FOOTBALL GOVERNANCE BILL

Fair Game Evidence Submission

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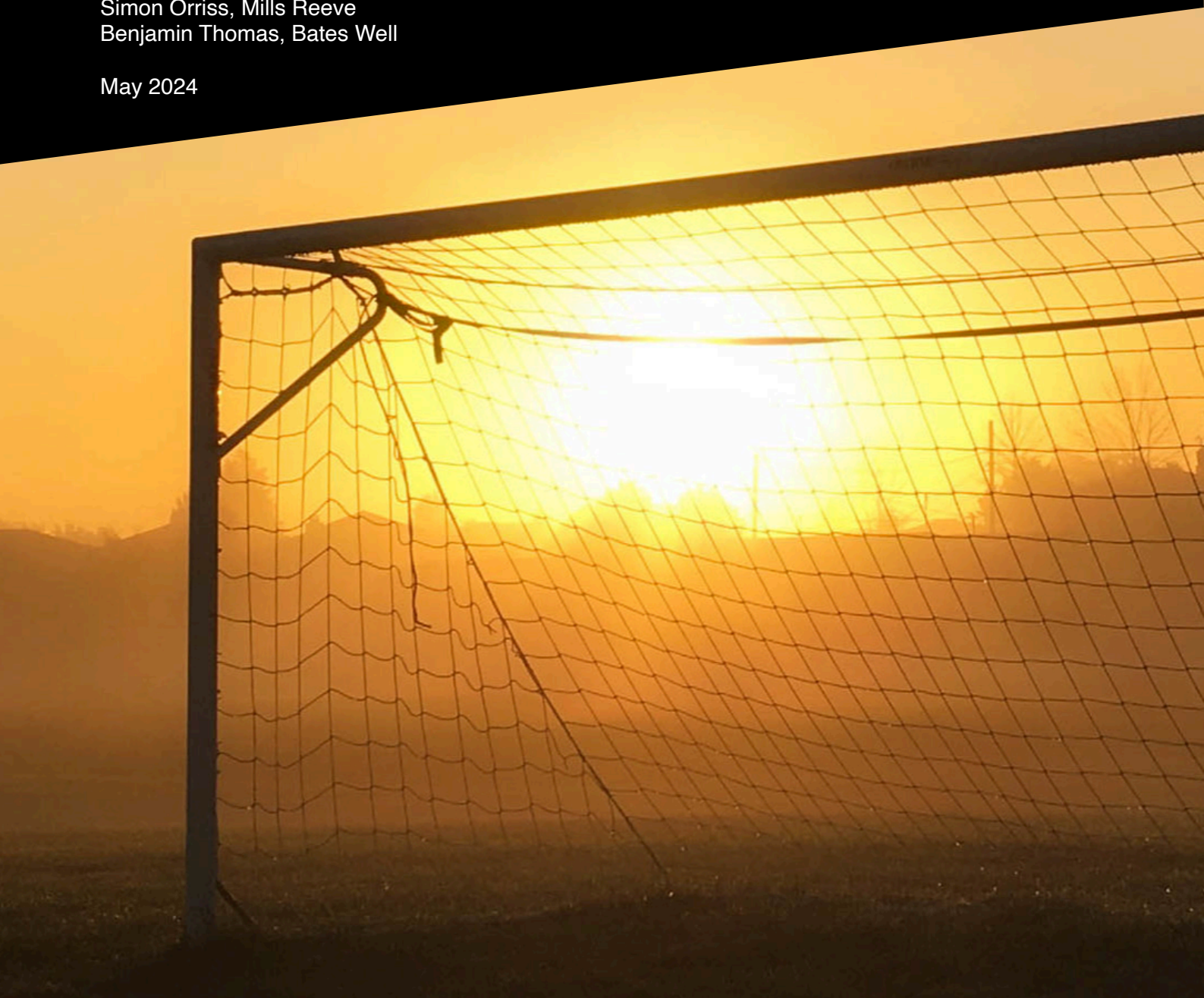

FAIRGAME
In the wider interests of football

INTRODUCTION

Fair Game represents 34 men's professional football clubs across all levels of the English football pyramid.

Our clubs have identified eight areas of concern with the current bill. These are:

1. Fairer financial flow in football
2. Vested interests
3. Support to clubs
4. Owners and Directors test
5. Protection of club heritage
6. The 'Wimbledon Clause'
7. Environment
8. Equality, Diversity and Inclusion

Each of these were put to our team of experts and our legal partners* to look for solutions, scrutinise the Bill and identify where necessary amendments can be made to address the concerns.

Details of where exactly these amendments can be made are available on request. In this document we have outlined general concerns with the Bill and the areas where improvements can be made.

** With thanks to Mill & Reeve and Bates Wells*

PART ONE:
THE FINANCIAL CONTEXT

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a) Overview

The primary objective of the Bill is to protect and promote the sustainability of English football. The financial divide in football is getting worse both between and within divisions at all levels of the football pyramid. At the same time, the current voting structures of the top two leagues mean it is highly unlikely that the divide will narrow.

