footing. That will require not just good relations with supporters and the local community. It also requires proper corporate governance and business planning. This is what makes the State of the Game reports so important to the future of football in this country. Highlighting the importance of these issues, and reporting on current practice, should help concentrate minds to improve performance in the future.

The PFA is therefore pleased to have been able to sponsor this report. We will be working with the Football Governance Research Centre at Birkbeck, and Supporters Direct to ensure that the message is heard and acted on - supporters’ trusts need further assistance in training and other areas in order to ‘raise their game’, and clubs in trouble need to build stronger links with their supporters and local communities, and to improve their standards of corporate governance and business planning. We face serious challenges. But there is a way forward, and the PFA is prepared to play its part.

Gordon Taylor
Chief Executive
Professional Footballers Association

Foreword

Derek Fraser
Chairman of the Independent Football Commission

I am very pleased to be given the opportunity to contribute a Foreword to this important Report. I and my fellow Commissioners read the Report last year with great interest and found it a very useful contribution to an important topic. This year’s report continues in that vein and will, I am sure, provoke much discussion and debate on a topic which has come to even greater prominence than a year ago.

The Independent Football Commission (IFC) is itself less than a year old and in our initial period we have found that the issues of governance are indeed of concern to supporters and other stakeholders. When I addressed the All Party Football Group at the House of Commons I was struck that issues of ownership, management and governance were the most prominent that the members wished to raise with me. There have, of course, been a number of clubs where ownership, possible sale, change of status and financial viability have been much discussed during this last year. The events and developments surrounding, for example, Carlisle, York City, Bradford City and Wimbledon have been topics which have been brought before the IFC by supporters and others. The question of who owns a club and how it is governed in the interest of all of its stakeholders is clearly a matter of central concern and one on which this Report can cast a great deal of light.

One of the first people I met as soon as my appointment as Chairman of the IFC was announced by Tessa Jowell was Brian Lomax. I have learnt a great deal about Supporters Direct from my conversations with Brian and I have spoken at two of the conferences organised by Supporters Direct. As Richard Caborn, the Minister for Sport, confirmed in his Foreword to last year’s State of the Game report, Supporters Direct represents an important innovation in the involvement of supporters in the running of their clubs. The IFC and Supporters Direct have a close relationship and will continue to maintain a close dialogue, whilst, of course, they have different functions and objectives to fulfil.

The many trusts which Supporters Direct have created provide a cohesive focus for the interests of all the supporters of those clubs and give such supporters both a voice in relation to the management of their favourite clubs and also act as an important conduit for the expression of supporters’ views. The IFC wishes to hear from supporters and many of those that have contacted or met the IFC have themselves been members of supporters’ trusts.

I wish the Supporters Direct movement every success and I again welcome this Report as an important contribution to a matter that clearly will be of interest to all those involved in football in the coming years.

Professor Derek Fraser
Chairman
Independent Football Commission
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 both Premier and Football Leagues 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 publicised by the club.

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

Companies House: the registry for incorporated companies.

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

Company Law Review: an independent review of company law with the aim of developing a simple, modern, efficient and cost effective framework for carrying out any business activity in Britain.

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 relationship between the shareholders, directors and management of a company.

Director: A person elected 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**: a market where the shares of listed public limited companies (PLCs) are traded.

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

**Modernising Company Law**: a government paper issued in response to the Company Law Review proposals in its Final report, which maps out how the Company Law framework is to be restructured and corporate governance improved.

**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.

**Registry of Friendly Societies**: the registry for Industrial and Provident Societies.

**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 motion 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 supporters’ 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 Companies House of the Registrar of Friendly Societies.
Executive Summary

Football faces serious financial and operational difficulties and challenges. The 2002 State of the Game survey reveals that less than a quarter of football clubs responding had an internal audit committee. Even where clubs had an audit committee, almost one third of those clubs report there being no regular board review of risk assessment reports.

The need to undertake risk assessment is now accepted as part of good corporate governance. The collapse of the ITV Digital agreement simply illustrates the reasoning behind the practice (following the Turnbull Report). Yet too many football clubs are still falling short.

This annual survey of both football clubs and supporters’ trusts - undertaken by the Football Governance Research Centre at Birkbeck, University of London, on behalf of Supporters Direct - does provide some positive results, alongside the above concerns. Firstly, the moves in England by the FA, the FA Premier League and the Football League to establish good practice have shown some positive results. Although the wording of the customer charters could be improved, they do appear to have been of some benefit. And while the experience of Fans’ Forums is mixed, the mixture includes examples of positive practice.

This year’s survey of supporters’ trusts invited them to indicate what further advice and assistance they needed from Supporters Direct. The requests clearly indicate a desire to develop the trusts as sustainable organisations with increased networking between trusts and greater ambition regarding their role within their clubs. Specific requests included a more active use of the web, including networking, and a training programme for trust Board members and others.

Many football clubs could benefit from improved corporate governance practice, financial planning and risk assessment procedures; 76 per cent of clubs responded that they would benefit from a guide to good corporate governance and 80 per cent that they would find advice on Company Law useful.

There is also the immediate pressure following the collapse of the ITV digital deal for additional finances. Supporters’ trusts will in many cases be in a position to assist, although this needs to be on the basis of genuine partnership. Provided that can be achieved, there may be new opportunities opening up for local community involvement, with financial support for clubs from local businesses, again on a partnership basis. All these options need further work by the football authorities, the government, the clubs and the supporters’ trusts. The returns to this year’s survey of clubs and trusts indicate not just the many and serious problems facing the game, they also include a pointer to the way forward, through genuine partnership between clubs, supporters and the community, to build the supporter base, strengthen the bonds with the local community, bring in new money, and put the clubs and the game on a path for sustainable development.

Supporters Direct will be working over the coming year to respond to these requests and challenges and to develop the mechanisms to deliver. This will be done in consultation and collaboration with all other interested parties. Supporters’ trusts have now established themselves as being key players in any such process.
The collapse of the ITV Digital deal earlier this year has raised awareness about the corporate governance of football clubs. While there is no question that the breach of the ITV Digital contract has created a financial crisis at many clubs, it is important to recognise that prior to the collapse of that agreement, football was already experiencing financial pressures. Between 1994/5 and 2001/2 the turnover of the Premier and Football leagues increased by over 170 per cent. Revenues also increased in the Scottish leagues. Despite this dramatic increase in revenue streams, operating profits declined over the same period by 332 per cent with operating losses in the 2000-2001 season (before the demise of the ITV digital contract) totalling £58 million. Pre-tax losses after transfers were even greater at £134 million. The number of clubs making losses also increased over this period so that during the 2000-2001 season only 14 out of 72 Football League clubs and 7 out of 20 Premier League clubs made pre-tax profits. In short, almost 80 per cent of Premier and Football League clubs made losses. The rising revenue from the sale of television rights, which was supposed to represent a new era of commercialism has failed to strengthen the financial performance of clubs. Indeed, in 1994/5, when broadcasting revenues were far lower, the English Football and Premier Leagues had combined operating profits of £15 million and significantly fewer clubs recording losses. (Figures from Deloitte and Touche, 1999, 2002.)

The paradox of rising revenue and declining profitability distinguishes football from most other lines of business where increases in revenue streams are usually translated into increased profitability. This raises the question of how the corporate governance and associated financial performance of football clubs differs from that of other industries? The answer falls into three inter-related areas. Firstly, football is more than just a business. Football clubs are cultural and community assets with associated sporting and community objectives. Secondly, the relationship between supporter and club is very different to standard customer-company relationships. Football supporters are key stakeholders who contribute to the club not just by being loyal customers but also by actively participating in match day support and contributing financially to keep their club afloat. Thirdly, the football industry depends on both competition and co-operation between clubs in order to survive. Football, like virtually all other professional league sports, redistributes income from leading to lagging clubs in order to promote competitive balance. However, the formation of the Premier League and the European Champions’ League has resulted in less revenue sharing which in turn has created an incentive system that encourages clubs to gamble on success.

As explained below, it is this combination of not-for-profit objectives, supporter-stakeholders and the need for redistribution of income that makes the corporate governance of football very different to that of other businesses. High standards of corporate governance are therefore vital if clubs are to remain viable. However, all the evidence suggests that general standards of corporate governance in football are poor with a lack of adequate internal and external control mechanisms. One of the causes of the current crisis facing football league clubs is the lack of robust internal control mechanisms. As revenue streams from broadcasting increased to become the major source of income, few clubs undertook proper risk assessments of what would happen if this income stream dried up. Only a small minority of clubs has the necessary internal control systems to carry out proper risk assessments. Our survey of corporate governance practices at football clubs (see Appendix I) indicates that less than a quarter of clubs that responded had an internal audit committee. Table 1.1 shows that even where clubs had an audit committee, almost one third of

| Table 1.1 Audit and Risk Assessment at Football Clubs (quoted and unquoted Plcs) |
|---------------------------------|-----|-----|
| Percentage of Respondents      | Yes | No  |
| Does your club have an Audit Committee? | 24  | 76  |
| If so, Does the Audit Committee present reports to the AGM? | 7   | 93  |
| Does the Board regularly review risk reports? | 68  | 32  |
| Does the board assess the impact of specific risks? | 74  | 26  |
| Are there controls and procedures to limit exposure to loss of assets and fraud? | 70  | 30  |
those clubs stated that there was no regular board review of risk assessment reports, and only seven per cent of clubs stated that a report was presented from their audit committee to the Annual General Meeting.

1.1 Football Club or Business?

The vast majority of football clubs in the Premier and Football Leagues are incorporated as public or private companies and their objectives (as stated in their Memorandum and Articles of Association) include both promoting football as a sporting activity and running a business. Many clubs also include broader community objectives in their list of objects. It is this dual mission of clubs – to promote sporting success and to operate as commercial businesses – that distinguishes them from standard businesses. Unlike most businesses, where there is a single overriding objective – making a profit – football clubs have both commercial and sporting objectives. The relationship between these two objectives is complex and has implications for the corporate governance and financial performance of football clubs. Generally speaking, clubs that spend more on players are more likely to win. Clubs therefore have a strong incentive to invest any increased revenue in players. As the distribution of revenues became more unequal during the 1990s, the revenue streams attached to winning increased. This encouraged clubs to gamble on success, even when this risked neglecting sound business practice.

The collapse of the ITV Digital television deal illustrates many of the peculiar problems facing football clubs. The ITV Digital contract represented a watershed in terms of the money earned from the sale of rights to broadcast live Football League matches. On the strength of the contract, Football League clubs invested heavily in players' contracts to strengthen their performance on the field in the hope of winning trophies and promotion. The pressures on clubs to invest in players' contracts are significant and increasing. Apart from the glory factor, success on the field brings increased revenue from cup runs and promotion. For first division clubs, winning promotion to the Premier League brings multi-million pound television income. For Premier League clubs, winning a place in European competitions offers similar rewards. The problem that football clubs face is that while winning cup and league competitions brings financial rewards, not all clubs can win. Investing to win is a gamble, and it is a gamble that most clubs will lose. The burgeoning gap between the income of the Premier and Football Leagues has raised the stakes, increasing both the rewards and the costs of gaining promotion. The costs of buying success on the field have risen as players' wages have been bid up on the back of increased revenue streams to the Premier and Football Leagues. And the rewards are becoming increasingly unequally distributed as the income gap between the Premier and Football Leagues widens and as more and more income is distributed to clubs on the basis of successful cup/league runs and associated TV appearances.

The solution to the current financial crisis in football is to be found by looking at the system of corporate governance. Our analysis of clubs, supporters' groups, supporters' trusts and the regulatory environment suggests an urgent need to improve the corporate governance of football in three key areas:

I compliance with company law and codes of corporate governance;

II increased attention to the supporter base and local community as key stakeholders; and

III reform of revenue redistribution rules.

Compliance with Company Law and Codes of Corporate Governance

Part of the financial difficulties that clubs are now encountering can be traced to poor corporate governance and lack of knowledge of and compliance with company law and codes of corporate governance. Analysis of results from our survey of clubs presented below illustrates that while there has been improvement in certain areas of governance, a number of clubs are still not meeting the basic requirements of running a business as laid down by company law. Many more clubs fail to meet best practice as set out by codes of corporate governance such as the OECD Principles and the Combined Code.

One of the basic requirements of running a business is to produce annual accounts, showing profit, loss, income and expenditure. Without this basic information it is difficult to see how any board of directors could take informed business decisions.
Companies are also required under company law to produce an annual return showing changes in issued share capital, ownership and other information. Again, basic information that is essential for good business decision-making and strategy formation. A spot check of the records at Companies House in August of this year showed that while all Premier League clubs had submitted their annual accounts and returns on time, over 10 per cent of Football League clubs had failed to submit either their annual accounts or their annual return on time.

The reasons for these management failings include the fact that the existence of non-profit (sporting) objectives in the constitution of most clubs means that the business side of football is often neglected. At the same time, the high media profile attached to owning and running a football club compared to any other business of similar size has attracted owners more interested in their personal profile than the serious business of running a club. While the FA is trying to address these problems through its Financial Advisory Unit it is evident that football clubs need advice, guidance and assistance on corporate governance. As illustrated in Figure 1.1 almost 80 per cent of clubs responding to our survey said that they would find advice on Company Law useful and 67 per cent said they would benefit from a guide to good corporate governance.

The Combined Code of Corporate Governance

The Combined Code of Corporate Governance (CCCG) aims to promote good corporate governance by setting out checks and balances on the power of executive directors and by establishing transparent procedures for the appointment of directors, the determination of directors’ pay and internal audit mechanisms. The code also aims to protect the interests of shareholders by making it clear that the board should encourage participation at the AGM and enter into dialogue with institutional shareholders. The code is only a requirement for clubs listed on the London Stock Exchange, but since it is widely regarded as best practice it has been adopted by many companies including those listed on AIM and OFEX. A list of quoted clubs is provided in Table 1.2.

The code is voluntary in the sense that companies must either comply with all aspects of the code, or else provide a public statement explaining each and every point of non-compliance. The aim of this ‘voluntary’ set-up is to name and shame companies that are not following best practice. Shareholders can exert pressure on companies to improve their governance or else sell their shares. Of course, for football supporters, selling shares in their club is often not an option as their priority is to see their club
survive and prosper, rather than to make a financial return. It is therefore particularly important to find a ‘voice’ rather than ‘exit’ mechanism for dealing with any such problem. Supporters’ Trusts can play precisely this ‘voice’ role by entering into dialogue with the board to seek to promote good corporate governance, encouraging clubs to comply with the code.

The discussion that follows reviews the five areas that make up the code and the degree to which quoted football clubs are following best practice as set out by the code.

### Table 1.2 Quoted Football Clubs

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<th>LONDON STOCK EXCHANGE</th>
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<tr>
<td>Aston Villa</td>
<td>Aberdeen</td>
<td>Arsenal</td>
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<td>Celtic</td>
<td>Birmingham City</td>
<td>Manchester City</td>
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<td>Leeds United</td>
<td>Bolton Wanderers</td>
<td>Rangers</td>
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<tr>
<td>Tottenham</td>
<td>West Bromwich Albion</td>
<td></td>
</tr>
</tbody>
</table>

Source: Soccer Investor Weekly, August 6, 2002

### Figure 1.2 Quoted clubs: The Remuneration Committee

<table>
<thead>
<tr>
<th>Does the club have a remuneration committee?</th>
<th>02.6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the remuneration committee wholly comprised of independent non-executive directors?</td>
<td>30</td>
</tr>
</tbody>
</table>

The code requires every board to have a nominations committee that makes recommendations on new directors. The nominations committee should have a majority of non-executive directors and be chaired by the chairman or a non-executive director.

On the separation of powers between the Chair and the Chief Executive Officer, 25 per cent of quoted clubs that responded to our survey were in breach of this aspect of the code. Responses from listed clubs to our survey and analysis of company reports for the 23 quoted clubs in England and Scotland shows that all clubs had boards of directors comprising at least one third non-executive directors. However only 35 per cent of quoted clubs clearly stated that of these non-executive directors, a majority were independent non-executives, as required by the combined code. On the nominations committee, only 22 per cent of listed clubs had a nominations committee, so over three-quarters of clubs were in breach of this part of the code.
(b) Directors' Pay

Every board should have a remuneration committee wholly comprising independent non-executive directors to make recommendations to the board regarding directors' pay. The committee should provide a written report to shareholders every year and where appropriate the remuneration report should be subject to approval by the Annual General Meeting. As indicated in Figure 1.2, only 82.6 per cent of quoted clubs had a remuneration committee and in less than one-third of clubs was this committee wholly made up of independent non-executive directors.

(c) Relations with Shareholders

Boards must use the AGM ‘to communicate with private investors and encourage their participation.’ (CCCG, Part 2, Section 1, C2). Shareholders should receive notice of the AGM and all papers, reports and proposed resolutions at least 20 days in advance of the meeting. Members of the Audit, Remuneration and Nomination Committees should be there to answer questions. All quoted clubs that responded to our survey indicated that they circulated the papers at least 20 days in advance of the meeting, although one club indicated that these papers did not include the Agenda or resolutions. However, only 25 per cent of respondents stated that they encouraged shareholders to submit agenda items. Moreover, some quoted clubs have made supporters’ trusts pay to circulate their resolutions. While this is not at present a breach of company law, it is generally regarded a poor corporate governance and it is a practice that is likely to be stopped if the draft legislation from the Company Law Review goes through Parliament.