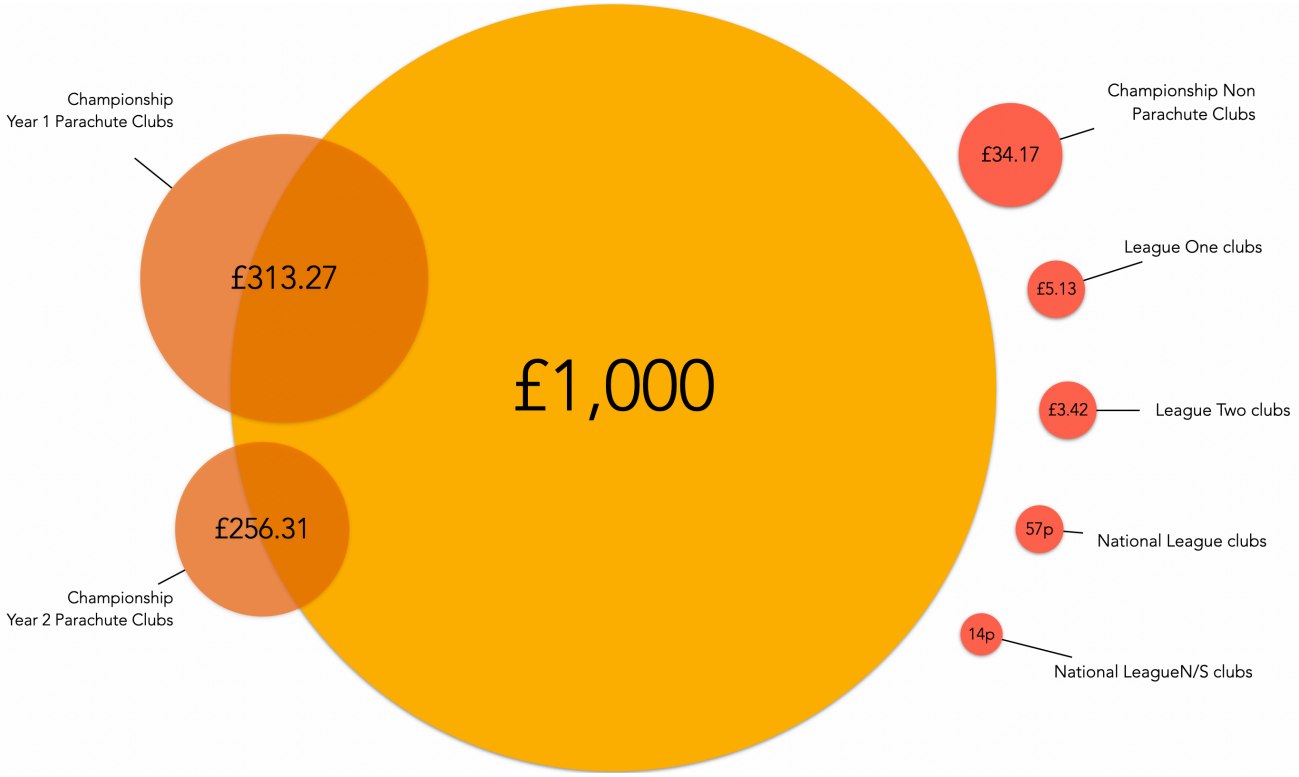
b) Executive Summary

This document identifies several key facts that are important to take into account when considering the sustainability of English football:

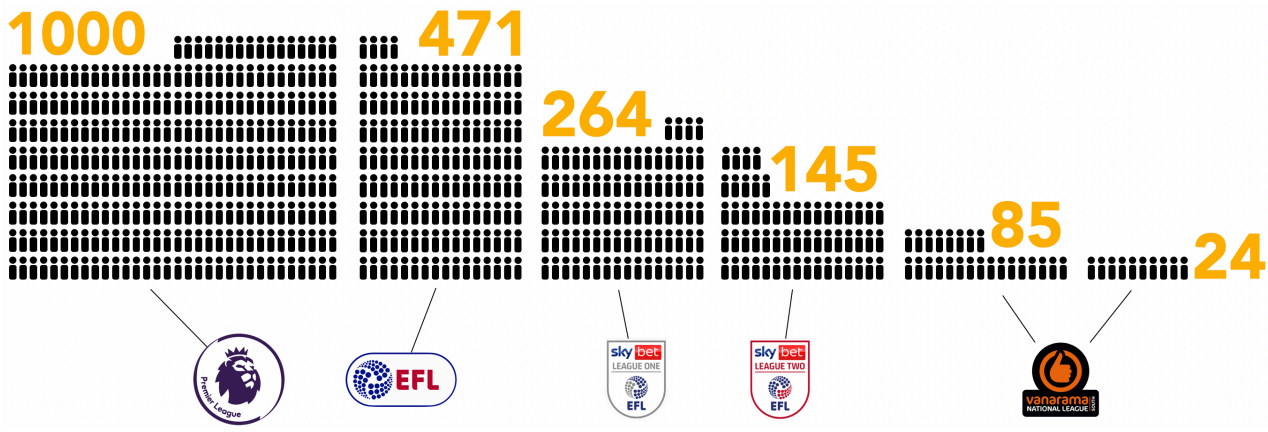
- The current Premier League broadcasting deal is worth around £3.19bn a year.
- The current financial distribution does not reflect the distribution of attendance.
- The divide in terms of revenue and wage spend between divisions is growing throughout the pyramid.
- The importance of parachute payments is growing. In each of the last five seasons, two of the three promoted clubs were in receipt of parachute payments. In the 11 seasons before that only 10 parachute payment clubs were promoted.
- The number of clubs becoming technically insolvent is on the rise.
- The voting structures of the bodies that can address the gaps all favour those who benefit from the growing divide.
- Financial decisions for the Premier League and the EFL can only happen if they are supported by clubs qualifying for Europe or clubs in the Championship.
- The Premier League needs a two-thirds majority to approve commercial deals.
- The EFL's financial distribution is set out in their articles of association. However, the split does not reflect divisional average attendance, and is unlikely to change as they require 75% of clubs to support the change - meaning only 19 clubs are required to block it. With 24 clubs in the Championship, this single bloc can effectively veto any proposal.