(d) Accountability and Audit

The board should present a clear and accurate statement of the company’s financial position and future outlook. There should be an audit committee with at least three non-executive directors. The board should review the effectiveness of the company’s internal controls on an annual basis and report to shareholders. Either there should be an internal audit system or companies that do not have one should regularly review the need for one. As indicated in Figure 1.3 only 87.5 per cent of quoted clubs had an audit committee and only one third of quoted clubs met the requirement that this committee should have at least three non-executive directors. Moreover, only seven per cent of quoted clubs that responded to our survey stated that Audit Committee reported to the AGM.

(e) Institutional Shareholders

Quoted companies have an obligation under the Combined Code on Corporate Governance to enter into dialogue with shareholders. The responses to our survey of clubs were very positive in this regard with 100 per cent of quoted clubs stating that they do indeed have dialogue with supporter, or supporter-shareholder groups. However, as reported below, our survey of supporters’ trusts suggested that the quality of such dialogue is variable.
Summary

Overall, it is evident that a significant number of quoted football clubs are failing to comply with the Combined Code’s requirements for good corporate governance. The area where clubs are particularly weak is on the use of non-executive directors and independent non-executive directors on the nomination, remuneration and audit committees, and on internal audit and control mechanisms. It may be that clubs genuinely do not understand all the requirements of the code, particularly in relation to the audit committee and Turnbull guidance on internal control and risk assessment.

1.2 Supporters, Community Stakeholders and Supporters’ Trusts

Despite the increasing revenue coming into football from the sale of broadcasting rights football depends fundamentally on its supporters for its commercial viability. Supporters contribute to club revenue streams not just via ticket sales but also by buying merchandise and subscribing to pay-TV. Ultimately, all revenue streams are dependent on the supporter base. Moreover, football clubs benefit from the loyalty of their supporters, the vast majority of whom never switch allegiances even when their team is performing badly or the facilities at the club offer poor value for money. Many supporters own shares in their club and/or fundraise during times of financial difficulty. Our survey of supporter groups indicates that supporters contributed over £4 million in cash donations to their clubs with £2.4 million of this coming from supporters’ trusts. Similarly, supporters and the local community often assist clubs by raising funds to build new stadia.

Supporters and the local communities in which clubs are based are therefore major stakeholders that play a crucial role in maintaining the viability of football clubs. They are also playing an increasing important role in promoting good corporate governance at football clubs via the formation of supporters’ trusts which seek to strengthen the links between club and community and play an active role in the running of the football club. There are now supporters’ trusts at 60 football clubs in England, Wales and Scotland, 32 of which have a shareholding and 22 having supporter representation at board level. Supporters’ trusts can play a positive role in the governance of football clubs by ensuring higher levels of transparency and accountability, by promoting links with the local community, by encouraging new support (especially from younger fans), by bringing business, legal and professional skills to the boardroom and by providing finance.

1.3 Governance by the Football Authorities: Redistribution Rules

Most professional sports leagues are highly regulated in the sense that they redistribute income from the richest to the poorest clubs. The rationale for redistribution is that the output of the industry is as much a product of the league as it is a product of the individual member clubs. Clubs agree to join, and be regulated by a league because cooperation increases the economic value of the product supplied by each individual club. The output of the league and its constituent clubs is maximised when there is competitive balance in the league and the outcome of matches is uncertain. If leagues become unbalanced, predictability of match results reduces demand by spectators/viewers.

In the absence of regulation, leagues have an inherent tendency to become unbalanced. Leading clubs attract more spectators and viewers, sell more merchandise and may command higher prices for tickets and the rights to broadcast matches. These revenues can be reinvested in players which serves to maintain and enhance the dominance of the leading clubs. Unbalanced leagues face the dual threat of bankruptcy of lagging clubs and breakaway groups of leading clubs who may seek competitive league balance in a rival league (for example, a European Super League).

Since the emergence and growth of income from the sale of broadcasting rights, redistribution has become less egalitarian with the leading clubs retaining a greater share of television income through merit awards and facility fee payments. This may be contrasted with the situation in the US where more money and resources are allocated to clubs at the bottom of the league. Changes in the redistribution rules in the UK have resulted in a widening income gap opening up between the Premier League and the Football League. This growth in inequality between the leagues encourages Football League clubs to overspend in an attempt to gain promotion.
It is important that the football authorities learn from the experience of the Premier League when considering proposals about how to deal with the current financial crisis. When leagues become unbalanced there is pressure from those at the top to form breakaway leagues in order to attain a greater share of revenue. However, as the experience of the Premier League shows, top-slicing revenue by splitting leagues generates inequality both within and between leagues. Within the Premier League a gap has opened up between the top 5 or 6 clubs that regularly have access to European revenue streams and the rest. Similarly, a huge gap has opened up between the Premier League and the Football League. If current proposals to separate Division one of the Football League go ahead there will be further inequality and fragmentation between leagues.

The significance of these changes for the corporate governance and financial performance of football should not be underestimated. The emergence of income gaps within and between leagues provides a financial structure that encourages clubs to gamble on promotion. Given the current financial situation the football authorities need to look carefully at the financial incentive systems facing clubs that may arise as a result of league fragmentation and different redistribution systems. The long-term financial viability of football in an integrated open league structure, such as the Scottish and English system depends crucially on effective redistribution within and between leagues.
Chapter 2
The Share Register, the AGM and Resolutions

The 2001 *State of the Game* (Hamil et al) report explained how shareholder groups such as supporters’ trusts can use their rights as shareholders to raise resolutions and ask questions of the directors at their football company Annual General Meeting (AGM). This offers one of the rare opportunities for supporters to hold the directors of their club to public account as a matter of right. However, the *State of the Game* 2001 concluded (page 31) on the basis of last year’s survey returns that:

1. The vast majority of supporter groups and supporters’ 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.

2. 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.

In essence it is not unreasonable to say that there has been and continues to be a crisis in corporate governance in the football industry.

Thanks to the well-publicised problems at US companies such as Enron, public awareness and appreciation of the need to maintain high standards of corporate governance in industry generally is increasing. As a result there is a climate more receptive to enforcing higher standards of corporate governance. However, the government’s white paper on *Modernising Company Law*, (Department of Trade and Industry, 2002) includes a number of recommendations which would actually hinder attempts to improve the standards of corporate governance in the football industry. And this at a time when, as the results of this year’s *State of the Game* survey illustrate, there are still significant problems with non-compliance with both legal obligations and best practice standards of corporate governance.

2.1 Access to the Share Register

One vehicle for influence for supporters is to raise a resolution at the AGM. This requires the support of at least 100 shareholders, or the support of a number of shareholders representing not less than 5 per cent of the total voting rights of all members (Hamil et al, 2001, page 36). Clearly, to undertake such an exercise the supporters’ trust will first have to view the company share register to ascertain if the 100 signatories of their resolutions are indeed current shareholders. As was explained in the 2001 edition of *The State of the Game* (Hamil et al, page 16) companies are legally obliged to keep the register up to date and to provide shareholders with access to the register. So, Article 356 (1) & (2) of the *Companies Act* (1985) stipulates that the share register ‘shall during business hours [not less than two hours a day] be open to the inspection of any member of the company without charge, and of any other person on payment of the appropriate charge’.

Article 356 (3 & 4) makes provision for the register to be sent to shareholders:

“(3) Any member of the company or other person may require a copy of the register, or any part of it, on payment of the appropriate charge; and the company shall cause any copy so required by a person to be sent to him within 10 days beginning with the day next following that on which the requirement is received by the company.

(4) The appropriate charge is -

(a) under subsection (1), 5 pence or such less sum as the company may prescribe, for each inspection; and

(b) under subsection (3), 10 pence or such less sum as the company may prescribe, for every 100 words (or fraction of 100 words) required to be copied.”

It is therefore disappointing to report that in answer to the question: “Would your club provide a copy of the share register to any shareholder that requests it?”, 16.3 per cent of the English clubs that responded indicated they would not provide access to the register (see Table 2.1 below).

This is an improvement on last year’s figure of 23 per cent of club respondents who would refuse to provide access. Nevertheless it remains the case that a
*All questionnaire results in this chapter refer to responses from the English Premier League and Nationwide Football League clubs and supporters’ groups unless otherwise stated.

significant number of club secretaries are proposing to act in breach of company law by refusing access to the share register. This demonstrates either a ignorance of their responsibilities to their club’s shareholders or an extraordinary wilfulness in terms of being prepared to ignore the statutory requirements of company law.

In addition to wishing to assess that all signatories to an independent shareholder resolution are indeed shareholders, there is another reason why supporters’ trusts might want to access the company share register, namely to mail shareholders to publicise the activities of the trust. As shareholders in the company it might reasonably be expected that a trust should be allowed, as a matter of right, to communicate with other shareholders on matters of mutual interest.

However, a major obstacle to this occurs because, almost universally, the format in which shareholders receive the company share register is not amenable to carrying out an efficient mailing. Failure to provide a copy of the share register in CD-ROM or address label database format is a serious problem.

Proposals in the recent white paper on Modernising Company Law (Department of Trade and Industry, 2002, pages 52-53), rather than making it easier for shareholder groups to access company share registers, may actually make it more difficult and it is worth reprising the argument presented for this in detail:

6.1.3...the revolution in information technology has not only changed how information about members is stored, recovered, transferred and copied but also greatly increased its commercial value in ways that were not foreseen when provision of public access was first made. The right of inspection is heavily used. But the main users are not members, journalists or the general public, but research organisations. Almost all purchases of copies of registers are for purposes unrelated to members’ interests, but are rather used for marketing and selling purposes, e.g. as the basis for mail shots. This has given rise to many complaints.

Holding the master copy of the shareholder register conveys significant privileges on the board of directors of the company as it effectively allows them to control the flow of communications to shareholders. As discussed below, this is problematic not least where an independent shareholder resolution has been put before shareholders but a company refuses to include a supporting statement without a significant payment. In the survey clubs were asked (see Table 2.2) what format they would provide the share register: only 17.4 per cent of English clubs that responded were prepared to provide the share register in address label format and only 13.6 per cent were prepared to provide it in CD-ROM format. While they are entitled to levy a charge as outlined in the Companies Act (see above) it is nevertheless disappointing to report that 27.5 per cent of those who said that they would provide a paper copy of the register said they would charge for this.

<table>
<thead>
<tr>
<th>Table 2.1 Club Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would your football club provide information on the share register to any shareholder that requests it?</td>
</tr>
<tr>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
</tr>
<tr>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Table 2.2 Club Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does your football club provide a copy of the Share Register to any shareholder that requests it in the following format?</td>
</tr>
<tr>
<td>Yes (%)</td>
</tr>
<tr>
<td>Hard copy only</td>
</tr>
<tr>
<td>Microfiche</td>
</tr>
<tr>
<td>Database labels</td>
</tr>
<tr>
<td>CD ROM</td>
</tr>
</tbody>
</table>
They also recommended that anyone who uses the register for an unauthorised purpose be liable to account for any profits arising from that use.

6.1.5 The government is not convinced that this proposal would be the most effective solution to the problem, preferring an approach that would permit companies not to provide copies of the registers if they are to be used for inappropriate purposes. Some protection is now available under provisions of the Data Protection Act 1998 which came into force on 1 March 2000. These give members who are living individuals the right to prevent processing which is likely to cause unwarranted and substantial damage or distress. In addition, the Government is inclined to allow a company to have the right to apply to the court for relief from the obligation to provide a copy of its register, while the courts would continue to have a discretion (albeit a narrow one) to refuse to order access to the register.

While the government’s proposals are well intended, and while in the end the government rejected the more draconian proposal to restrict access to company registers, even the more limited proposals presented represent an erosion of the right to free access to the company share register. We would argue that the desire of independent shareholder groups such as supporters’ trusts to communicate with their fellow shareholders is a “purpose relevant to the holding of the interests recorded in the register” (see 6.1.4, above).

Recommendation

The government should be enshrining in the new proposals the right of bona-fide shareholder groups such as supporter-shareholder trusts, to have free access to the company share register in a CD-ROM/address label format. This will allow bona-fide supporter-shareholder trusts to exercise their right to communicate efficiently with their fellow shareholders on matters of mutual interest.

2.2 The Future of the Company AGM

A number of writers, most notably David Conn (1997), and more latterly Chris Horrie (2002), have chronicled the poor standards of corporate governance in the football industry. And in 1998 the FA’s own sponsored enquiry into football’s Values, Finances and Reputation, chaired by Sir John Smith (Smith & LeJeune, 1998, Summary), a former Deputy Commissioner of the Metropolitan Police, laid bare the extraordinary cynicism within the industry on the question of financial probity (Smith & LeJeune, 1998, para. 2.1):

“Since it is so successful, why should football bother about its occasional scandals? Why meddle with a success story? Does it matter if the world of football is tarnished by rumours of financial misbehaviour? There is a tendency for people within the game to dismiss this subject with a cursory statement: ‘that’s football’ as if it were the natural order of things for financial misconduct to be part of the game.”

Many of these same writers have argued that the football authorities need to be more assertive in terms of regulating the game. But in the absence of decisive action from the football authorities, a core principle of the supporters’ trust movement is that organised groups of supporters can exercise some form of effective oversight over the financial management of their clubs. They can achieve this through the not-for-profit Industrial & Provident Society structure that allows supporters to take a shareholding in their club so that they can utilise corporate governance techniques and events, such as a company AGM, to solicit information from their club and bring pressure to bear on issues of concern on the Board of Directors.

A major obstacle to supporters’ groups playing a more meaningful role is the poor quality of information received by supporters from clubs. This is illustrated by the following results from the State of the Game survey. As indicated by Table 2.3 (below), clubs perceive themselves as having few problems in the information provision and consultation arenas.

However, as can be seen from Table 2.4 (below), the view from the supporters’ groups is very different. The majority feel that the clubs are poor on information disclosure and consultation. These results mirror those in last year’s State of the Game Report. This indicates that, according to supporters’ groups there has been little perceived improvement in club communication techniques over the last year.
<table>
<thead>
<tr>
<th>Does your club find it difficult to do the following:</th>
<th>Not at all Difficult (%)</th>
<th>Not very Difficult (%)</th>
<th>Quite Difficult (%)</th>
<th>Very Difficult (%)</th>
<th>N/A (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balancing between fan/business interests</td>
<td>11.4</td>
<td>38.6</td>
<td>38.6</td>
<td>11.4</td>
<td>0.0</td>
</tr>
<tr>
<td>Disclose information to shareholders</td>
<td>45.5</td>
<td>45.5</td>
<td>4.5</td>
<td>2.3</td>
<td>2.3</td>
</tr>
<tr>
<td>Consulting with shareholders</td>
<td>38.6</td>
<td>50.0</td>
<td>6.8</td>
<td>2.3</td>
<td>2.3</td>
</tr>
<tr>
<td>Disclosing Information to fans</td>
<td>34.1</td>
<td>56.8</td>
<td>6.8</td>
<td>2.3</td>
<td>0.0</td>
</tr>
<tr>
<td>Consulting with fans</td>
<td>45.5</td>
<td>40.9</td>
<td>13.6</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Implementing community policy</td>
<td>55.8</td>
<td>37.2</td>
<td>2.3</td>
<td>0.0</td>
<td>4.7</td>
</tr>
<tr>
<td>Implementing Equal opportunities policy</td>
<td>45.2</td>
<td>52.4</td>
<td>2.4</td>
<td>0.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>
### Table 2.4 Supporter survey

**How effective is your club at doing the following:**

<table>
<thead>
<tr>
<th></th>
<th>Not at all Effective (%)</th>
<th>Not very Effective (%)</th>
<th>Quite Effective (%)</th>
<th>Very Effective (%)</th>
<th>Don't know (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balancing between Fan/business Interests</strong></td>
<td>19.4</td>
<td>26.4</td>
<td>40.3</td>
<td>5.6</td>
<td>8.3</td>
</tr>
<tr>
<td><strong>Disclosing information to shareholders</strong></td>
<td>19.4</td>
<td>29.2</td>
<td>23.6</td>
<td>8.3</td>
<td>19.4</td>
</tr>
<tr>
<td><strong>Consulting With shareholders</strong></td>
<td>33.8</td>
<td>22.5</td>
<td>16.9</td>
<td>2.8</td>
<td>23.9</td>
</tr>
<tr>
<td><strong>Disclosing Information to fans</strong></td>
<td>20.8</td>
<td>40.3</td>
<td>26.4</td>
<td>9.7</td>
<td>2.8</td>
</tr>
<tr>
<td><strong>Dialogue With fans</strong></td>
<td>16.7</td>
<td>25.0</td>
<td>33.3</td>
<td>22.2</td>
<td>2.8</td>
</tr>
<tr>
<td><strong>Dialogue with shareholding fans</strong></td>
<td>27.8</td>
<td>19.4</td>
<td>16.7</td>
<td>12.5</td>
<td>23.6</td>
</tr>
<tr>
<td><strong>Publicising club’s policy on major Issues</strong></td>
<td>25</td>
<td>27.8</td>
<td>31.9</td>
<td>9.7</td>
<td>5.6</td>
</tr>
<tr>
<td><strong>Implementing community policy</strong></td>
<td>16.7</td>
<td>16.7</td>
<td>33.3</td>
<td>26.4</td>
<td>6.9</td>
</tr>
<tr>
<td><strong>Implementing Equal Opportunities Policy</strong></td>
<td>16.7</td>
<td>9.7</td>
<td>26.4</td>
<td>18.1</td>
<td>29.2</td>
</tr>
</tbody>
</table>

### Table 2.5 Supporter survey

**Did your supporters’ group take any of the following actions at the last AGM?**

<table>
<thead>
<tr>
<th>Action</th>
<th>Yes (%)</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asked a Question?</td>
<td></td>
<td>38.9</td>
<td>36.2</td>
</tr>
<tr>
<td>Voted on a Resolution?</td>
<td></td>
<td>38.9</td>
<td>26.1</td>
</tr>
<tr>
<td>Requested Directors’ Resumes</td>
<td></td>
<td>4.2</td>
<td>2.2</td>
</tr>
<tr>
<td>Requested Directors’ Attendance Records</td>
<td></td>
<td>2.8</td>
<td>0.0</td>
</tr>
<tr>
<td>Used Shareholders’ Proxy votes</td>
<td></td>
<td>27.8</td>
<td>19.6</td>
</tr>
</tbody>
</table>
A key mechanism through which the club can communicate with its shareholders and supporters both through information disclosure and dialogue is the company AGM. And the results from this year’s State of the Game survey indicate that supporters’ groups are making increasing use of the AGM to question the board of directors on matters of concern, as Table 2.5 illustrates.

This high level of activity is hardly surprising given the emergence of the supporters’ trust movement, facilitated by Supporters’ Direct, a movement which has at its heart an aspiration to make corporate governance work for supporters. As Table 2.6 illustrates, supporters’ trusts tend to be more assertive than other supporters’ groups in terms of making requests for information to their club’s directors. This is obviously made easier by the fact that they are often shareholders in their companies.

And it is a matter of some encouragement that the results of this year’s survey indicate that clubs may be beginning to adopt a more open approach to such questioning as Table 2.7 illustrates. Supporters’ groups indicated that they received a more positive response from their company directors at their respective AGMs in the last year. This was an improvement on the results of the 2001 State of the Game (Hamil et al, 2001, page 34) survey where 9.3 per cent of shareholder questions were described as ‘hostile’. The vast majority of clubs claim to be more comfortable with questions from the floor at their AGMs (see Table 2.8); and indeed even appear to welcome such questions (see Table 2.9).

The strong underlying message emerging from these returns is that, for both for the clubs and supporters groups/trusts, the company AGM is a useful forum for...
exchanging information and raising issues of concern. It is therefore of concern that the white paper on *Modernising Company Law* includes a recommendation ‘removing the requirement for private companies to hold Annual General Meetings (AGMs) unless members want them’. Specifically:

‘2.10 At present, the general rule is that companies must hold an AGM at least once every calendar year ... Private companies may dispense with AGMs, but only if all the members agree.

2.11 The Bill will remove the requirement for private companies to hold AGMs. It will also remove the requirements to lay the accounts and re-appoint the auditors annually at a general meeting (usually the AGM). Most private companies will therefore no longer be automatically obliged to hold AGMs which are, for most of them, an unnecessary formality that carries out no business of substance.

2.12 However, the government agrees with the Review that there will be some private companies, in particular larger companies with a wider shareholder base, who will continue to find the statutory AGM a useful procedure. For this reason, the Bill will allow private companies to decide by ordinary resolution to hold AGMs and to lay accounts and appoint auditors at such meetings. In other words, whereas at present private companies may opt out of holding the AGM, the Bill proposes a regime where they may opt in. [Author’s bold] The Bill also includes provisions to implement the Review recommendation that any single member should also be empowered to require an AGM, laying of accounts and re-appointment of auditors in any one year (clauses 136-139 in Volume II). This replicates the power any individual members currently have under the Act’s elective regime. However, the Government believes that there are serious disadvantages with such a power for individual members to require the holding of an AGM in any given year:

- It would allow a single dissenting member to require AGMs, the laying of accounts and re-appointment of auditors every year and thus undermine the deregulatory purpose of one of the core private company reforms in the Bill;

- While the power for a single member makes sense under the Act’s elective regime (where a company may opt out of AGMs only if there is a unanimity) it does not fit well with the Bill’s regime where the default is that private companies are not subject to the requirements on AGMs, laying of accounts and appointment of auditors, and where existing companies may opt out of those requirements through a 75 per cent majority; and

- Such a power for individual members would add an extra layer of complexity to the provisions for private companies. This does not meet the objective of providing accessible legislation for small companies.

The government is therefore seeking views on including draft clauses in the bill.”

(Department of Trade & Industry, 2002, page 8, 18-20)

While the Company Law Review proposal is understandable in the case of small private companies with no stakeholder interests, it is unfortunately likely to encourage a deterioration in the corporate governance of the football industry. Removing the automatic requirement to have an AGM would be a retrograde step in the context of the football industry. As Sir John Smith (1998) pointed out, the football industry has a poor record on corporate governance, most notably in the area of information disclosure. To remove the legal requirement whereby football club directors are required to make an account of their stewardship of the football club in the previous year would remove a key vehicle for the public scrutiny of industry corporate governance. This would be doubly regrettable at a time, as the results of both the 2001 and 2002 *State of the Game* reports illustrate, there are some promising signs that: (1) progressive clubs are recognising the value of the AGM as an effective means to
communicate with shareholders and other key stakeholders; (2) supporters’ groups, particularly supporters’ trusts, are making increasingly effective use of AGMs to exercise a progressive influence over the way their clubs are governed and managed.

2.3 Resolutions Submitted to the Company AGM

A key mechanism through which supporters’ groups can bring pressure to bear on the boards of their clubs is through raising an independent resolution on the agenda paper of the company AGM. The mechanism by which this is achieved was outlined in the 2001 *State of the Game* Report (2001, pages 36-39). However, our survey of clubs indicates that 76.7 per cent of clubs do not encourage shareholders to submit resolutions (see Table 2.10 below).

Perhaps it is not surprising that directors should take such a negative view as traditionally such resolutions have tended to be regarded as a direct challenge to the authority and judgement of directors. This is because such resolutions tend to be raised by minority shareholders at a time of crisis. For example, in 1988, an independent resolution was proposed at Rochdale Association Football Club Ltd to stop the directors selling the ground without the authority of the shareholders. More recently in 2000 the independent shareholders association at Sheffield Wednesday put down a motion of no confidence in the board of the club at a special EGM. This resolution, while defeated, led to the introduction of new investors and directors at the club. Also in 2000 the shareholders association at Aberdeen Football Club put forward a resolution nominating a fan’s representative on the board. Again, while ultimately defeated, the resolution-raising process has led to significant positive changes at the club in terms of the relationship between supporters’ groups and the board of directors.

It is encouraging that one of the positive developments in the white paper on *Modernising Company Law* is the recommendation relating to independent resolutions:

“2.24 The Government also proposes to retain the right of a sufficient body of members to require the directors to circulate a members’ resolution to an AGM and to circulate a members’ statement relating to any general meeting. At present, the circulation of such material is at the members’ expense. The Review proposed, and the Government agrees, that in future members’ resolutions and statements received in time to be circulated with the notice of the meeting should be circulated to all members at the company’s expense.”

(Department of Trade & Industry, 2002, page 21)

Table 2.10 Club survey

<table>
<thead>
<tr>
<th>Does your football club encourage participation at AGMs by encouraging shareholders to submit resolutions? (%)</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>No</td>
</tr>
<tr>
<td>N/A</td>
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</tbody>
</table>

The net effect of this provision should be to make it easier for supporters’ trusts to submit resolutions. Critically, as well as being able to have their resolution circulated free of charge the supporters’ groups will also be able to have a supporting statement circulated free of charge.

**The Celtic Trust Resolutions to the September 2001 Celtic Plc AGM**

An example of how the resolutions process can be used by a trust to exercise some influence over its club’s policy making process is provided by the Celtic Trust.

The Celtic Trust was the first supporters’ trust to register as an Industrial & Provident Society in December 2000. From its establishment the Trust had sought to establish a positive working relationship with the board of Celtic Plc. However, the initial response of the Celtic board was hostile. Apart from one brief meeting with Plc chairman Brian Quinn prior to the September 2000 Plc AGM the company essentially ignored the Trust.

In March 2001 the Trust took the decision to submit a number of resolutions to the Celtic Plc AGM. The motives of the Trust were as follows. The AGM is a public occasion the agenda for which would have to
be communicated to all 18,000 shareholders. It thus offered an ideal opportunity for the Trust to communicate its manifesto to the wider Celtic shareholder body. Secondly, the AGM is the ultimate source of authority of the company. As such it offered the opportunity for the Trust to hold the directors of Celtic accountable on key issues of concern for Trust members. Thirdly it offered the opportunity to open up a line of communication with the board of the Plc.

The four resolution topics emerged from the following process (see Box 2.1 below for details of the resolutions).

- March 2001 – a meeting was held of Trust members to agree resolutions.
- May 2001 – resolutions submitted to Trust members in a postal ballot.
- June 2001 – members asked to complete a resolution requisition form.
- June 2001 – initially personnel at Celtic Plc’s registrar Computershare argued that the resolutions were of a nature that could only be discussed at an Extraordinary General Meeting (EGM). However, following correspondence with Cobbetts Solicitors representing the Celtic Trust, both Celtic Plc and Computershare accepts that the resolutions proposed by the Trust were valid business for the AGM.
- Late July 2001 – completed requisition forms were submitted.
- Early August 2001 – Celtic Plc’s company secretary writes to the trust secretary confirming that the resolutions have been accepted as properly raised and have been placed on the Plc AGM agenda.
- Mid-August 2001 – Celtic Plc post to all shareholders the Annual Report & Accounts, the AGM agenda paper, and a supporting statement recommending that shareholders should vote against these resolutions. The Celtic Trust is unable to include its own supporting statement for fear of incurring significant cost.
- Late August – Trust writes to members explaining the mechanics of transferring their proxy votes to the Trust.
- Late August – Trust secretary writes to the Plc company secretary advising who will be voting the proxies of Trust members, and advising that he will be calling for a show of hands on the day of the AGM.
- 8th September – Celtic Trust AGM addressed by Celtic Plc CEO Ian McLeod who urges the Trust to withdraw its resolutions. Trust members vote to withdraw Resolution 11 after Celtic Plc agreed to regular meetings,

Box 2.1

Resolutions proposed at the Celtic PLC 2001 Annual General Meeting by the Celtic Trust pursuant to Section 376 Companies Act 1985.

Resolution 1
THAT the company is requested to instigate a programme of consultation with supporters’ organisations, which shall include quarterly meetings between members of the board and representatives of the Celtic Trust and/or other such supporters’ associations as the board deems appropriate, in order to canvass the views of such organisations on issues of concern to such organisations relating to the operation of the Company and/or affairs of Celtic Football Club Limited.

Resolution 12
THAT the board is requested to propose a scheme at the next Annual General Meeting for the appointment to the board(s) of the Company and/or Celtic Football and Athletic Club Limited of an elected representative of supporters’ organisation/small shareholders/season ticket holders.

Resolution 13
THAT the board is requested to ensure that all future general meetings of the company called by the board are held on a Saturday or Sunday at Celtic Park, Glasgow.

Resolution 14
THAT the board is requested to carry out a consultation exercise with supporters’ organisations on the design of all future Celtic first team playing strips prior to their introduction.
The Corporate Governance of Football Clubs

thus meeting the substance of the resolution.

15th September, the Celtic Plc AGM – the meeting is dominated by a debate on the three outstanding Trust resolutions. The Trust achieves an average vote of 677,000 or approximately 3.3 per cent of the shares cast (although a majority of shareholders present on the day back the Trust’s resolutions).

As a result of submitting the resolutions Celtic Plc has established quarterly meetings with the Trust and a generally cordial channel of communication and discussion has been established. Celtic Plc did charge £250 for the cost of circulating the resolutions.

2.4 The Role of the Company Secretary

What has emerged from both the 2001 and 2002 State of the Game surveys is that there is a lack of knowledge on both best practice and legal obligation on corporate governance matters on the part of football company administrators. In fact when asked specifically do they feel they need advice and guidance in this area the answer is a resounding ‘yes’: It is interesting that two thirds of respondents expressed a need for advice on the company secretary’s duties (see Figure 3.10 in Chapter 3). It is therefore worrying that the white paper on Modernising Company Law (Department of Trade and Industry, 2002, pages 31-32) includes a recommendation to remove the requirement to have a company secretary; this proposal needs to be given very careful reconsideration in the forthcoming consultation on the white paper.

2.5 Conclusion

In general, the returns from the 2002 survey of clubs indicated that the practice of both clubs and supporters’ trusts has developed for the good since last year’s survey. However, there is clearly a huge potential for improving the governance of clubs, including in the areas of financial planning and risk assessment, and of improving and enhancing links with the supporters and the local communities. It is important that the Modernising Company Law white paper (Department of Trade and Industry, 2002) assists rather than hinders this process.
The ground on which a football club plays represents the most fundamentally important and yet often the most vulnerable asset relating to a club’s medium and long-term future. Regulations and licensing requirements introduced in the aftermath of the Hillsborough tragedy in 1989 have rightly required that clubs invest heavily, either in the building of new stadia or in the redevelopment of existing grounds. Despite the considerable financial assistance of the Football Foundation (formerly the Football Trust), this has been a further financial burden on many clubs already struggling to balance company accounts.

According to our survey, football ground ownership is becoming an increasingly complex area, with ownership structures in continual flux and an increasing number of interested parties. Traditionally, the football club has owned club grounds and the freehold land. In the last two decades changes in the structure of clubs has led increasingly to new ownership patterns and the steady erosion of club control over its primary tangible asset. Our survey reveals that football club grounds are currently owned variously by clubs, holding companies, shareholders, local authorities, individual investors and property development companies. Of clubs in England that responded to our survey, 47 per cent are now either partially or wholly owned by holding companies.

### 3.1 Holding Companies and Issues of Ownership

One trend has been to transfer the ownership of the ground from the football club to the club’s holding company, separating the ownership of the football club from ownership of the ground. Typically, a holding company will now own the football ground, the freehold and the football club as either one or more subsidiary companies. Of our respondents, 21 per cent of grounds that are not owned by the club are now either wholly or partially owned by holding companies. This alteration in ownership structure potentially threatens the long-term security of a club’s primary asset. The separation of the ground from the club has enabled the major shareholders in club holding companies to sell the primary asset, thereby realising the value of the land for property or retail development. The football club may continue to exist, but without a ground to play on. Because the holding company is not considered within the jurisdiction of the Football Association, regulations protecting the ground as a community and sporting asset can thereby be subverted. The FA regulation [Rule I(2)b] states the following: “On the winding up of a Company the surplus assets shall be applied, first, in repaying the Members the amount paid on their shares respectively. If such assets are insufficient to repay the said amount in full, they shall be repaid rateably, so that the loss shall fall upon the Members in proportion to the amount called upon their shares respectively. No Member shall be entitled to call upon other Members for the purpose of adjusting Members’ rights; but where any has been made and has been paid by some of the Members such call be enforced against the remaining Members for the purpose of adjusting the rights of the Members between themselves.

If the surplus assets shall be more than sufficient to pay the Members the whole amount paid upon their shares, the balance shall be given by the Members of the club, at or before the time of the dissolution as they shall direct, to the Football Association Benevolent Fund, or to some club or Institute in the (here insert the name of the appropriate city or county) having objects similar to those set out in the Memorandum of Association or to any local charity, or charitable or benevolent situate within the said (here insert the name of the appropriate city or county). In default of any such decision or apportionment by the Members of the club, the same to be decided upon and apportioned by a Judge of the High Court of Justice having jurisdiction in such winding-up or dissolution and as he shall determine.

Alternatively, such balance may be disposed of in such other manner as the Members of the club with the consent of the council of the Association, as then existing, shall determine.”

FA rules do not, therefore, require that a club must own the freehold or leasehold of a ground. Each league determines what rules it considers suitable in this respect at different levels of the game. However, the FA rule cited above was written to preserve clubs from property speculators winding up clubs deliberately to realise the value of the land. Although the rule itself exists, it is easily subverted.
According to our survey, the majority of grounds in the Football League and the Premier League are still owned by the football club (53 per cent), but a large minority are not. The following cases illustrate the dangers of allowing ownership of the ground to pass from the hands of the football club:

(i) **Wimbledon**

A high profile example of change in ownership occurred at Wimbledon, where Sam Hammam, the previous owner of the football club, sold the Plough Lane ground to Safeway for £8 million, leaving the club without a home and forced into a sharing arrangement with Crystal Palace FC at Selhurst Park. Ironically, Selhurst Park is not owned by Crystal Palace, but by Ron Noades, the owner of Brentford FC. Hammam himself owned the Plough Lane ground through his company Rudgwick Limited. Plough Lane was sold by Rudgwick in 1998 and company accounts for that year show a profit of £5 million based on the sale of a property. Hammam then sold Wimbledon FC to Norwegian businessmen Kjell Rokke and Bjorn Gjelsten for approximately £28 million. The new owners therefore bought a ‘club’ without the most important and valuable tangible asset. The sale of the ground and the club, and the move to Selhurst Park, removed the club from the community it had traditionally served and created the circumstances in which the new owners were able to convince a three man panel appointed by the FA that the club’s interest was best served by moving to Milton Keynes. Wimbledon FC’s inability to use Selhurst Park as a strategic asset and as an additional revenue generator was cited as a central argument in the proposal.

The separation of football club and ground therefore facilitated what has essentially amounted to a ‘franchising’ of the football club. The ground sale left the club with a position in the league, but no home in the borough of Merton. Despite evidence to the contrary, and support for the return of the club to the borough from Merton council, officials of the club were able to persuade decision makers that the club had no future in South London.