c) Current financial distribution of broadcasting deal

The distribution of the current financial deal is weighted heavily towards clubs that often finish at the top of the Premier League, sidelining the clubs at the lower end of the pyramid. Currently, for every £1,000 that a Premier League club gets from broadcast revenue:



The average attendance distribution amongst these leagues is wildly different to their financial allocation. For every 1000 people attending a Premier League match during the 2022/23 season:



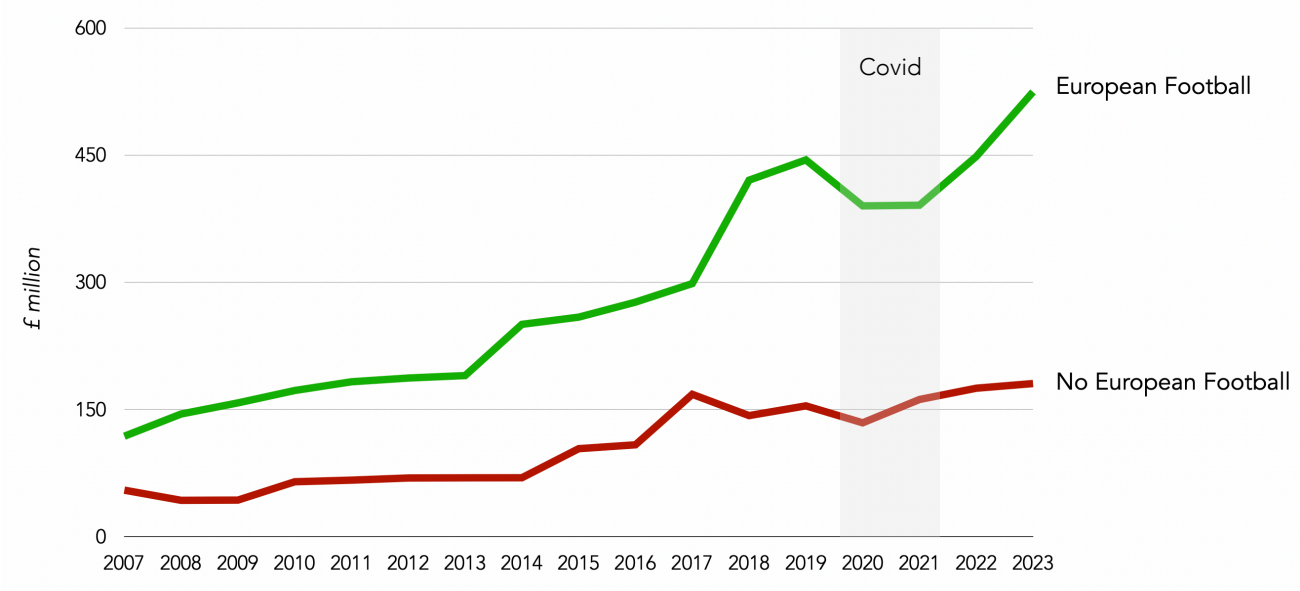
In short, broadcasting revenue between Premier League and National League South clubs splits 7,143:1. However, when it comes to attendances, the ratio is 45:1.

That represents a difference of 158 times. **Hardly a pyramid**.