(ii) **York City**

In 1999, York City was reorganised and Bootham Crescent Holdings (BCH) became the holding company for York City Association and Athletic Club plc. Four directors, including the major shareholder Douglas Craig, owned 94 per cent of the share capital in BCH. As part of the reorganisation, the freehold of the land including Bootham Crescent, was transferred from the ground to the holding company at book value, approximately £300,000, substantially less than the market value of the land. The holding company also gained ownership of the club’s training facilities and other local properties. The club argues that the reorganisation was necessitated by FA Rule 34 [now Rule I(2)b], which, Craig claimed, may affect the ability of the club to play at Bootham Crescent in the future. Should the club be in a position where it is unable to meet its debts, the company could be wound up and its assets sold in order to pay creditors. It is argued that the transfer of the ground to a holding company prevents the ground from being forcibly sold to meet the football club’s debts.

The transfer of the assets from the football club to a holding company also removed the future of the ground from the jurisdiction of the Football Association, which requires that, in the event of the club being wound up and after Members have been repaid their share capital, the balance should be given to Members, the FA Benevolent Fund, charities or similar sporting organisations as articulated in Rule I(2)b.

In December 2001 the football club and BCH were put up for sale. The football club notified the Football League of its intention to resign its membership at the end of the season and that any prospective purchaser vacate the ground and premises at Bootham Crescent by June 30th 2002. BCH was made available for sale at a price of £4.5 million. In April 2002 John Batchelor purchased York City Football Club while BCH, the holding company of the ground remained in the ownership of the major shareholder Douglas Craig and other shareholders. The future of the football club will depend to a significant extent on the ability of present and future owners of the club to secure long term accommodation in the York area.

(iii) **Brighton and Hove Albion**

Bill Archer purchased the majority shareholding in Brighton and Hove Albion in 1993 and sold the Goldstone Ground in 1995 in order to clear debts,
following amendments to the club’s Articles of Association. There was no provision as to the future home ground of the football club. The ground was vacated by the club in 1997 and the club now plays at the Withdean Athletics Stadium, following two years of ground sharing with Gillingham FC. The club is currently seeking planning permission to build a new stadium.

(iv) Clydebank

Clydebank finally ceased to exist in July 2002 after eighteen months in administration and 36 years after formation. Secretary of the Scottish Football League, Peter Donald, argued that following the sale of the club’s home, New Kilbowie Park, and the subsequent ground share with Dumbarton and then Morton, ‘much of the life went out of the club’. The demise of Clydebank draws clear analogies with Wimbledon regarding the inherent dangers of losing control of one’s own ground. The ground was purchased for the football club for £5,000 by the club’s owners, the Steedman family, following a failed attempt to merge Clydebank Juniors with East Stirling. The Steedmans also accumulated a sufficient percentage of the shareholding to allow them to compulsorily buy all the remaining shares. The ownership of the ground was then transferred to the club’s holding company DBI Glasgow.

Kilbowie Park was then sold in 1997 by the holding company to VICO Properties, a property development company, for £2.2 million. The Steedmans maintain that attempts were made to gain planning permission to allow them to compulsorily buy all the remaining shares. The ownership of the ground was then transferred to the club’s holding company DBI Glasgow.

3.2 Sale and Leaseback

The leasing of the ground by the football club from a third party is also becoming increasingly common. The degree of security this gives the club will depend on both the specific contractual arrangements in place and also the identity of the landlord. For example, should the landlord be the local authority, it is more likely that the club will secure both preferential terms and the security of the ground as a long-term community asset. Alternatively, should the landlord be, for example, a property development or management company, it is likely that the terms of tenancy would be more commercially driven and long-term tenancy less secure.

An arrangement that clubs are increasingly considering is Sale and Leaseback, where the owner of property or land sells and then leases back from the new owner, thus releasing capital value in exchange for the leasing overhead. It is frequently used, for example, by businesses wishing to sell a fleet of vehicles, removing the financial and operational aspects of running company cars, whilst taking advantage of the capital that can be invested back into the business.
A number of football clubs in parlous financial positions have opted for the 'sale and leaseback' on the ground, as an alternative to mortgaging the property and in order to alleviate long-term debt. The freehold of the football ground is sold to, for example, a property management company, accompanied by an arrangement that allows the football club to lease the ground back from the company/organisation for a set period of time. Whilst this may be an appropriate strategy for certain businesses to adopt, it is hazardous for football clubs for a number of reasons.

Firstly, whilst the sale of the freehold may assist in alleviating short-term financial pressures and also secure the football club's continued use of the ground in the medium term, such an agreement can place the football club in a vulnerable long-term position. Typically, a lease back agreement will include a right to renew. However, unless a football club makes a concomitant effort to secure new premises, the long-term security of the club may be undermined and a club may face the possibility of the landlord deciding not to renew the lease for an extended period.

The value of the stadium in a sale and leaseback is likely to be considerably less than the total cost of buying the freehold and stadium construction. The stadium itself is of value only to the football club; its value to other organisations is the land on which the stadium is built, and the commercial value for redevelopment. Although the Sale and Leaseback agreement may contain a pre-emptive right, giving the club first option on re-purchasing the freehold, it is almost impossible for the football club to realise the full value of the ground to the football club in a sale and leaseback arrangement. Finally, if clubs have loans secured on the freehold of a ground, and the ground is then subject to a sale and leaseback agreement, the security of the loans immediately disappears. In the case of a football club, ownership and security of the ground is essential to long-term health and this may be jeopardised by moves to sell the ground.

(i) **Watford**

Watford FC recently sold the freehold to Vicarage Road to offset financial difficulties caused by the collapse of ITV Digital and decisions made concerning the playing side of the club in the season 2001-2002. The club's financial difficulties arose following relegation from the Premier League at the end of the 2000-2001 season. In an attempt to return to the Premier League the club adopted a high-risk strategy of appointing Gianluca Vialli as manager and signing a number of players on high salaries. The team was unsuccessful and Vialli was dismissed as manager, with the club obliged to settle his contract. The club turned a pre tax profit of £3.75 million in 2000 into a loss of £5.4 million in 2001. According to the Chief Executive, the club has complete security of tenure at Vicarage Road, with provision for the club to buy back the freehold at any time.

(ii) **Walsall**

The Bescot stadium was bought by the JW Bonser Ltd Pension Fund, owned by Jeff Bonser, the majority shareholder in Walsall FC. The current lease runs for a period of 33 years with an option to extend for a further 66 years. The football club therefore pays considerable rent each year to the majority shareholder's pension fund. Whilst the club has a degree of security on the ground, it is prevented from fully exploiting the ground as a commercial asset and pays a considerable amount annually to continue playing football at the Bescot Stadium.

(iii) **Bristol Rovers**

In 1940, Bristol Rovers, £16,000 in debt and requiring re-election to the Football League sold their ground, Eastville, to the local Greyhound Company. A long-term lease was secured, but financial crisis in 1981 saw the club relinquish the right of tenure at Eastville in return for £280,000. A new 5-year lease was eventually agreed at £52,000 per year. Eventually the Greyhound Company sold the 12 acres of land for £2 million. The club's tenure ended in 1987 and Bristol Rovers moved to temporary accommodation at Twerton Park in Bath. The club moved back to Bristol in 1986 in a ground sharing agreement with the rugby club, and the football club bought the ground outright in 1988.

A checklist for supporters

Supporters concerned about a Sale and Leaseback proposal may wish to pose the following questions:
To whom will the freehold and ground be sold?

Will they have a role in the management of the football club?

How much will the proposed sale & leaseback raise?

What is the length the lease?

How much will the lease cost?

Can the cost of the lease be increased?

How do these costs compare to existing commitments (eg loan repayments)

Is there an option to renew?

What rights of tenure does the club have?

Can the club afford to pay the lease and save to re-purchase the freehold?

What happens if the club defaults on lease payments?

Does the club have a right to repurchase the freehold and stadium should it wish?

How will the cash injection be invested?

Does the club have a strategic plan for long-term financial health?

What assets can the club secure loans against in future?

3.3 Strategies to protect football grounds

Transferring the ownership of the ground to a holding company may make the ground more secure should the club fall into financial difficulty, but, as has been shown, it also puts the ground at the mercy of a small number of individuals and shareholders. Similarly, a Sale and Leaseback scheme takes the ownership and control of the freehold of the ground away from the football club. Whilst tenancy may be secured on a long-term basis, the scheme weakens the club’s long-term financial and sporting stability. Two areas in which a football club could generate a greater degree of security for a club’s stadium are through local government involvement in stadium provision and through placing restrictive covenants on the use of the ground.

(i) Covenants

A restrictive covenant is an obligation created by deed that curtails the rights of an owner of land from using it for means other than that stated by the covenant. Third parties who acquire freehold land affected by a restrictive covenant may be bound by it if it is registered. A number of football clubs have restrictive covenants in place on the freehold on which the ground is situated. Of the forty-five responses from Football League and Premier League clubs, 12 stated that they have a restrictive covenant on the football ground. This figure includes clubs from the Premier League and all divisions of the Football League. Covenants on football grounds usually restrict the land to be used for sporting purposes only.

Restrictive covenants are a useful tool by which to protect football grounds from redevelopment. Covenants can be drafted so that they ‘run with the land’. This means that the covenant remains in place following transfers of ownership of the freehold and that the intended beneficiaries of the covenant continue to enjoy the benefits of the restriction. To enforce the covenant the party wishing to enforce the covenant must establish that he or she is entitled to benefit from it and the person against whom he seeks enforcement is subject to the burden of the covenant.

One concern that might be raised is that should a club wish to relocate to a new stadium, it would usually require the sale of the existing freehold to finance the new stadium. It is feared that if the freehold is subject to a restrictive covenant, then realising the market value of the land will be impossible. However, processes exist in which a covenant may be removed. This can be done by applying to the Lands Tribunal to have the covenant modified or discharged under section 84 of the Law of Property Act 1925. This was a situation confronted by Oxford United when it decided to move from the Manor Ground to a new purpose built development. In 1961 Oxford United bought the
Manor Ground for £8,800 from Headington Sports Ground Ltd. The low price was due to a restrictive covenant stating “the Purchaser shall not use the lands hereby conveyed for any purpose other than as an open air sports ground”. Oxford United moved to its new home at Minchery Farm in time for the 2001/02 season. Firoz Kassam, the new owner of the club, paid the Headington Bowls Club £40,000 for an option to release the club from the covenant intended to safeguard the land for sporting use. This enabled the football club to realise the value of the Manor Ground in order to help fund the move to the new stadium. Presently, Shrewsbury Town are also attempting to have a covenant on Gay Meadow lifted in order to fund the move to a new stadium.

The Lands Tribunal may therefore remove the restriction if it is satisfied that one or more of the grounds set out in the Act are met and it does not have jurisdiction unless the grounds set out are referred to. Even if the grounds are met, the tribunal still has the power of discretion on whether or not to lift the restriction. Should a football club apply to have a restriction lifted, then the Act sets out the right of ‘any person interested in any freehold land affected by any restriction’ to object.

Covenants have not always provided total security for a club ground. A restrictive covenant existed at Plough Lane, the previous home of Wimbledon FC. The club’s previous owner succeeded in having the covenant removed without having secured land for a new stadium. Ironically, Safeway, who purchased the land in 1994, have failed to gain planning permission for redevelopment since then. However, if exercised correctly, covenants provide a useful means by which a ground can be protected against moves towards property and retail development. Should a club wish to move ground, using the proceeds of the sale of the existing freehold, a regulatory structure exists that ensures that certain criteria are adhered to. Vigilance is required on behalf of supporters, local government and other stakeholders to ensure that covenants are effectively administered and enforced.

(ii) Local Government Intervention

Best practice and good corporate governance at clubs should entail a high degree of stakeholder involvement in the management of the club and high levels of consultation. This would not only include effective communication with supporter organisations, but should also involve developing a strong relationship with local communities and, more specifically, the local authority. The involvement of local government in both existing grounds and new stadia can play a positive role in protecting grounds as community assets as well as the clubs themselves. Of the clubs that responded to our survey, local authorities own 22 per cent of grounds in the Football League and Premier League.

Fresh Players, New Tactics (Frampton et al, 2001) described the crucial role of the council in the survival of Northampton Town FC, the building of a new stadium and its long-term security as a community asset. The contribution of the council at Northampton provides a useful blueprint, both for local government involvement in a Supporters’ Trust and the football club, and specifically for securing the football ground as a community asset. Firstly, the council was involved in the Supporters’ Trust from the outset in 1991, with a seat on the Trust committee. This helped the supporters develop a strong and positive relationship with the council. Later, the council agreed to fund a new community stadium that could be used by the club and which could also host athletics and rugby. The stadium was completed in 1994 with the assistance of a grant from the Football Trust.

When Northampton Borough council agreed to finance the new stadium, it placed conditions on the management of the football club. One such condition of the lease and license to utilise the stadium was that an elected representative of the Supporters’ Trust should become a director of the football club. Furthermore, the council also insisted on having one non-executive observer on the board for the same period. The agreement between the football club and the council has therefore contributed to the building and long term security of the stadium and it has also ensured supporter representation and contributed to better practice in the corporate governance of the football club.

(iii) Other Strategies: Chelsea Pitch Owners

Chelsea Village plc has created an initiative aimed at securing the future of football at Stamford Bridge. Chelsea Pitch Owners plc (CPO) was set up in 1993
with the intention of gaining ownership of the freehold of Stamford Bridge. This was achieved in December 1997 with the aid of a loan from Chelsea Village. CPO must raise £9.2 million in order to repay the loan. Once the money has been raised CPO will grant a lease of 199 years to Chelsea FC on terms that have already been agreed and that restrict the use of the ground for football and ancillary activities. These lease terms cannot be changed without the agreement of CPO and the football club.

The main objective of the company is restricted to raising money to purchase the freehold and broaden the ownership of the ground to all interested stakeholders. Should there be a proposal to change these objectives then a 75 per cent vote in favour of change will be required. Additionally, the Articles of Association limit any shareholders vote to 100 votes, regardless of the number of shares held. Consequently, control over the company could only be gained by purchase of at least 90 per cent of the issued share capital.

The company is set up without the objective of making a profit or issuing dividends. If members of the company refused to sell shares, it would be extremely difficult gaining control of the company. Furthermore, the Articles of Association protect the interest of the shareholders regarding the future of the ground. The directors and the company do not have the authority to enter into agreements that might result in the disposal or sale of the freehold, without the approval of shareholders at a General Meeting and by Special resolution. However, there is room for greater democracy within Chelsea Pitch Owners. Whilst limiting voting rights to 100 votes curtails the possibility of a single individual or organisation from gaining overall control, it is not a fully democratic process as ensured by the Industrial and Provident Society Model. Similarly, whilst the directors of the company may not have any interest in the share capital of Chelsea Village, thus avoiding potential conflicts of interest, there is no process for election to the board of the Company.

3.4 Conclusion

If a football club is to survive the increasingly uncertain financial future then maintaining the ownership of the football ground will play a crucial role. Whilst the relative importance of a club’s revenue streams is in continual flux, the fundamental importance of the club’s ground remains paramount. Ownership of ground and freehold remains a symbol of long-term financial health. It denotes the future location of the club as an institution and secures the ability of the club to fulfil its fixtures within the local community that it serves. Club ownership of the ground also allows the football club to maximise the use of the stadium as a strategic commercial asset.

The high profile developments at Wimbledon FC illustrate the inherent dangers of forfeiting the ownership of one’s ground without the security of a parallel stadium construction. Clubs should avoid transferring the primary asset to either holding companies, especially where a large degree of control is vested in a single individual, and to other third parties in exchange for short-term, debt alleviating financial gain. The hazards associated with loss of control may be irreversible.

Restrictive covenants may act as an extra regulatory buffer against abrupt attempts to realise a ground’s market value. Additionally, if football clubs wish to seriously embrace the principles of good corporate governance, stakeholder involvement has a natural role to play in this area. Extending ground ownership to both the local authority and other interested stakeholders, including supporters, would further the goal of entrenched the future of a football club within its historic locality.
Chapter 4
Supporters and Corporate Governance at the Club

Our questionnaire was completed by 72 supporter groups from clubs in the English Premier and Football Leagues. Table 4.1 gives a breakdown by organisational type and an indication of how they are structured is provided in Table 4.2.

Table 4.1 Supporter survey
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<th>Type of supporters’ group</th>
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<tr>
<td>Official Supporters’ Club</td>
<td>13.9</td>
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<tr>
<td>Shareholders’ Association</td>
<td>5.6</td>
</tr>
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<td>Travel Club</td>
<td>2.8</td>
</tr>
<tr>
<td>Fanzine</td>
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<td>Supporters’ Trust</td>
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<td>Exiles’ Group</td>
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<td>Other</td>
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Table 4.2 Supporter survey
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<th>How supporters’ groups are structured</th>
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<td>Industrial and Provident Society</td>
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<tr>
<td>Company Limited by Guarantee</td>
<td>3.0</td>
</tr>
<tr>
<td>Unincorporated Association eg. Supporters’ Club</td>
<td>65.2</td>
</tr>
</tbody>
</table>

As with last year’s survey, over 70 per cent of respondents came from just three organisational types: Independent Supporters Associations, Official Supporters’ Clubs and Supporters’ Trusts. Last year’s aggregated membership figures for supporters’ groups responding to the questionnaire totalled 28,446, an average of 646 per organisation; this year’s total comes to 50,056, an average of 758. This represents an average of 10 per cent per organisation of the home gate.

4.1 Consultation and dialogue between supporters’ groups and the club

The level of involvement of supporters’ groups can be gauged through various mechanisms, including fans’ forums, customer charters, meetings with club officials, board representation, and use of collective shareholdings.

4.1.1 Fans’ forums

All Premiership clubs are required to have a fans’ forum. Last year’s survey found that of Football League club’s responding, 70 per cent had a fans’ forum; this year’s percentage has increased to 85 per cent.

The returns from the supporters’ survey indicate a wide divergence of opinion regarding these forums; in some cases they were considered to be an excellent mechanism for taking into account supporters’ views and establishing ‘consensual stakeholder management’:

1. “we have regular two-way dialogue … we advise them, question them … they consult and inform us”

2. “[the fans’ forum] facilitates the process of honest and open two way communication between club and supporters”

3. “a constructive tension exists and a level of trust”

At other clubs the system suffers from a variety of problems including the undemocratic nature of the forum, a breakdown of the relationship between club and fans and simply the infrequency of meetings:

1. “seems ineffective and hand-picked”

2. “good, if we agree with them, non-existent if we don’t”

3. “although [the shareholder trust] and the [independent supporters association] have been allocated places, we are concerned that the undemocratic way in which the other places are allocated undermines the authority of the Forum”

The basic problem underlying all fans’ forums is that their effectiveness, in terms of their ability to enforce good practice, is dependent on the relationship between the club and the fans. When the relationship is good the mechanism can be an effective way of consulting with fans and maintaining a healthy relationship between the club and its supporters.

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If the relationship sours, for whatever reason, the mechanism breaks down. There is a wider issue here: at the heart of the relationship between the club and the fans is an inequality. Ultimately, the club can ignore the fans requests, simply refusing to listen or just paying lip service to their opinions and the fans can do very little to enforce their views or increase club accountability.

4.1.2 Customer Charters

Both the FA Premier and Football Leagues require their clubs to have a Customer Charter and to publicise it. The FA Premier League Customer Charters cover issues concerning: consultation, accessibility, ticketing policy, merchandise, community activity and loyalty and membership. All twenty clubs have appointed an executive with the responsibility of dealing with customers (supporters), and these executives are required to meet every three months to discuss issues and share best practice. Clubs monitor the level of complaints they receive and report every quarter to the Customer Response Unit at the Premier League who monitor the clubs’ complaint system and facilitate communication between clubs and supporters if necessary. The FA Premier League also publishes an annual report on the matter detailing the progress of each club.

The Football League also has a requirement for clubs to have a customer charter and to publicise it (according to the regulations outlined in their Handbook, Season 2002-3). The charter is the club’s mission statement regarding issues of customer service, staff conduct, consultation and information, ticketing, away supporters, merchandise and community activities. Customers who have a complaint should contact the club in the first instance, but if communication with the club has broken down then they can contact the Supporters’ Liaison Official at the Football League who will take the matter further.

The Football League dictates that clubs must submit a report by 30th June each year to the League detailing “…how the policies outlined in the charter have been implemented and the extent to which each has been achieved.” The Football League is committed to disseminate best practice for the benefit of all clubs. This information is also passed to the Independent Football Commission.

Our survey asked:

(a) Were customer charters widely known and how effectively are they publicised?
(b) How difficult is it for clubs to comply with them?
(c) How effective are the charters?
(d) How widely are they used as an instrument to enforce good practice?

Supporters’ groups were asked whether their club has a customer charter; in both the FA Premier and Football Leagues, over a third of respondents reported either that they did not know or that the club did not have a charter. Those reporting that their club did have a charter were asked whether the charters were publicised effectively; while a third of supporters’ groups from Premier League clubs indicated that the charters were not effectively publicised (Table 4.3).

<table>
<thead>
<tr>
<th>Percentage of respondents</th>
<th>Premier League</th>
<th>Football League</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all effectively</td>
<td>25.0</td>
<td>28.6</td>
</tr>
<tr>
<td>Not very effectively</td>
<td>12.5</td>
<td>21.4</td>
</tr>
<tr>
<td>Quite effectively</td>
<td>18.8</td>
<td>17.9</td>
</tr>
<tr>
<td>Very effectively</td>
<td>12.5</td>
<td>0.0</td>
</tr>
</tbody>
</table>

Table 4.3 Supporter survey

How effectively is the customer charter publicised to fans?

How difficult is it for clubs to implement their customer charter?

Our club survey indicates that 100 per cent of Premier League clubs and 91 per cent of Football League clubs reported little difficulty in implementing their charters. These extraordinary high statistics may be explained by the fact that at most clubs the charters were drafted by club officials, with minimal consultation with supporter groups. As a result many charters sometimes lack precision, are vague on topics for which they should be accountable and do not address the most important issues such as regular consultation.
with fans. In this sense the standards that are set may either be rather minimalist or simply written in such a way as to be unenforceable. For example, under the section entitled Customer Consultation, referring to the design of new strips, a matter that most fans care passionately about, many charters state: ‘the club undertakes research on the design and number of new strips’. Such statements are virtually meaningless without knowing the details about the nature of the research: what processes are involved; how this includes fans; and what other factors are involved. Given the nature of the statement it is difficult to see how a customer could use it to enforce good practice.

How effective are the Charters?

89 per cent of Football League clubs and 80 per cent of Premier League clubs reported that they find customer charters effective, whereas only 25 per cent and 20 per cent of supporter groups from the respective Leagues find them so (Table 4.3). The response from the supporter survey to questions regarding the effectiveness of the charters reveal large ‘don’t know’ proportions – 40 per cent across both leagues – indicating a lack of awareness of (and/or interest in) the charters as useful documents. As can be seen from Figure 4.1 14 per cent of supporter groups in the Premier League had used the customer charters to enforce good practice and all of these described them as ‘Not very effective’. However, while only 13 per cent of supporter groups from the Football League had used the charters to enforce good practice, 86 per cent of these described them as effective.

How widely are they used as an instrument to enforce good practice?

Any real test for a customer charter comes in terms of its application. According to our survey supporter groups at both Football and Premier League clubs overwhelmingly (79 per cent from the Premier League and 68 per cent from the Football League) indicated that they have not used customer charters to enforce good practice. The comments provided on the nature and substance of customer charters give some clues as to why this is so. One supporters’ group from a division three club stated that the club did have a charter but it was “a joke”; another supporters’ group representative from a Premiership club noted that it was “…useful as far as it went, but it didn’t go far enough.”

Other findings

Our survey did find that where club officials and supporters were working together to maintain the customer charter, both the effectiveness of the charter and the general relationship was reported as very good:

1 “The communication with the Chief Executive and the board is first class…[as] we have been involved in the development of the customer charter, we can assist our members/fans with any problems and sort things smoothly”

1 “We vet and suggest amendments to the customer charter each season. We have a very good relationship with the club both at a senior and an operational level”.

Summary

Customer charters are not publicised effectively at either Football or Premier
League clubs.

There is a huge disparity between the perception of clubs and that of supporters as to how effective the charters are.

Clubs could improve the effectiveness of their customer charters by involving the main customers, the supporters, in updating the document.

4.1.3 Regular contact between club officials and supporter group representatives

The views of both supporters and clubs regarding meetings appear mixed. 96 per cent of clubs reported having a dialogue with supporters’ groups. Some supporters’ groups reported such meetings as an excellent way of maintaining consultation and dialogue with the club. Like fans’ forums this depends on the relationship between the people involved. When the relationship is good the supporters feel involved in the running of the club and the club are happy with the response from supporters; when the relationship suffers for whatever reason, this mechanism likewise becomes problematic.

4.1.4 Supporter directors

Since the launch of Supporters Direct in September 2000 the number of clubs with supporter representation at boardroom level has been steadily increasing. The largest growth has been seen in the Football League where eleven clubs (15 per cent of the total) can claim to have some form of boardroom representation. To ensure maximum effectiveness for supporter-elected directors and to provide clarity to the process for both supporter directors and clubs, some supporter directors asked for a code of conduct to be developed as a framework for the working relationship between the elected supporter director, the trust and the club’s board; this Code is reported in Appendix III.

Only one English Premier League club, Charlton Athletic, can claim to have supporter representation on the football club board.

Some clubs have more than one supporter director on the club’s board – Chesterfield have 3 directors elected out of a board of 5 and Lincoln City have 2 directors out of a board of 5.

At the time of writing there are a total of 21 clubs across the various football leagues and divisions with supporter representation on the board. The non-league and Scottish clubs with supporter representation are listed in Table 4.4.

<table>
<thead>
<tr>
<th>Scottish Clubs</th>
<th>Non-league Clubs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partick Thistle</td>
<td>Altrincham</td>
</tr>
<tr>
<td>Falkirk</td>
<td>Enfield Town</td>
</tr>
<tr>
<td>Greenock Morton</td>
<td>Bromsgrove Rovers</td>
</tr>
<tr>
<td>Aberdeen</td>
<td>Doncaster Rovers</td>
</tr>
<tr>
<td></td>
<td>Newport County</td>
</tr>
<tr>
<td></td>
<td>Dover Athletic</td>
</tr>
<tr>
<td></td>
<td>AFC Wimbledon</td>
</tr>
</tbody>
</table>

Table 4.4: Scottish and non-league Clubs with Supporter Directors

Four case studies of supporter representation on the club’s board

Gauging the impact and effectiveness of Supporter Directors is difficult. The sheer complexity of local club contexts and the variety of corporate governance mechanisms at different clubs means that cases are difficult to compare by any statistical means. Some supporters on some club boards have a great deal of influence and bearing on the club and can claim to add a great deal of value, for others their influence is limited. Four case studies are therefore reported here, three from Football League clubs – Brentford, Luton Town and Exeter City – and one Scottish club, Aberdeen, chosen because it illustrates the challenges facing a supporter director at a listed Public Limited Company.

(a) Brentford

The Bees United Supporters’ Trust registered as an Industrial and Provident Society in April 2001 with the support of the Brentford Independent Association of Supporters (BIAS) and other local supporters’ groups. The trust, which currently has a membership of approximately eight hundred, had the option to purchase the majority shareholding in the football club...
from the existing owner Ron Noades (via a holding company Altonwood Holdings). As part of the obligations of taking a majority stake in the club, Bees United would have to inherit the considerable loans and overdraft at the club (estimated at £5m) and present a viable business plan for the club to remain solvent. These difficult circumstances were made worse by the problematic issue of the club’s ground at Griffin Park. Although there was widespread recognition that Griffin Park and the facilities could no longer generate the level of income to sustain the club and a new ground may need to be found in the Borough of Hounslow, the trust needed to ensure that any deal would not leave Brentford FC homeless.

As Chair of Bees United, John McGlashan took up a full directorship of the club in January 2002. On behalf of the supporters’ trust, he had to secure the majority stake in the club and agree an ‘exit strategy’ for Ron Noades without leaving the club bankrupt, while still maintaining the support of the fans. Given the circumstances the best deal negotiated involved a sale of Griffin Park for housing development to generate enough money to pay the creditors and fund the development of a new ground, while simultaneously securing a site for a new stadium within the Borough of Hounslow. The deal was complex and risky. A football ground is by its very nature an emotional issue for the supporters and any proposal to sell and move on must be watertight. The local council had historically been pessimistic about the possibility of finding a new home for the club and the Supporters’ Trust needed to generate support for the move among councillors. Although negotiations are still pending, the supporter director’s role has been instrumental in securing the Council’s growing support, and Brentford predict they will be able to move soon.

The supporter director represents the trust and because the trust is a not-for-profit, community mutual it offers a perfect vehicle to secure the club for the benefit of the community. The promise of the majority shareholding belonging to a mutual organisation has seen the objectives of the Council and the club become closely aligned in achieving the same end: ensuring the club survives as an asset for the benefit of the local community. In short the supporter director has put the relationship between the club and the Council on a new footing.

(b) Luton Town

Yvonne Fletcher of the Fans of Luton Action Group (FLAG) was elected to the position of club director in June 2000 following the decision to invite a FLAG supporter onto the board in recognition of their efforts after the club went into receivership in March 1999. Using the mandate of FLAG, the supporter-elected director’s main concern is to improve communication between the club and fans. A supporter-elected director is ideally situated to facilitate a process of two-way dialogue as they have the benefit of knowing the business information of the club but at the same time being part of the supporter base.

Thus, persuading the board that the AGM should be held in the evening, as opposed to the morning, has improved attendance and made the AGM more inclusive. Secondly, the supporter director ensured that it was minuted that the Chair would underwrite the club’s debts thus ensuring the club was not trading insolvently, and therefore illegally.

Yvonne was also instrumental in developing new links with the local university. The club now has a stall at the Freshers’ Fair at Luton University which it runs with the supporters’ groups, raising the profile of the club (and supporters’ groups) and encouraging students to attend matches. The Students Union is now going to adopt a ‘Luton Town Society’ which recruits new fans from a total of over 15,000 students. Recently, the club has stepped up its efforts and funded a bursary for students; as part of the package, successful students are granted a work placement.

(c) Exeter City

The supporters’ trust at Exeter were offered an Associate directorship on the club’s board for an agreed one off payment of £6000 in June 2001, and consequently elected a supporters’ representative, Norman Warne. Norman’s post is re-elected annually.

Under Company Law, a full director enjoys the benefits of limited liability in exchange for a number of duties that he/she must, along with other directors, collectively fulfil, such as the preparation of the company’s accounts, preparation of the directors’ report, presentation of Annual Returns to Companies House, etc.
The appointment of an associate director is not intended to be a board appointment, but merely to confer status upon an appointee. Provided the appointee does not hold themselves out as a full board director and does not act as a director within the meaning of Companies Act 1985, they will not be subject to the statutory responsibilities and liabilities attaching to full board directors, yet will have the benefit of calling themselves an ‘associate director’. If the associate director is held out as a full board director, they will have both the obligations and the benefits of a director under the Companies Act 1985.

Clubs can see a benefit in offering Associate directorships to supporters as it allows them to present the club as fan friendly while at the same time excluding the supporter director from certain business decisions. As such, they receive positive press and public relations but retain control over the main decision making of the club.

In the first year Norman’s experience as an associate director of Exeter City Football Club has not been a happy one. His presence was only accepted reluctantly and his position was seen as being dependent on the goodwill of senior figures of the club. Norman felt that the senior directors wanted the supporter representative to be completely obsequious, and any deviation from this sedated state resulted in the relationship becoming fraught: "...there was a distinct hostility which was very unpleasant. Clearly the notion of supporter input to matters of significance was an anathema."

Being an associate director allowed the club to treat him differently to other directors. He was not given all the information about the running of the company that other directors received, and he was only invited to ‘selected’ board meetings. During his tenure as supporter director he only attended two meetings in a year, as most went on behind his back without his knowledge. Even when present at these meetings, he was only allowed 30-40 minutes at the beginning of the meeting to make his points and then had to leave while the board meeting continued without him. Furthermore, senior directors on the board restricted his agenda so that most subjects were outside his brief, including all major financial, strategic and operational matters. Later in the year relations deteriorated to such an extent that he was no longer allowed in the directors' box.

**Figure 4.2 Supporter Representation on the Board at Football League Clubs**

<table>
<thead>
<tr>
<th>Number of clubs</th>
<th>Before September 2000</th>
<th>Sept - March 2001</th>
<th>Apr 2001 - Apr 2002</th>
<th>Apr 2002 - present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bournemouth</td>
<td>4</td>
<td>0</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Leyton Orient</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northampton Town</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plymouth Argyle</td>
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<td></td>
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<tr>
<td>Exeter City</td>
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<tr>
<td>Chester City</td>
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<tr>
<td>Lincoln City</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Luton Town</td>
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</tr>
<tr>
<td>Breidford</td>
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<td>Chesterfield</td>
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<td>Exeter City</td>
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<td>Luton Town</td>
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<td>Bournemouth</td>
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<tr>
<td>Plymouth Argyle</td>
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</table>
Given the difficult conditions, the circumscribed agenda and the restricted role itself, the impact of the supporter director was restricted to relatively minor matters such as the failing speaker system, the conditions of the ladies toilets, costs of cups of tea, and the price of pasties. As Norman himself put it: "the more trivial the matter, the better". When more ‘difficult’ questions – relating to corporate governance at the club – were asked, including the issues of discrepancies concerning the shareholding of the club, the share register and the Chair’s personal shareholding, these were deflected or the question ruled inappropriate. The main reason the club was able to deflect these questions was because of Norman’s associate director status.

However, the club may well be on the threshold of a new era as the composition of the board has recently altered and new directors have come in who welcome the idea of supporter directors. Given the new spirit at the club and the ‘difficult’ experience of the supporter director over the past year, the trust is campaigning for the supporter director to be a full directorship.

(d) Aberdeen

The supporter representative at Aberdeen, Chris Gavin, was appointed to the board of the club in March 2002 following the appointment of a new Chief Executive who wanted the fans to have some form of board representation. As Aberdeen is a listed public limited company, trading on the Alternative Investment Market, and Chris’s position is one of full non-executive director, the decision to appoint Chris was immediately announced to the Stock Exchange to comply with listing rules. Chris’s appointment is backed by the Aberdeen Supporters’ Trust and he represents all supporters of the club, not just the Trust members. Regarding the new appointment, the Chief Executive of the club, Keith Wyeness, said:

“The issue of understanding how the decisions are made from a fans point of view is important and the opportunity to see in depth behind the scenes how the club is run is a very important benefit for the fans representative and it may have dispelled some common misconceptions of how things were done and just how much it does take to run a successful club operation.”