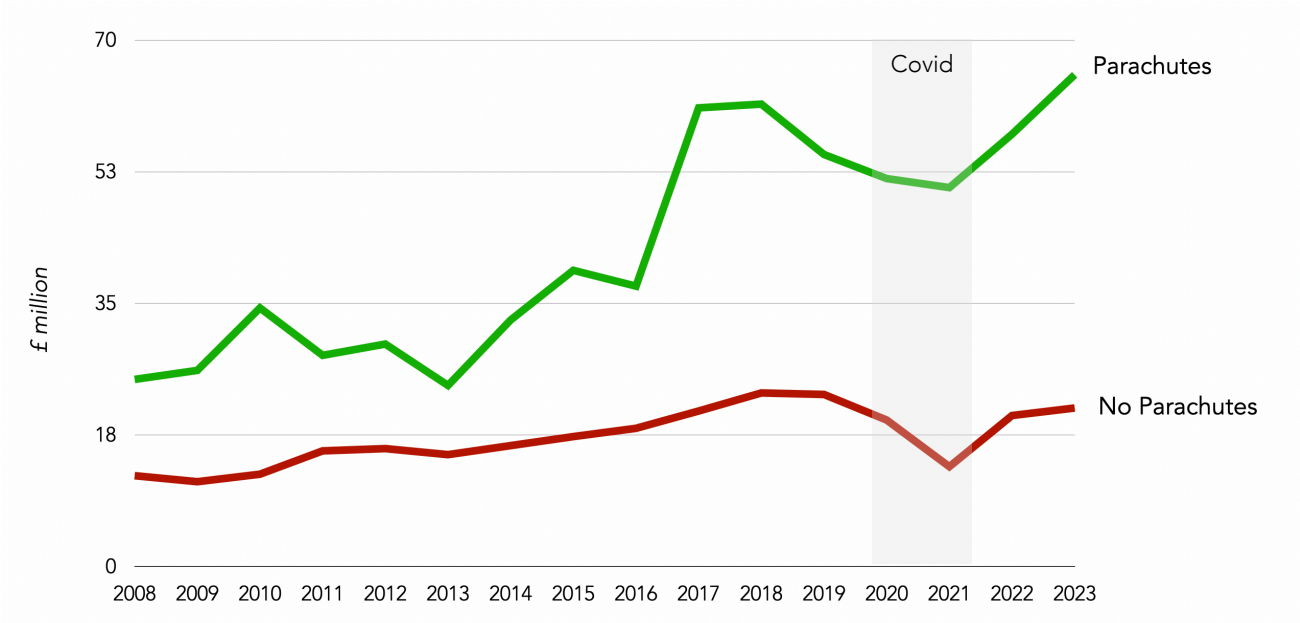
d) Revenue

At every level of the English football pyramid, the difference between the average revenue earned by clubs in sub-groups within divisions is widening. This is highlighted by the growing gap between the lines on each of the graphs below:

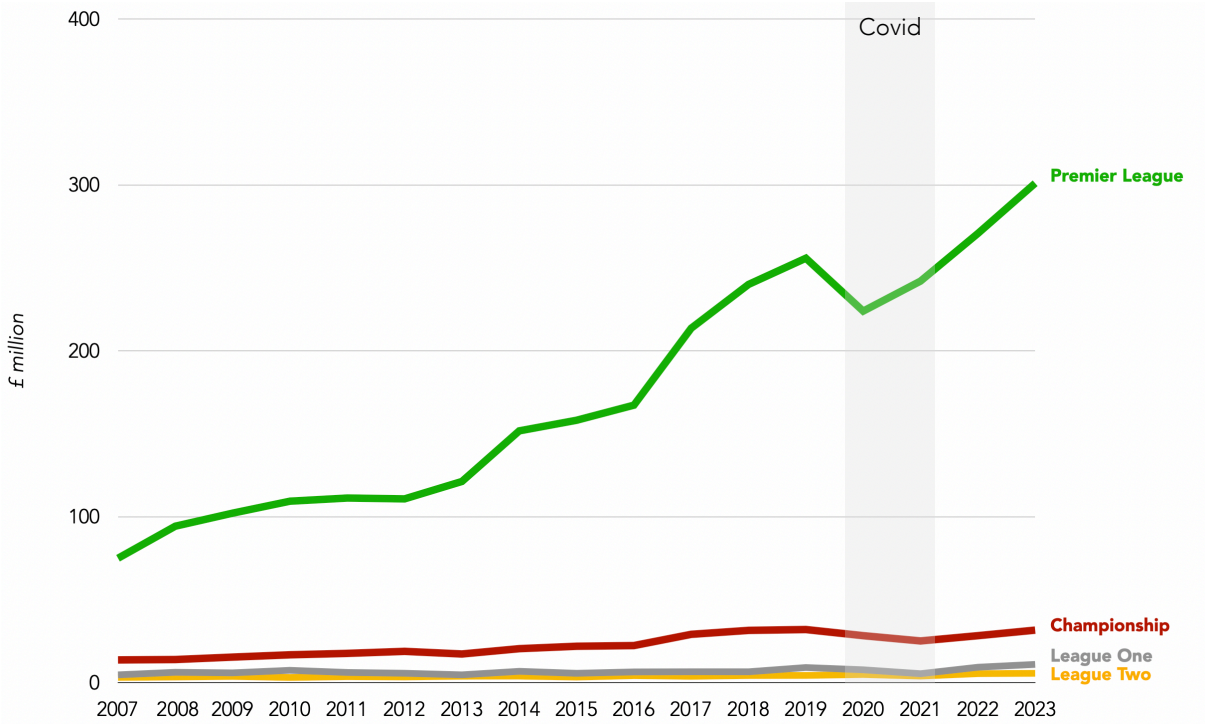
Clubs playing in Europe vs. Rest of the Premier League:



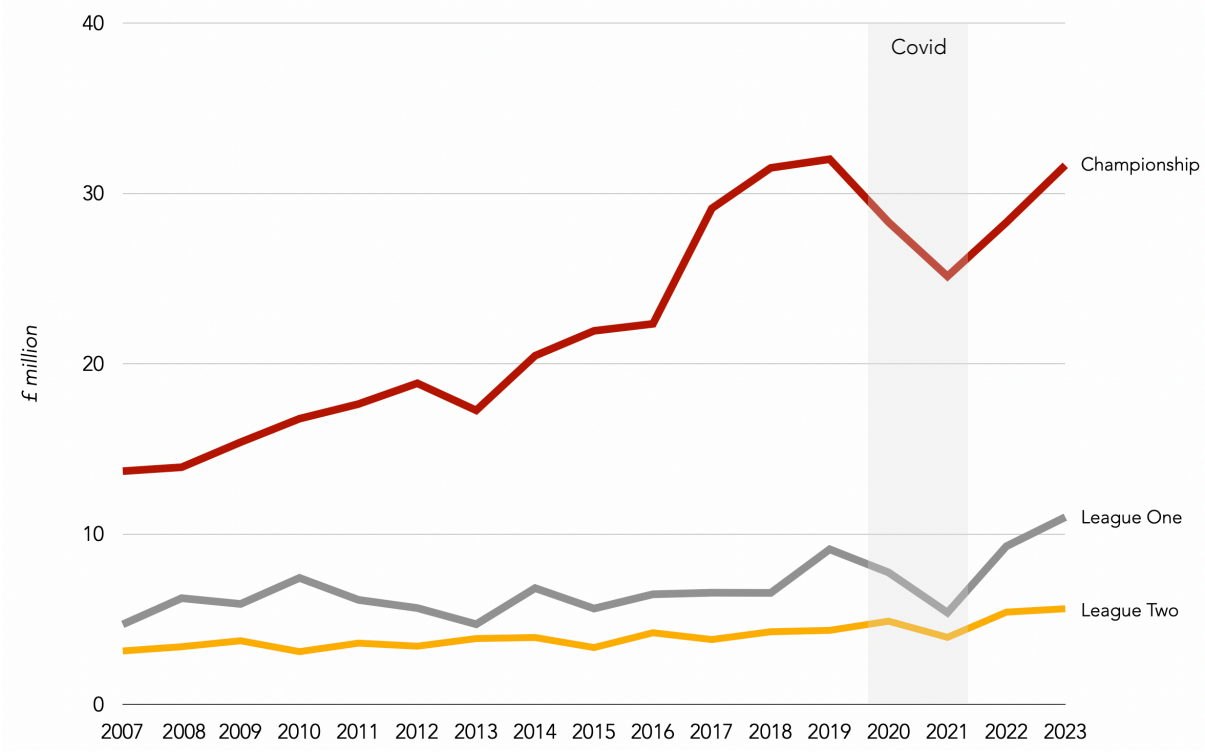
Clubs getting parachute payments vs. rest of the Championship



Club Revenue from the Premier League to League Two



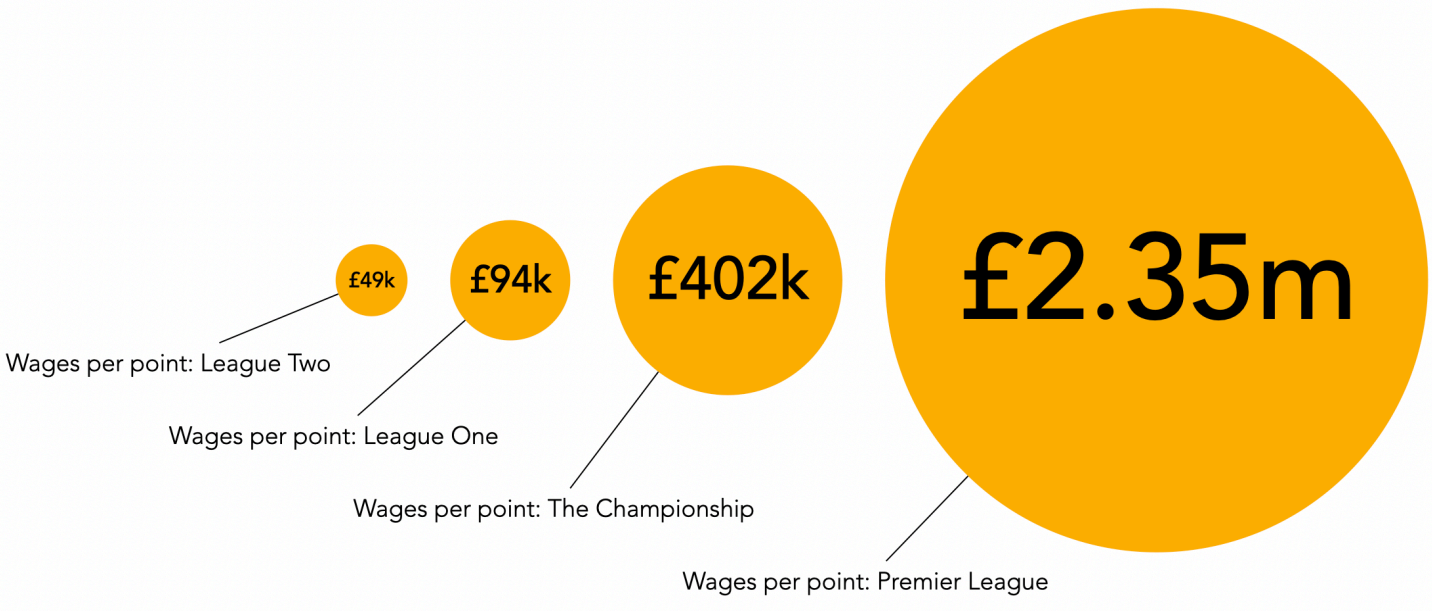
Closer view of the Championship to League Two



e) Wage Spend Per Point

There is a huge difference between each of the four divisions in terms of how much a club needs to spend on players' wages to be successful. For each division, Fair Game looked at a 10-season period and compared how much a club has spent on wages to the amount of points they won.

To earn one point in League One, a club on average had to spend £94,000 on wages. In the Premier League that figure was £2.35m - exactly **25 times**