With over fifty supporters’ groups at Aberdeen there is a great deal of activity for the supporter director especially as he intends to consult with all of them by way of open forums. The supporter director has already played an invaluable role and is helping initiate a number of positive changes to the format of board meetings which in turn has tightened up governance procedures and helped enhance the running of the club: agendas have been restructured to make items clearer; there is a more effective action tracking system that makes decisions more accountable; and directors’ roles have been made more defined for greater clarity. Likewise, since the appointment of the supporter director the relationship between the many supporters’ groups and the club in general has improved significantly with more consultation.

Summary

1. Supporter directors can add value to the general running of the club and the corporate governance practices at both large plc and small private limited clubs.

1. The introduction of a supporter director to the club’s board can produce positive outcomes in terms of relationships with other stakeholders in the community, especially the council, the supporters’ groups and other community organisations.
4.1.5 Supporter groups, club finance and shareholdings

Over 90 per cent of supporters’ groups indicated that they regard the objective of fundraising for the club as either crucial or very important (Figure 4.3). Over 50 per cent of supporters’ groups regard the objective of acquiring a collective shareholding in the club as important and over 80 per cent of supporters’ groups regard acquiring a shareholding on behalf of members as important. Funding of clubs comes from all types of supporter organisations – two Football League supporters’ clubs reported that over the course of several years they have contributed hundreds of thousands of pounds. However, supporters’ trusts were the largest provider (Figure 4.4). 39 supporters’ groups reported having provided a significant amount of money to the club; 14 of these had provided over £20,000. The supporters’ groups that returned questionnaires had raised just over £4m in total, although this includes all fundraising, not just funds that go to the clubs. Of this, £2.4m was accounted for by supporters’ trusts.

Many clubs acknowledge the help and support they get from the supporters’ clubs and ensure they consult the supporters on how the money is spent. One club wrote:

“…our supporters’ club is absolutely brilliant … raises large sums of money for the club … and has a regular and productive input into decision-making”.

Other clubs do not appear to appreciate the support they receive. At one division one Football League club the supporters’ exiles group stated that they donated £1000 every season to the youth team but have no say in the running of the club:

“we are tolerated … as a minor irritant”.

Likewise, even though the group offers free labour and expertise from amongst their members:
"[the club] will accept no help, criticism or suggestions even though many of our members are more skilled/knowledgeable in their field than the club's employees".

Another Division Two supporters' club described the club's attitude as: "...raise money, run coaches – don't interfere".

According to our survey of clubs' only 17 per cent of supporters' groups who have provided contributions to the club have received shares in return. However, this is undoubtedly changing. With the launch of Supporters Direct and the growth of supporters' trusts, fans now expect – and are getting – a share of the club in return for funds put in.

4.2 Supporters' trusts – a new force in football

Since the launch of Supporters Direct in September 2000 there has been a huge increase in the number of supporters' trusts across the whole of the football industry: 34 Football League clubs (47 per cent of the total) now have a supporters' trust, with a further three having agreed to form; supporters' trusts have formed at four Premier League clubs (20 per cent of the total), with a further three agreed to form. The number of supporters who are members of a trust now totals over 30,000 and this figure is growing.

Of the 59 established supporters' trusts, 51 are Industrial and Provident Societies, five are Unincorporated Associations, and three are Companies Limited by Guarantee. Several trusts have played a significant fundraising role, acquiring shares in the club in return for their investment. For most trusts this shareholding is a collective holding whereby the trust owns all the shares regardless of the financial contribution of the individual members. At others, the trust is a holding mechanism whereby the individual members of the trust still own the shares. In some cases both types of shareholding – individual and collective – are combined. Six trusts now either own the majority stake in their club or have the majority voting rights in their club: Dover Athletic, AFC Wimbledon, Lincoln City, Chesterfield, Enfield Town and Bournemouth.

Supporters' trusts have acquired shareholdings using various methods as detailed below.

4.2.1 New share issues

At Northampton Town every time the supporters' trust raises money for the club it receives new shares. These new share issues occur at regular intervals. Over the years, the supporters' trust has raised approximately £120,000 and has purchased over 30,000 shares, nearly 9 per cent of the total share capital of the club. The total percentage shareholding of the trust has not increased significantly relative to the other major shareholders because each time the trust invests in the club and receives new shares the directors also invest money into the club and therefore
increase their own shareholdings. However, the overall effect of this is a positive one in that the supporters' trust not only invests money, but acts as a catalyst to encourage the other directors to do the same.

The advantage of supporters' trusts acquiring shares through a new share issue, as opposed to negotiating a transfer of shares from an existing owner, is that the money goes straight to the club rather than the owner of the shares. The financial details of the transaction appear in the club's annual accounts.

4.2.2 New classes of shares and share holding agreements

The supporters' trust at Mansfield, TEAM Mansfield Supporters' Society Limited, offers an example of how a trust can negotiate for the creation of a totally new class of shares, tailor made for a supporters' trust. TEAM Mansfield has recently acquired a 3.3 per cent stake in the club by purchasing 3300 'Community Shares' in the club for £33,000. In terms of rights and powers the new class of shares ranks equally with the ordinary shares of the company, but the trust were able to use the investment as a way of enforcing other rights.

Accompanying the creation of the new class of shares, which by definition meant altering the Articles of Association, is a shareholders' agreement with clauses specifically designed to protect the trust's shareholding and rights as minority shareholders. The football club cannot, without briefing and consulting the trust:

1. issue, allot, redeem, purchase or grant options over any of its shares or reorganise its share capital in any way;
2. pay or make any dividend or other redistribution;
3. alter the provisions of its memorandum or articles of association;
4. pass any resolution for winding up;
5. change the nature or scope of its business or carry on any new business not being ancillary or incidental to its business as a football club;
6. give any guarantee, indemnity or security in respect of the obligation of another person.

Similarly, the procedures and format for consultation with the trust are laid out clearly. Creating the new class of shares and securing the rights of these shares with a shareholders' agreement establishes the trust with a firm footing in the club. This model is ideal for securing the rights of minority shareholders, such as supporters' trusts, and could be easily applied to other clubs.

4.2.3 Golden shares

At Bournemouth the Supporters' Trust (or Community Mutual as it is commonly called) has purchased £75,000 worth of ordinary shares in the club and is seen by many as the mechanism that will ultimately deliver supporter directors to the board of the club. However the situation is complicated. The club has a 'Trust Fund' whose remit is to protect the community interest in the club. It does this by a number of mechanisms: firstly, it holds a special 'golden share' in the club worth 51 per cent of the total voting rights in the club's shares and this effectively means that it can override the decision made by the club; secondly, it appoints three directors on the club's board; thirdly, it ensures that no shareholder can vote more than 10 per cent of the issued shares. Although it is the Trust Fund that has the real power in the club, as opposed to the supporters' trust, it is an interesting example of the use of using special voting rights to secure the privileged status of any organisation.

4.2.4 Share-save schemes – the listed Pcl Models

Shareholders United, the supporters' trust at Manchester United, has a share-save scheme whereby members of the trust are encouraged to take out a monthly Standing Order to buy shares. Each month the club's Manchester stockbroker uses the aggregate sum to make a single purchase of Manchester United Football Club Plc shares. The shares are held in a single account, but remain the property of the individual members, although the trust has also bought some shares in its own name, owned collectively by the trust. Although the shares are owned by the individual members and not the trust, the voting rights are pooled and are voted collectively, as decided by the trust as a whole on a one member, one vote basis. One of the first proposals put to the club by Shareholders United was for the plc to
introduce a dividend reinvestment scheme, whereby dividends are paid in the form of additional shares rather than cash. This was agreed and introduced. All members of the Shareholders United Share Scheme are automatically signed up to this option, so as to ensure that the collective holding grows over time.

Arsenal’s nascent supporters’ trust is faced with different challenges in establishing a share scheme. Its shares are traded on a small, unregulated market for unlisted securities called OFEX (Rangers and Manchester City shares are also traded on this market). Although these shares are available, they are currently valued at £1,350 (mid price, or around £1,450 to buy plus commission and duty), which puts them beyond the reach of most supporters. The steering group of the supporters’ trust is working on a scheme whereby shares will be divided into smaller units of a hundred. Basic supporters’ trust membership at Arsenal will be £2 a month and all of this money will be used for the purchase of Arsenal shares after essential running expenses have been covered. Members will however also be able to purchase additional ‘units’ in Arsenal shares which will be held in their own personal trust account. A unit will be equivalent to 100th of an Arsenal share. The monies from different subscriptions will then be aggregated and shares purchased either via a broker or by private agreement with existing small shareholders. The scheme will operate like a unit trust: individuals will gradually build up ‘units’ in their own personal account with the trust. Trust members will be able to sell units to the trust at the prevailing ‘buy’ price quoted on OFEX.

4.2.5 Share-save schemes – Private Limited Companies

The Carlisle and Cumbria United Independent Supporters’ Trust (CCUIST) have established a share fund to enable the trust to buy shares in the company that owns Carlisle United. The trust has guaranteed its members that the funds will only be used on condition that the supporters have the right to elect their own director(s) to the board of the club. With a minimum of £3 per week the scheme is affordable to most of its members.
1000 members and has proved highly successful: since May 2001 Carlisle United trust have about £90,000 in the share fund and are currently collecting £4,000 a month primarily via small regular donations from members using standing order and direct debit. By March 2003, through a combination of more monthly payments and the maturing of pledges, it is anticipated that there will be £150,000 to invest in the club. At the time of writing the trust have agreed in principal with the new owner a shareholding for CCUIST of up to 25 per cent to be acquired gradually as funds permit, elected CCUIST board representation and premises for the trust to be provided at the club.

4.2.6 Loan Notes

A variety of supporters' trusts have utilised a Loan Note scheme as a mechanism to raise money to acquire shares in their football club. The scheme is a collective one: once the shares are purchased the trust owns the shares for the benefit of all its members, not just individual noteholders. The scheme operates by individual supporters loaning the trust money to invest in the football club or the holding company for shares. The terms and conditions of the Loan Fund are set out in a legal loan instrument. Subscription rates vary from trust to trust according to local circumstances. At the Crystal Palace and Brentford supporters' trusts, the minimum level of subscription to the Loan Note Scheme is £1000 and further loans can then be made in multiples of £1000, whereas at the Swindon Town Supporters' Trust the minimum denomination is £250.

Funds raised by Loan Note Schemes are usually held in a separate trust bank account until opportunities to invest in the club become available. Once an opportunity to purchase shares arises the Supporters' Trust board will usually seek the Noteholders approval. The decision to approve the investment of funds raised by the Loan Notes can be made in one of two ways. The decision can be made on a fully democratic basis with each Loan Note holder having one vote, irrespective of the investment made, or alternatively, the number of votes exercised can be allocated on the basis of the value of the Loan Note held. For instance, at Bees United, the Supporters' Trust at Brentford, a Noteholder has one vote for a holding of £1000 or more Loan Notes; two votes for a holding of £5000 or more; three votes for a holding of £10,000 or more; four votes for a holding of £50,000 or more; five votes for a holding of £100,000 or more. This method has the benefit of encouraging the note holder to contribute a larger amount to the Loan Note Scheme, but dilutes the principle of democracy. There is no interest paid on the Loan Notes.

Fig 4.6 Supporter Survey: Supporters’ Trusts with a Collective Shareholding

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Depending on the details of the Loan Note Scheme instrument there are usually procedures in place by which loans may be repaid at some point in the future. As a private arrangement between the individual and the Co-operative Bank some supporters’ trusts have made a ‘Loan for a Loan’ arrangement with the Co-operative Bank, with the bank lending supporters a minimum of £1000, subject to eligibility criteria, to enable supporters to subscribe to the supporters’ trust scheme.

4.2.7 Donations

Other supporters’ trusts have been offered shares through donations by existing shareholders. At Sheffield Wednesday, the Owls Trust were given a 9.6 per cent stake in the club by three directors shortly before they launched publicly. Likewise, Swindon Town were also promised a donation of shares from a director, although actual confirmation has not yet been received. Many other supporters’ trusts have also requested donations by writing to existing shareholders asking them to join the organisation and/or donate all or part of their shareholding.

4.2.8 Trust as a safe house

Dover Athletic Supporters Trust provides a different example of the supporters acquiring a shareholding. During a shift in ownership at Dover Athletic during the 2001-2 season, some of the most significant share-holders felt that the club’s future was best in the hands of the trust although they still wanted to keep their stake in the club. Using the concept of the trust as a safe house, they used the trust to ‘hold’ their shares. The shares were effectively split into legal and beneficial ownership. Under the conditions of a ‘Declaration of Trust’ document – see Appendix IV – the trust becomes the legal owners of the shares, but the former owners become the beneficial ones for a set period of time or unless certain circumstances come into play. All that needs to be done is to complete the necessary stock transfer forms.

4.3 Resolutions and AGMs

Resolutions should be regarded as part of good corporate governance practice, enabling shareholders to take the initiative on issues that the board of directors have not addressed. 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. The effectiveness of resolution raising as a strategy for exercising influence by supporters’ trusts has already been discussed in Chapter 2. A common topic of resolutions from supporters’ trusts is that the club allow a supporter-elected director.

The club’s AGM – principles and practice

AGMs are a key part of the club’s calendar providing an opportunity for the board of directors to present their policy on key issues affecting the club and allowing shareholders to exercise a number of rights. In short, the AGM provides the following:

1. accountability – formally allows shareholders to hold the board to account for the stewardship of the company;

2. democracy – provides shareholders the right to provide a mandate for key policy proposals and governance matters; and

3. representation – enables shareholders to highlight governance issues to the board and other shareholders which concern them, and to elect directors.

All shareholders have the right to attend the club’s AGM. For supporters’ groups who have a shareholding this should be an opportunity to bring influence to bear and for directors of clubs it is an opportunity to present the results of their stewardship.

To encourage attendance at the AGMs, football clubs should find a suitable local location close to where the majority of shareholders live, such as the ground itself, and hold the event at a suitable time, such as on the weekend or in the evening. Over the last 2 years our survey found that most clubs do indeed hold the AGM at the ground and this practice appears to be increasing, up by over 5 percentage points on last year. However, a sizeable minority still hold the meeting more than 10 miles from the club – see Table 4.5. More clubs are holding their AGMs in the evening or at lunchtime, but fewer are choosing to hold them on weekends – see Table 4.6 for details.
Many supporter responses indicated that the way their club’s AGM was conducted did not fulfil one of the key points of the meeting – namely, an exchange of information between directors and shareholders.

Supporters’ trusts are the most active of the fans’ associations at the club’s AGM:

1. 47 per cent of trusts had asked a question at the club’s AGM – up from 30 per cent last year;
2. 11 per cent of supporters’ trusts had submitted a resolution – compared to 10 per cent last year;
3. 39 per cent of supporters’ trusts voted at the club’s AGM – compared with 25 per cent last year; and
4. 31 per cent of supporters’ trusts used proxy votes – up from 20 per cent last year.

As regards good governance practice of encouraging participation at AGMs, a series of questions were put to clubs. The responses indicate that:

1. across most indicators clubs are performing well, although some are not;
2. some clubs are failing to comply with company law stipulations on minutes.

Responses to the supporters’ survey indicate that:

1. nearly 20 per cent of Boards were ‘dismisive’ when addressing questions; and
2. clubs should actively promote good practice at AGMs by requesting agenda items from shareholders prior to the AGM.

Under company law minutes of General Meetings are required to be kept in the company minute book at the club’s registered office. Shareholders are entitled to inspect the book without charge, and if they request it, be presented with a copy within seven days. The percentage of clubs indicating they produced minutes of the AGM increased from last year from 86 per cent to 96.5 per cent. However, although down from last year, there is a small number of clubs (3.5 per cent) who stated they do not produce minutes – see Table 4.8. These clubs are in breach of company law. While most clubs produce minutes of the AGM, according to the supporters’ survey 30.9 per cent did not produce them accurately.

### Table 4.5 Club survey

<table>
<thead>
<tr>
<th>Location of AGM distance from Club (%)</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>At ground</td>
<td>79.1</td>
<td>84.2</td>
</tr>
<tr>
<td>Within 2 miles</td>
<td>7.0</td>
<td>7.0</td>
</tr>
<tr>
<td>Within 10 miles</td>
<td>11.6</td>
<td>8.8</td>
</tr>
<tr>
<td>N/A</td>
<td>2.3</td>
<td>0.0</td>
</tr>
</tbody>
</table>

Like last year, nearly one third of clubs still only allow less than one hour for the AGM – see Table 4.7. However, an increased proportion of clubs (96.4 per cent) stated they did encourage questions and there was nearly a 10 per cent increase in the proportion reporting that presentations were made to members. The proportion of clubs not inviting the press to the AGM increased by 2 percentage points from last year’s figure (to 37 per cent).