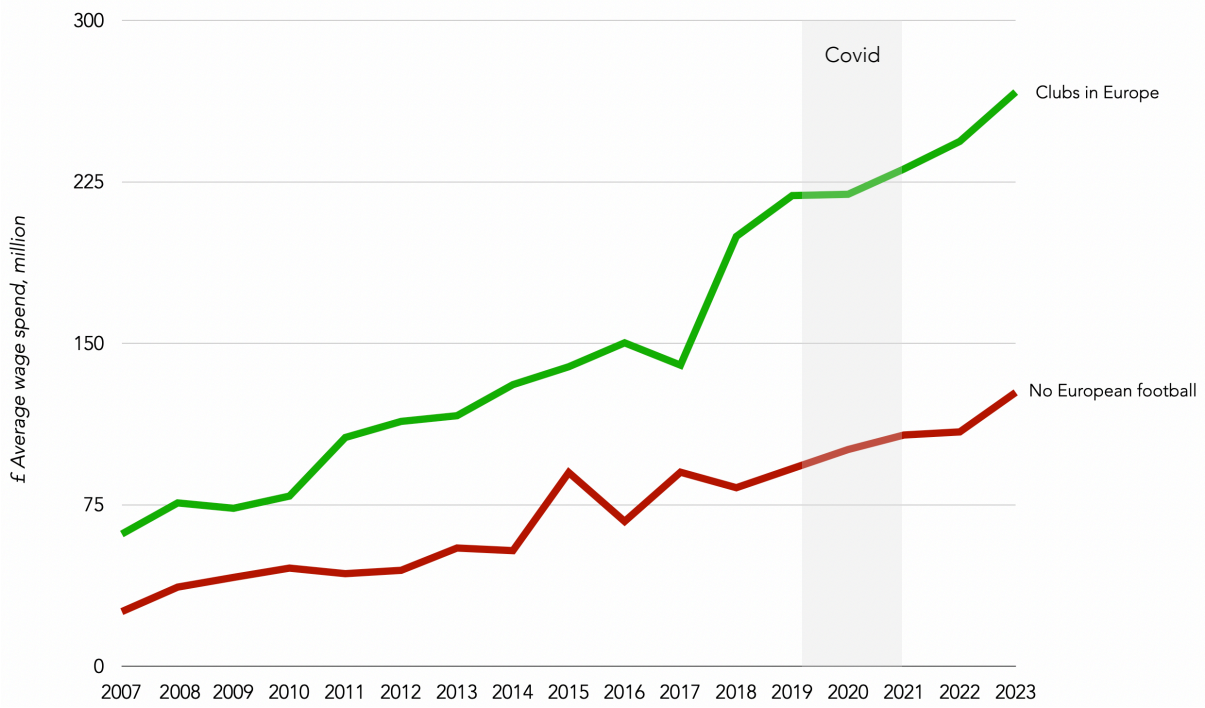
Summary breakdown of WSPP

	Premier League	Championship	League One	League Two
Average 2013-23	£2,350,000	£402,000	£94,000	£49,000
Average '22/23	£3,450,000	£407,000	£120,000	£51,000
Top 7/promoted	£2,570,000	£524,000	£102,000	£42,000
Non promoted	£2,260,000	£386,000	£89,000	£50,000
Median 2013-23	*£2,220,000*	*£371,000*	*£81,000*	*£46,000*
Median '22/23	*£3,220,000*	*£393,000*	*£101,000*	*£47,000*

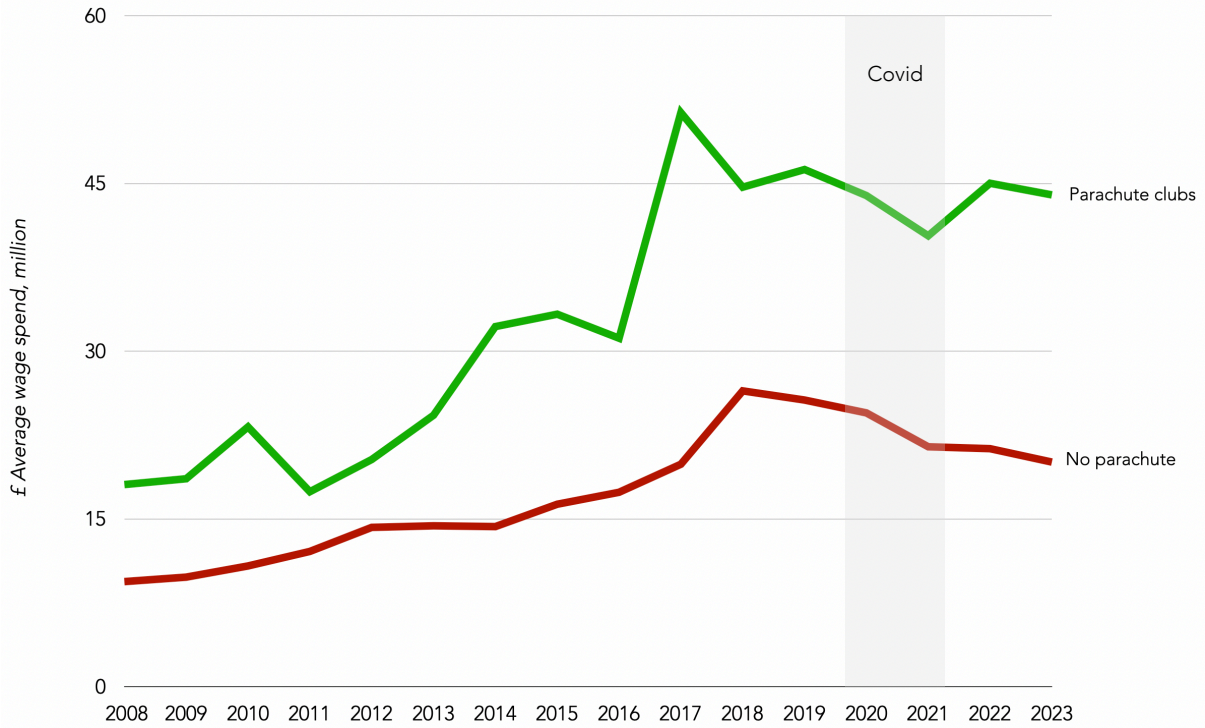
f) Divisional comparison of wage spend

At every level of the English football pyramid, the wage spend differential is also widening. This is highlighted by the growing gap between the two lines on each of the graphs below.

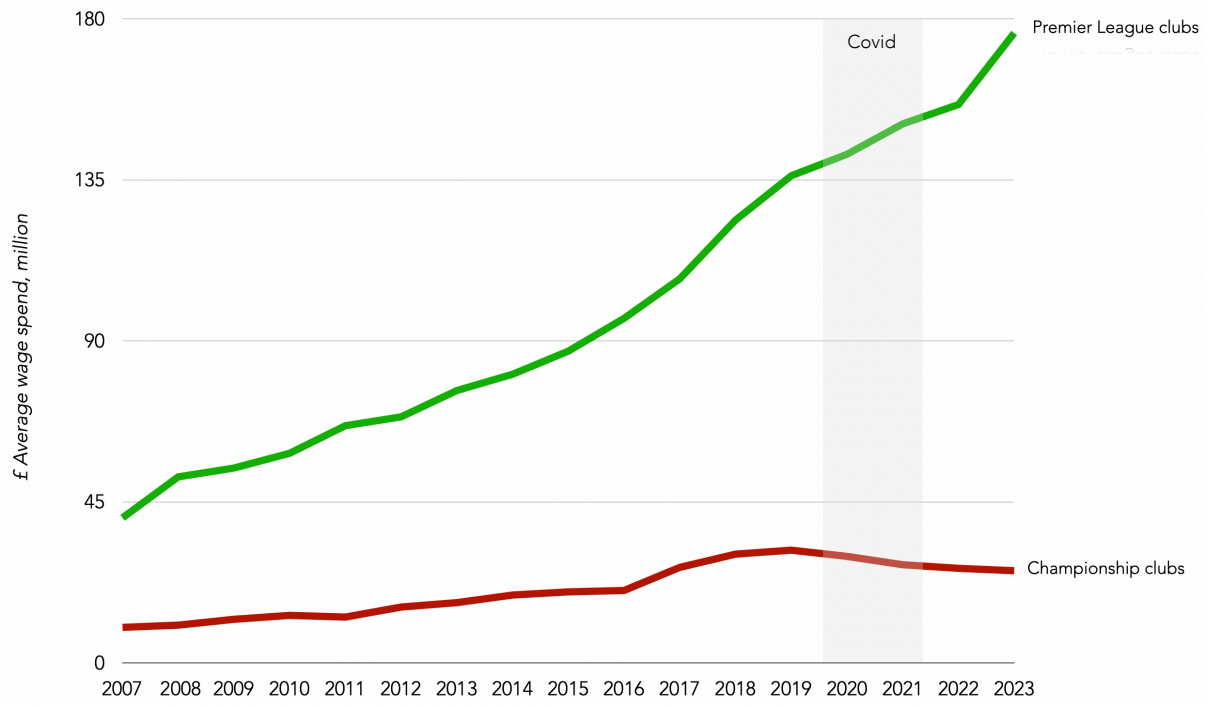
Average wage disparity: Clubs playing in Europe vs. Rest of the Premier League



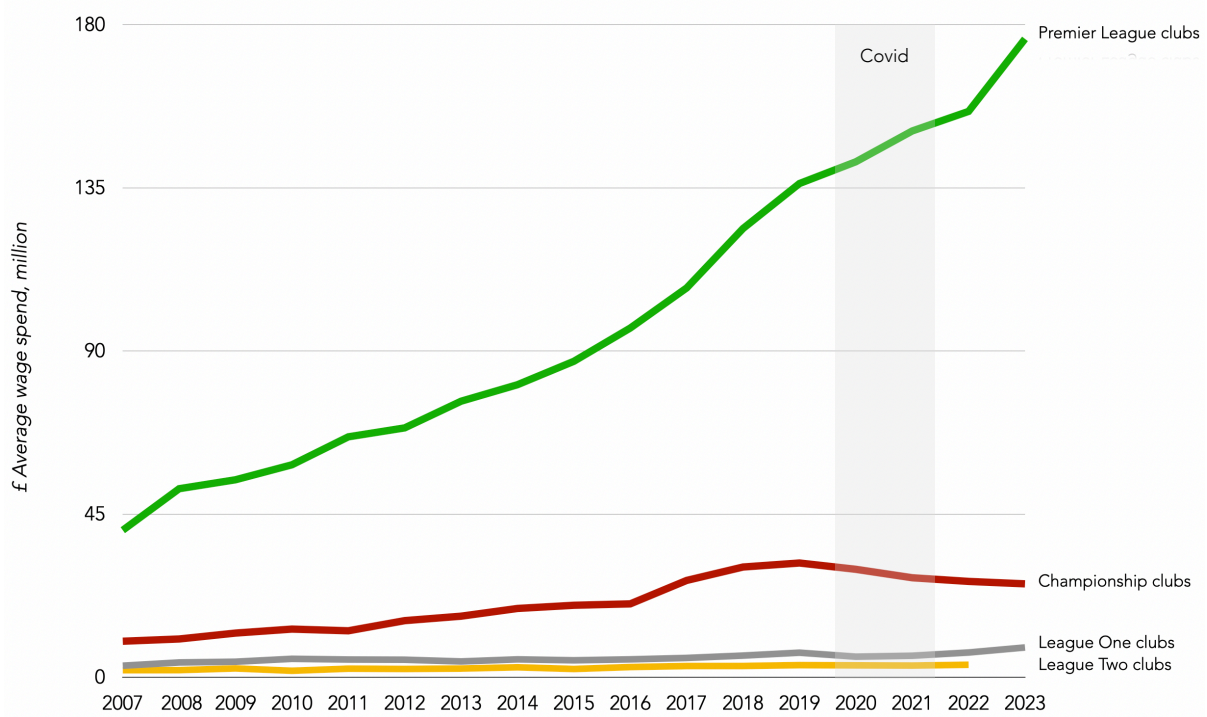
Average wage disparity: Parachute clubs vs. rest of the Championship