### Table 4.6 Club survey

<table>
<thead>
<tr>
<th>Day of last AGM (%)</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekend</td>
<td>7.0</td>
<td>5.2</td>
</tr>
<tr>
<td>Weekday</td>
<td>90.7</td>
<td>94.8</td>
</tr>
<tr>
<td>N/A</td>
<td>2.3</td>
<td>2.3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Time of last AGM (%)</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lunchtime</td>
<td>4.7</td>
<td>6.9</td>
</tr>
<tr>
<td>Evening</td>
<td>53.5</td>
<td>58.6</td>
</tr>
<tr>
<td>During work hours</td>
<td>39.5</td>
<td>34.5</td>
</tr>
<tr>
<td>N/A</td>
<td>2.3</td>
<td>-</td>
</tr>
</tbody>
</table>

### Table 4.7 Club survey

<table>
<thead>
<tr>
<th>Duration of and presentation at last AGM</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 hour or less</td>
<td>32.6</td>
<td>32.8</td>
</tr>
<tr>
<td>1-2 hours</td>
<td>51.2</td>
<td>58.6</td>
</tr>
<tr>
<td>2-3 hours</td>
<td>14.0</td>
<td>8.6</td>
</tr>
<tr>
<td>N/A</td>
<td>2.3</td>
<td>-</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Presentation to members</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>20.9</td>
<td>22.4</td>
</tr>
<tr>
<td>No</td>
<td>76.7</td>
<td>77.6</td>
</tr>
<tr>
<td>N/A</td>
<td>2.3</td>
<td>0.0</td>
</tr>
</tbody>
</table>
4.4 What Trusts Need: The Next Phase for Supporters Direct

To ensure supporters' trusts are fully equipped to act as agents of good corporate governance the questionnaire asked them what additional services are required from Supporters Direct. Answers ranged from basic information on the running of an organisation, such as keeping minutes, using committees and constructing agendas, to more complex professional help regarding share purchasing and the implications of the Financial Services Act. Figure 4.7 provides a summary of the results from existing supporters' trusts and those supporter groups that are looking to form a trust.

Table 4.8 Club survey (%)

<table>
<thead>
<tr>
<th>Does your club produce minutes of AGMs?</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>yes</td>
<td>86</td>
<td>96.5</td>
</tr>
<tr>
<td>no</td>
<td>11.6</td>
<td>3.5</td>
</tr>
<tr>
<td>N/A</td>
<td>2.3</td>
<td>0.0</td>
</tr>
</tbody>
</table>

The questionnaire returns suggested a number of other services that need to be provided to supporters' trusts, including:

Information on grants and community schemes across the country:

A comprehensive directory of grants and community schemes that are available to trusts, including information on how to go about applying for these.
Online Database Facility:

An online database contact facility would enable trusts to contact representatives from other clubs quickly and efficiently, and therefore learn from one another’s initiatives so ensuring that people do not have to ‘reinvent the wheel’ and can share best practice. The database would contain contact details of trust representatives who would be willing to travel to attend events of other trusts in the same regions therefore harnessing the resources and expertise of other trusts representatives, many of which are keen to help other trusts to get established and would devote time and effort to do so, free of charge.

Supporters Direct staff would be in an ideal position to regulate and maintain this database. In short, this initiative would serve a number of functions that the survey indicates would be useful for supporters’ trusts:

1. enable supporters’ trusts to reach out to other clubs in the region and coordinate regional initiatives;

2. encourage and stimulate nascent groups to achieve a ‘domino effect’ in establishing trusts; and

3. provide details of initiatives undertaken by trusts around the country for other trusts to benefit from.

Question and Answer facility:

A Question and Answer facility delivered via the web to offer advice on, for instance, Annual Returns, Accounts, Business plans, fundraising etc., all with downloadable examples. This could potentially be linked with the database facility and delivered online.

Supporters Direct will be working with supporters’ trusts over the coming months to provide these additional services.
In February 2002, just over two years after the announcement of the funding to establish Supporters Direct in England and Wales, Mike Watson MSP, Minister for Tourism, Culture & Sport in the Scottish Executive announced that £150,000 was to be made available over two years, commencing on 1st April 2002, so that Supporters Direct could extend its activities to Scotland. Scottish case-worker James Proctor took up his position in May 2002. His contact details can be found on the inside cover of this publication. The establishment of Supporters Direct in Scotland reflects the fact that football as an industry faces the same challenges both north and south of the border. Many clubs in Scotland are in financial crisis and are turning to their supporters in their hour of need. Supporters’ trusts are now being established across Scotland to meet this challenge.

Chapter one included analysis of the corporate governance of football clubs in the Scottish and English Premier Leagues and the Scottish and Nationwide Football Leagues. The chapter focused on the current financial problems facing the industry and the extent to which quoted clubs north and south of the border were following good corporate governance practice as set out in the Combined Code. In this chapter we provide a more detailed analysis of how the financial, governance and regulatory challenges are being played out in the Scottish context as this will form the backdrop against which Supporters Direct, and Scottish supporters’ trusts, will have to operate over the next year.

5.1 Overall Financial Situation

In overall terms Scottish clubs face the same problems as their south of the border counterparts, but with some added complications. For 1999/2000, the last financial year for which comprehensive data are available, courtesy of the PriceWaterhouseCoopers Financial Review of Scottish Football, the ten Scottish Premier League (SPL) clubs made a combined loss of £43.7m (a deterioration from £28.2m in 1998/99), of which nearly £31m was lost by Celtic and Rangers, the two Old Firm clubs. While combined turnover rose by nearly 20 per cent to £129m, total wage costs increased by around the same amount (18.6 per cent). Celtic and Rangers were responsible for 70 per cent of turnover in the SPL compared to 65.2 per cent in 1998/99.

An added problem which has not yet been a factor in England is that, outside of Celtic and Rangers, average attendances in the SPL are declining. Not surprisingly in light of the gulf in financial resources, and therefore the corresponding standard of competitiveness, the playing performance between Celtic and Rangers and the other ten SPL clubs is now so wide that many commentators have opined that it may be unbridgeable; Celtic lost only one game on their route to their second consecutive SPL Championship in 2001/2002 and the championship had been decided by mid-March.

One has to go back to 1984/1985, when Aberdeen were champions, to find a non-Old Firm league victor. Though perhaps the real high tide of non-Old Firm success was that of 1982/1983 SPL Champions Dundee United who were defeated finalists in the 1987 UEFA Cup Final.

It is perhaps the growing predictability of the SPL, and corresponding lack of competitive uncertainty, which is one reason for the decline in attendances at the non-Old Firm clubs. The Old Firm has leveraged their larger attendance figures and greater all-round media pulling power (with additional revenues from European competitions both in terms of higher gate receipts and TV revenue) to acquire an increased share of the financial cake. The attempts by the non-Old Firm clubs to reverse this by trying to negotiate a more equal share of TV monies distribution (see below) was at the heart of the decision of these clubs to announce their intention to leave the SPL in 2003/2004.

A similar picture, albeit one not distorted by the presence of the two Old Firm giants, emerges in the lower divisions of the Scottish Football League (SFL). There were ten clubs in the SFL in 1999/2000. Due to insolvency neither Greenock Morton nor Airdrie filed accounts for that financial year, though Greenock Morton has since emerged from administration in a comparatively healthy state with a supporters’ trust holding a 5 per cent stake.

The Morton trust acted as the key catalyst in the formation of the consortium led by local businessman Douglas Rae which eventually took over the club and implemented a successful financial re-construction. Clydebank were at that time also in administration and being run by accountancy firm PKF and also had not
filed accounts for 1999/2000. So of the ten clubs in the First Division of the SFL, three were on the financial critical list. Of the remaining seven clubs Falkirk and Raith Rovers were known to have significant financial problems (though fortunately both clubs have very active supporters’ trusts with the latter holding a small shareholding in their club) leaving only Ayr United, Dunfermline Athletic, Inverness Caledonian Thistle, Livingston and St Mirren in what might be regarded as comparative financial good-health – albeit only by the standards of the football industry!

Scottish football improved the quality of its physical stadia infrastructure in the SPL throughout the 1990s with significant assistance from public grants from the Football Trust (whose role has now been taken on in Scotland by the Scottish Football Partnership). Lower division clubs have been faced with a requirement to upgrade their stadia in order to meet the requirements necessary to take their place in the SPL should they win promotion. More money has flowed into the game from TV contracts. However, this has been heavily concentrated at the upper levels with Celtic and Rangers being the greatest beneficiaries. For the reasons discussed in Chapter 1, none of this has resulted in improved finances. There are the same pressures to spend as in the Premier and Football League south of the border and the quality of financial planning by clubs appears to be equally poor. The result is a football industry in financial crisis.

5.2 Potential Break-up of the Premier League

On Thursday 1st August 2002 Hearts chief executive Chris Robinson formally handed in the resignations of Aberdeen, Dunfermline, Dundee, Dundee United, Hearts, Hibernian, Kilmarnock, Livingston, Motherwell and Partick from the Scottish Premier League (SPL). The fundamental reason behind this decision is the current voting structure of the SPL which requires an 11-1 majority to make amendments to the SPL rules. This effectively gives Celtic and Rangers a veto over major changes, a veto they reportedly exercised earlier this year when they voted against the establishment of an SPL TV channel controlled by the league’s members as opposed to a conventional broadcaster like BSkyB. The SPL 10 want to amend the majority required to 8-4. Under SPL rules the ‘10’ can now leave the league at the end of the 2003/2004 season and form their own league which Celtic and Rangers would be free to join provided they accepted the new terms set by the ‘10’.

Fundamentally the dispute revolves around who should own the media rights to the SPL; the ‘10’ want the rights to be held collectively, with the Old Firm taking a smaller proportion of the deal than hitherto, while Rangers and Celtic wish to have individual ownership of their new media rights, and still take the vast proportion of the main deal. Increasingly the Old Firm see their core business as competing in Europe. Any move toward a more equitable distribution of TV monies for a SPL TV deal will impact most directly on the Old Firm and undermine their ability to compete in Europe. They also argue that as they are the key drivers for audiences in the SPL they should take the lion’s share of the proceeds. The Old Firm clubs took 37 per cent each from the previous BSkyB deal. They will also take this proportion from the new BBC Scotland deal, a figure the ‘10’ have been seeking to negotiate downwards.

Of course if the ‘10’ accede to the Old Firm’s logic then it will only serve to make the SPL more unbalanced and the outcome even more predictable, thus making the league less attractive as a TV spectacle. Indeed the current SPL deal – £18m over two years from BBC Scotland as opposed to the £45m over four years from the previous BSkyB deal represents a significantly inferior per-annum payment. Clearly the major TV companies are taking the view that the market for broadcasting live SPL matches is not as large or as lucrative as it was four years ago.

The recent and well-publicised attempts by Rangers and Celtic to leave the SPL and take a place in the Nationwide League as a stepping stone to a place in the English Premiership were a none too subtle statement that both clubs felt they had out-grown the Scottish game’s structures. What is clear is that decisions made in the 1980s and early 1990s to allow the Old Firm to retain the whole of their home gate receipts and receive a disproportionate share of collective SPL media revenues has contributed to the development of an uncompetitive Scottish Premier League. Whether it is in the interests of the wider Scottish game for Celtic and Rangers to remain in the SPL in two years time is very much an open question. There is certainly a growing body of opinion that the present situation is unsustainable and that Scottish
football may be better off without them, unless monies are re-distributed more equitably. But for the latter to happen Celtic and Rangers will have to sacrifice spending power which they would appear to have set their face against. As both are stock market-traded plc's (Celtic on the main London market, Rangers on OFEX) they can justify this position on revenue maximisation as part of an over-riding obligation to shareholders to maximise profitable returns over solidarity with their fellow league members; unless it can be proven that accepting a more evenly distributed revenue pot will actually enhance profitability in the long term.

5.3 ‘Franchise’ Clubs via the Back Door?

The decision of the Nationwide Football League to allow Wimbledon to move from its base in South London to Milton Keynes has caused considerable controversy. The Football League has argued that the decision in no way sets a precedent. Scotland already has some experience of this, both positive and negative. Clyde have had a modicum of success in their transplant to a ground at Cumbernauld new town east of Glasgow from their original South Glasgow base at Shawfield. More prominently Meadowbank Thistle’s membership of the Scottish Football League was acquired by Livingston FC. The new club, in Livingston, a new town in West Lothian previously unrepresented by a professional football league team, has proved a spectacular success qualifying for the 2002/2003 UEFA Cup via a third place in last season’s SPL.

Some might argue that the cases of Clyde and Livingston were both more evolution than revolution. Clyde were a club in search of a ground. Meadowbank was a club with a short history in the SFL, no ground of its own (it being a tenant in Edinburgh City Council’s Meadowbank athletics stadium) and attendances in the very low hundreds, moving to a large conurbation with no professional team. Though fans of Meadowbank would obviously argue otherwise on the grounds that just because their small numbers made them easy to over-ride should not obscure the moral injustice of the Livingston move: should Livingston not have had to qualify for SFL membership from junior football just as Gretna did this season?

Having said all that, this season’s decision by the SFL to allow Glasgow businessman and Airdrie supporter Jim Ballantyne to purchase Clydebank, change the name to Airdrie United, and move the club to the now defunct Airdrie’s old ground would appear to pose critical questions. Airdrie had eventually gone into liquidation at the end of the 2001/2002 season after 124 years of existence and after a prolonged period of financial crisis culminating in it going into administration. In the end it proved impossible to broker a financial future for the club. When a similar situation came about at Aldershot in the English Football League in the early 1992 a newly formed Aldershot football club had to begin life again at the bottom of the non-league pyramid with their place taken by an club from the Conference league. The principle that having failed as a business such a club would have to start again from scratch was maintained. No attempt was made to sell Aldershot’s place in the league as a franchisable asset.

What is fundamentally different about the arrival of Airdrie Utd into the SFL is that effectively Mr Ballantyne has been able to buy, debt-free, a merchandisable ‘franchise’ league place, much as Livingston did, but with the critical difference that the new ‘franchise’ has been established on the ashes of a liquidation (Airdrie’s) much more cheaply than it would have cost to buy the original Airdrie and clean up its balance sheet; and critically, at the expense of the supporters of another league team with a creditable takeover proposal of their own. The SFL would not appear to have directly benefited as no fee was paid to it. However, PKF, the chartered accountants responsible for the administration at Clydebank accepted a payment of £185,000, effectively for a place in the SFL. As outlined in Chapter 3, a failed bid was made by a supporters’ consortium who raised £170,000 but who were outbid, even though they did not know that they were effectively in an auction. United Clydebank Supporters (UCS) wanted to keep the club in the locale covered by the former Clydebank district council.

Of course this was not the first time that someone had tried to trade on the implicit financial value of Clydebank’s membership of the SFL. Owner, John Hall had previously tried to move Clydebank’s league membership, franchise-style, to Dublin. But the football authorities in the Republic of Ireland vetoed the move.
Essentially, the upshot of the Clydebank metamorphosis into Airdrie United is that private businessmen are profiting from the sale of a place in a league when it is the league, in this case the SFL, which is the organiser and regulator of league membership; yet the SFL receives no material benefit from the new ‘franchise’ which it could potentially have ploughed back into developing other activities such as youth development or stadia modernisation. And like all transplants their future health is a little less predictable than plants grown from the seed. The great benefit of the alternative approach of having to progress from the bottom of the football pyramid is of course that in order to prosper, the deep roots of real long-term fan loyalty need to be cultivated. As Wimbledon are now discovering in the Football League 1st Division, once destroyed by a transplant such roots of fan loyalty, the lifeblood of any club, are difficult to recreate.

There is also the question of whether the SFL should have taken into account the existence of the supporters’ group bid for Clydebank which would have kept them broadly within the area of their traditional support when assessing whether Jim Ballantyne’s application to transform Clydebank into Airdrie United was accepted? Should it simply have been the case, as it would appear, of the club going to the highest bidder, wider issues of history and location notwithstanding? Should obligation to the community that has sustained Clydebank through many difficult years not have been taken into consideration in the SFL deliberations?

As is discussed in Chapter 3 in specific relation to the issue of the surrender by clubs of the ownership of their grounds and the consequences in terms of how this undermines the rootedness in local communities of their football clubs, the case of Airdrie United’s resurrection as the heir to Airdrie’s position as the town’s standard-bearing football club firmly establishes League membership as a merchandisable asset. This development has significant implications for other clubs that are struggling financially, or even where their owner has just got bored and wants to maximise the return on their investment. Critically it raises the possibility of the more wholesale introduction of an American-style franchise system in Scottish football at some point in the future. In the past, supporters desperate to save their club could at least rely on a certain force of gravity tying the destiny of their club to the local area, which was respected by the football authorities; clubs didn’t move. If a businessman wanted to make a success of a club he or she had to do it where it stood. As the supporters of Clydebank have just discovered, this appears no longer to be the case.

This may become a particular problem for clubs whose ground offers the opportunity for potentially lucrative real estate development; it is no longer just the land that may be sold to the highest bidder but also now the ‘franchise’, perhaps as a merger with other local clubs. What price a plan for an East Stirling/Stenhousemuir/Falkirk merger for those business-people with short memories of the fall-out from the establishment of Inverness Caledonian Thistle, or Wallace Mercer’s proposal to merge Hearts and Hibernian to form an Edinburgh super club? Ironically in the light of future events there was just such an attempt to merge the then junior league Clydebank Juniors with SFL member East Stirlingshire which saw ‘ES Clydebank’ play one season in the SFL in 1964-65 before Clydebank returned to the Combined Reserves League following a protracted legal battle. They then returned to the SFL the hard – and some would say the proper – way in Division Two in 1966/67.

While there has been much public criticism of the SFL in facilitating the destruction of Clydebank in order to ensure the presence of a league team in Airdrie, a town with a history of larger crowds for its football team and a modern stadium to fill, to be fair to the SFL the timing of the Airdrie liquidation close to the end of the season left them a very short timescale in which to make some difficult decisions. And a positive precedent in the example of Livingston did exist.

However, now that the possibility of similar occurrences in the future is a reality, there would appear to be no reason why the SFL, the SPL and the Scottish Football Association (SFA) should not begin the process of drafting open and transparent guidelines for clubs and their supporters faced with proposals for ‘franchise’-style moves. This phenomenon should not be left to develop as part of an unpredictable free-for-all driven by purely commercial considerations, as would appear to have been the case at Airdrie United/Clydebank; a process...
which has consigned the defiant Clydebank fans’ group UCS to a season without competitive league action until their planned AFC Wimbledon phoenix-style re-emergence for Clydebank in junior football in the 2003/2004 season. Hopefully their absence from senior Scottish professional football will be a short one.

5.4 Conclusion

Scottish football has entered a period of turmoil. The largest two clubs are actively seeking to leave the national league structure. The SPL lacks the level of competitive balance necessary to make it a top-drawer TV spectacle able to command the historic high of £11.25m per season from TV companies at auction. Elsewhere in the SPL and the lower divisions of the SFL many clubs are in significant financial difficulties. The spectre of a spate of club liquidations, mergers and even franchise moves across country is very real.

Against this backdrop it is vital that fans’ organisations are able to organise themselves effectively to protect their clubs and set them on a steady course for the future. Supporters' trusts have an important part to play in this process by taking financial stakes in their clubs. Trusts are now established at Aberdeen, Celtic, Dumbarton, Falkirk, Greenock Morton, Partick Thistle and Raith Rovers. Trusts are being formed at Dundee United, Hearts and St Mirren. At Aberdeen, trust member Chris Gavin has been appointed as a full director of the club (see Chapter 4 for more details). In all these cases the new fans’ organisations have sought a constructive dialogue with their clubs. And in this course of action they have been actively supported by the Federation of Scottish Football Supporters Clubs (ScotFed), who represent the traditional football supporters’ clubs. Indeed the ScotFed was prominent in the campaign to secure funding for Supporters Direct in Scotland.

It is also the case that at many clubs, such as Morton and Falkirk, the club directors are beginning to engage the trust organisations and traditional supporters’ groups in a more meaningful way. There is clearly much common ground to be built on. One of the more refreshing comments on a questionnaire return from an SFL club was that its relationship with its supporters’ club was ‘Superb’ with the supporters’ club raising £20,000 per annum for the football club. Clearly all is not doom and gloom where an active partnership between supporters’ groups, clubs and the football authorities can be established.
The fallout following the collapse of ITV Digital has highlighted what many fans already knew: football finances are currently unsustainable. The increasing number of clubs sinking into administration and the indebtedness of most of the clubs in the Football League is the clearest manifestation of this issue. Swindon Town provides a case in point here as a club that has been into administration twice in the last five years. And there is no guarantee that it will not return to administration again in the not too distant future if the structural financial problems are not addressed. Each time the club enters administration it becomes vulnerable to either owners who may not be fit and proper to run a football club or having its assets either sold off or mortgaged to the hilt to pay off the creditors. If the administrator does manage to rescue the business without selling the club or its prime assets and return it to trading as a going concern, if the reasons for going into administration in the first place are not addressed, then the likelihood is that a new owner will simply repeat the mistakes of the old. Put simply, a new structure is needed.

In the Football League especially, supporters’ trusts can be seen as a mechanism to help fill the gaping hole in club finances left behind by the ITV digital collapse. Supporters already provide a steady stream of income to the club via gate receipts and commercial sales, but this could be taken one step further. The football authorities could facilitate the process further by encouraging clubs to make their shares available to supporters’ trusts thereby raising additional share capital, in return for supporter representation on the board. Equally, clubs should also be encouraged to work with supporters’ trusts to develop their links in the local community links as a means of tapping into these new funding streams. The supporter trust model, incorporated as a not-for-profit, community based organisation like an Industrial and Provident Society, is the ideal vehicle to realise this potential.

Our research has shown that supporters’ trusts are reliable and stable organisations that, in return for a shareholding and representation, can provide access to new funding streams. Supporters’ trusts have already proved an effective vehicle to represent supporters and other supporters’ groups because they are intrinsically representative, democratic and not-for-profit organisations. With vision and the appropriate backing trusts could play a fundamental role in providing ongoing finance and resources for running clubs. New fundraising initiatives could be most effectively channelled through the trust as the vehicle not only to ensure that monies are spent wisely but also to mobilise the community into action. The basic requirement though is for the current owners of clubs to admit supporters’ trusts into their corporate governance practices.

From a wider perspective, supporters’ trusts are ideally situated to become the cornerstone of a new pattern of corporate control, one that receives its impetus, finance and direction from the grass roots. To ensure this money is spent wisely it should come with conditions of representation and shareholding attached; this would ensure that clubs are and remain transparent in their practices and accountable to the community they serve. In this scenario it would be a force that could put clubs on a more sustainable footing.

Evidence drawn from our survey reveals that supporters’ trusts can hold shares either on behalf of individuals or collectively and elect directors to the board of the club, and in the cases we have studied, this not only has positive outcomes for both club and supporters, but also improves the corporate governance practices of the club. As they have access to company legislation, supporters’ trusts with a shareholding can offer a form of scrutiny from the grass-roots which would enable the game to become truly self-regulating.

The football authorities, and in particular the Football and Premier Leagues, could play an active and forward thinking role in these developments by going further than simply endorsing the work of supporters’ trusts and encouraging their member clubs to work with trusts by making shares available and providing supporter representation on the club’s board. Given the experiences at different clubs, there are a number of models available that could be made to fit the circumstances of a variety of contexts, whether these be publicly listed clubs or smaller limited companies. The experience of Supporters Direct is invaluable here.

Furthermore, the Football Association could also play a crucial role in providing a safe passage for financing clubs during this turbulent period in the industry by
establishing a rescue fund for financially stricken clubs to help them back on the road to solvency. Crucially, this fund would have to have an independently assessed set of criteria for selection and central to this should be a commitment to work jointly with the supporters’ trust, to consolidate and build the supporter base, to extend and deepen the links with the local community, and to enhance their corporate governance practices, including on financial planning and risk assessment. Such an initiative could be administered by the FA in consultation with Supporters Direct. One of the requirements for a successful application could be the club’s provision of shares and board representation for the supporters’ trust because these are indicators of good, sustainable governance practice.

Rescuing the game from its own problems is merely the first step on a long road to reform. For the change to become sustainable and effective it is imperative that the FA continues to promote good practice among clubs in complying with company law, accounting procedures and codes of good conduct. The work of the FA’s Financial Advisory Unit has been instrumental in rolling out this good practice and clarity about club’s legal obligations. However the work could also be stepped up a gear and entrenched in its own Code of Good Conduct for Clubs. There is clearly a call from clubs for a guide to general guidance (in our survey 70 per cent of clubs stated this would be useful) and even workshops on good governance – 54 per cent stated they would find this service useful.

The results from the 2002 State of the Game survey of clubs and supporters’ trusts is clear – there are problems, but there are equally clear solutions; the way forward for clubs lies in forging a genuine partnership with the supporters and the local community, and the newly established supporters’ trusts offer the vehicle for both. There is also a clear recognition of the need to improve systems of corporate governance, financial planning and risk assessment, and here a partnership between the FA and Supporters Direct could offer the expertise and advice required – both to the clubs and the supporters’ trusts. The supporters’ trust movement represents a constituency with the necessary interest in and commitment to ensuring the sustainable development of their respective football clubs. If ever there was an industry both tailor made for, yet still in desperate need of partnership and mutuality, football is it. The 2002 State of the Game returns suggest that there is now the recognition of this from both clubs and trusts. The scale of the current financial crisis is of course huge. The cost of properly funding Supporters Direct to take on this challenge may be considerable. The costs of not doing so do not bear thinking about.
Appendix I
Survey of Clubs and Supporters’ Trusts/Groups

Of the 92 clubs in the English Premier and Football Leagues, 47 questionnaires were returned, a response rate of 51 per cent. This is a very high response rate for a lengthy postal survey and we would like to express our gratitude to the clubs who took the time to complete the questionnaire. For those clubs who did not complete the questionnaires we were able to obtain information from other sources, including Annual Reports and documents lodged at Companies House.

The questionnaire was also completed by 14 clubs in the Scottish Premier and Football Leagues, a response rate of 33 per cent. Of the survey of supporters’ trusts and groups, the questionnaire was completed by 72 such trusts/groups in the English Premier and Football Leagues, a response rate of 39 per cent, and 22 supporters’ trusts and groups in the Scottish Premier and Football Leagues, a response rate of 40 per cent. Of the groups that responded across England, Wales and Scotland, 37 responses came from Supporters’ Trusts. The responses from both clubs and supporters’ trusts/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.

The analysis of survey results in Chapter 1 is based on returns from clubs in the English and Scottish Premier and Football Leagues. The analysis in Chapters 2 and 4 (which looks at the impact of Customer Charters) is based on returns from the English Premier and Football League where the Customer Charters have been in place for longer (the charters were introduced in the English Premier League in the 2000-01 season).
Appendix II

The Independent Football Commission

Chris Gamble

The Independent Football Commission (IFC) was established at the beginning of 2002, backed by the Football Association, the FA Premier League, the Football League and the Department for Culture Media and Sport. Considerable debate had followed an initial recommendation by the Football Task Force that an independent body should be created: the appointment of an ‘ombudsfan’ was one suggestion; statutory regulation was another. The IFC now sits as the first independent scrutiny body within football’s self-regulatory framework, specifically to monitor and review the performance of the governing bodies.

The Commission is particularly tasked to examine the Customer Charters exercise in both the FAPL and the League; to look at the work of the FA’s Financial Advisory Unit; and to establish formal complaints procedures. On the latter, the IFC is the final stage in the complaints hierarchy and will examine issues that have failed to be resolved by the governing bodies. In its first six months, the IFC has set up a series of working groups that are looking into a number of areas, including ticketing (with particular reference to away supporters), UEFA licensing, and football’s investment in the community, as well as the areas mentioned above. All this is a healthy development which is already contributing to greater transparency within the government of the football business.

The IFC comprises the Chairman and six commissioners who all love the game and bring serious and significant expertise with them (see the IFC website on www.theifc.co.uk for full details). Their independence is total and their motivation lies straightforwardly in being of benefit to the game and contributing to improvements in its governance. The IFC has direct access to the governing bodies at Chief Executive level, besides working with customer relations and other units at the FA, FAPL and FL; additionally it consults and meets with professional organisations associated with the game, pays direct visits to clubs to validate information it receives and to gather evidence and information first-hand; it meets with supporters’ groups; it has held a series of discussions with research bodies, including Birkbeck’s Football Governance Research Centre.

The IFC represents a bold experiment. Will the football industry listen to what it has to say? We shall see. The onus is on those who are responsible for football’s good governance to stand by their undertaking to respect and respond to the IFC’s findings. Its first Annual Report will be published in January 2003.
The following document has been developed by staff from Supporters Direct, the Football Governance Research Centre and Cobbetts Solicitors, following consultation with a number of supporter-elected directors and football club directors.

It is intended that the code be considered and adopted by meetings of both the trust and the club’s boards of directors.

It is not intended that the provisions of this code have the binding force of law, but that it will serve as a framework for the working relationship between the elected supporter director, the club and the trust. The code is intended as a framework that can be amended according to the particular circumstances in consultation with Supporters Direct.

It is acknowledged that the elected-supporter director owes his/her ultimate responsibility to the club as a director under company law and that his/her adherence to this code takes effect subject to that responsibility.

1. The trust will ensure that the person nominated by it to serve on the board of directors of the football club (‘the supporter director’) will:
   (i) Be a paid up member of the trust.
   (ii) Be an elected member of the trust board nominated by its members or directly elected by the members of the trust in accordance with the electoral procedure adopted by the trust.

2. The supporter director will:
   (i) Devote sufficient time and attention to the club to fulfil his/her duties as a director
   (ii) Attend meetings of the club board regularly
   (iii) Attend trust board meetings regularly and report back to the trust the decisions of the club’s board, subject always to paragraph 4 below and to his/her overriding duties of confidentiality to the club.
   (iv) Abide by the majority vote of the trust board [or trust membership] so far as his/her duties to the club allow.
   (v) Submit to re-election/re-appointment every [_____] years in accordance with the policy of the trust.
   (vi) Abide by the club’s memorandum and articles of association and to any regulatory code adopted by the club.
   (vii) If required to do so by the trust, represent the trust in association with the club board in their dealings with football authorities, local and central government.

3. The directors and secretary of the club will:
   (i) Give adequate notice of all board meetings and ensure that the supporter director is provided with sufficient information to enable him/her to participate on an equal footing with other directors and to fulfil his/her duties as a director and all such information as is provided to other directors.
   (ii) Ensure that the supporter director is entitled to the benefit of any indemnity and/or directors’ liability insurance enjoyed by other directors.
   (iii) Not unreasonably restrict the supporter director in reporting back to the trust the deliberations and decisions of the board of directors and the matters to be discussed at forthcoming meetings of the board to enable the supporter director to canvass the views of the trust board.
   (iv) Ensure that the supporter director is entitled to the benefit of any indemnity and/or directors’ liability insurance enjoyed by other directors.
   (v) Not unreasonably restrict the supporter director in reporting back to the trust the deliberations and decisions of the board of directors and the matters to be discussed at forthcoming meetings of the board to enable the supporter director to canvass the views of the trust board.
   (vi) If required to do so by the trust, represent the trust in association with the club board in their dealings with football authorities, local and central government.

Appendix: III
Elected Supporter-Directors and the Football Club Code of Conduct
5. The supporter-elected director will not be obliged to disclose the following information to club directors or officials without the express permission of the trust board:

(i) The trust's financial position including individual members' contributions, assets and levels of income.

(ii) Matters deemed confidential by the trust board.

6. The supporter-elected director shall not receive remuneration from the club except reimbursement of reasonable expenses, including travelling expenses, while conducting business for the benefit of the club.

Signed on behalf of the 
Football Club

.................................................................

Name
(print)..................................................Date..........................

Signed on behalf of the Trust

.................................................................

Name
(print)..................................................Date..........................

Signed by the Supporter Director

.................................................................

Name
(print)..................................................Date..........................
Appendix IV

Declaration of Trust of Controlling Shareholding

WHEREAS

(A) The Settlor is a registered owner of (number) ordinary shares ("the Shares") in the capital of (name of company)

(B) The Settlor now wishes to declare himself trustee of the shares on the following trusts and subject to the provisions of this deed.

NOW THIS DEED WITNESSETH

1. Declaration of Trust

As and from the date of this deed the Settlor shall hold the shares and all dividends accrued or to accrue upon trust for

SIGNED as a DEED

by

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation
Following my guide to insolvency last year matters have moved on a pace. The Enterprise Bill (a misnomer if ever there was one) has been moving slowly through parliament the main effect of which for football clubs involves the phasing out of receiverships, a simplified version of administration for those who would have previously used receivership, and an improvement in the legislation concerning Company Voluntary Arrangements (CVA) which will make them a more useful tool in restructuring.

As a consequence of the winding down of the receivership route government departments are to waive their preferential rights. Employment rights will however stay preferential. This may appear to be a positive move forward however current intelligence is that the Inland Revenue in particular is not prepared to accept the preferential status given to football associated debts which had to be one of the concessions in the past in order for clubs to continue trading. Unless there is going to be some accommodation by the football authorities I believe more clubs will be forced into liquidation with the attached penalties regarding relegation currently extant in the various leagues’ structures.

The information given in the 2001 State of the Game report is still current and therefore not repeated, however I have added a section on CVA’s which may be pertinent following the collapse of ITV Digital and the general financial decline in the football industry.

What if insolvency intervenes?

Introduction

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). This gentleman suffers from being blamed for every-thing and indeed 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 i.e. the repayment of amounts due to his appointor.

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 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 (see below) until and unless an outside liquidator is appointed by the creditors or the Secretary of State the Official Receiver (see above) acts as liquidator.

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 ie 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.

General

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 if the club goes into administration?

What is it?

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 indeed only receivership being available. This latter procedure really only benefiting 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”.

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. (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”.

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. 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. 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 particularly with a football club where there is intense press and supporter interest which need to be kept confidential.

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. 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. 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 as mentioned above 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 i.e. 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 Footballers 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 i.e. 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 with the administrator’s actions.

Will a CVA help?

As mentioned above a voluntary arrangement can be used as an exit route from administration. It has been unpopular in the past as a stand-alone method of restructuring as there was no period between notification of the arrangement and the meeting in respect thereof during which the rights of creditors were frozen. In the circumstances creditors given notice could attempt some pre-emptive action to better their position. This anomaly is now to be corrected through one part of the Enterprise Bill which is to be enacted in 2003.
This will make CVA’s a viable alternative where the significant creditors are unsecured.

A CVA is simply a debt restructuring proposal put to the creditors and sanctioned by the court representing the wishes of those creditors. It may mean payment in full of some or all classes of creditors or it can do as little as agreeing a dividend to one class of creditor having first taken into account the priorities. It is the decision of the creditors alone and is effectively a private contact between them and the club. The only requirement is that at least 75 per cent in value of those notified and able to vote support the scheme. Case law has now crystallised the view that assets within the scheme are held in trust for the scheme members and cannot be claimed by others should any other form of insolvency ensue the arrangement.

The only down side to a CVA are that it does not bind creditors without notice who may pursue their own
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A ‘Fit and Proper’ Person Test for Football? Protecting and Regulating Clubs
Matthew Holt

The research paper concentrates on the regulation of football clubs’ owners and major shareholders. In particular, it looks at the possibility of introducing a ‘fit and proper’ person test as recommended by the Football Task Force in the context of financial mismanagement. The paper also looks at the role of the Football Association in the promotion of best practice and improving corporate governance at clubs.