Average wage disparity: Premier League clubs vs. clubs in the Championship



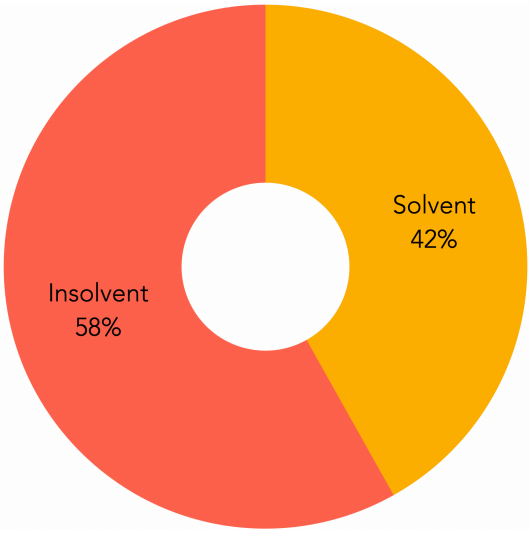
Average wage disparity: the Premier League to League Two



(The data only goes up to 2022 due to a lack of credible data for clubs in League Two for the 2022/23 season. Only four clubs have submitted wage data for this season and therefore the available data is unlikely to paint an authentic picture of the state of wage spending).

g) Technical insolvency

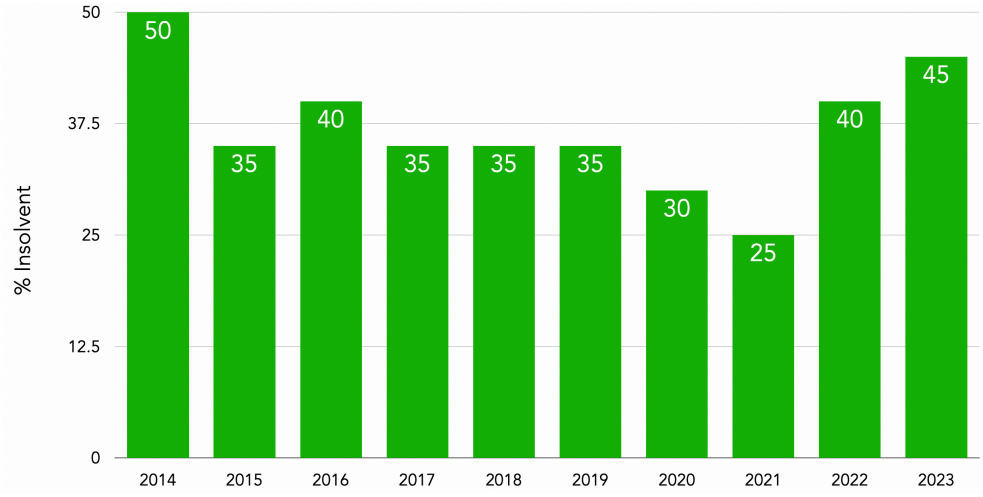
Technical insolvency is a simple balance sheet insolvency test that adds up all a company's assets and takes away its liabilities, and is used in most commercial sectors to describe a situation where a company would be insolvent but for receiving critical financial support.



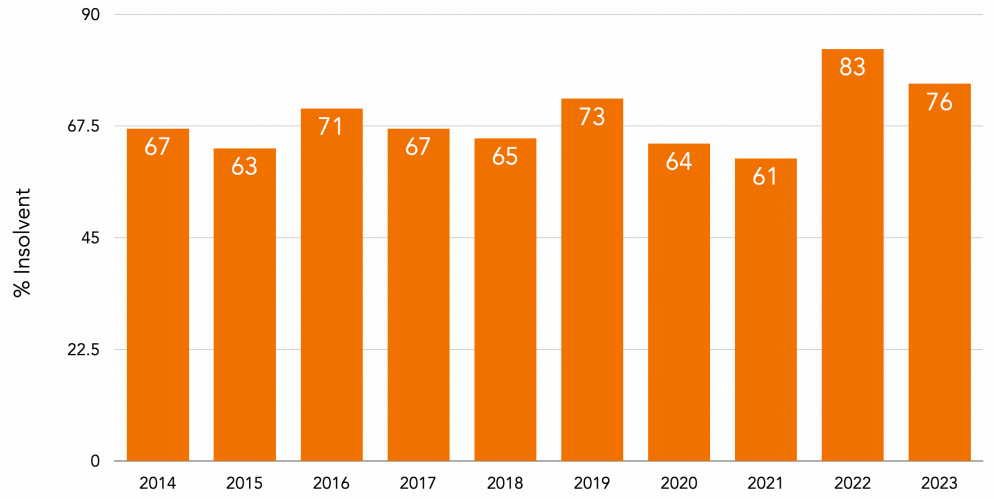
The latest set of accounts filed at Companies House (22/23) have revealed 50 of the 86 clubs in the top four divisions are technically insolvent (58%). This figure has grown from 2020 when 52% were technically insolvent.

The Premier League: technical insolvency

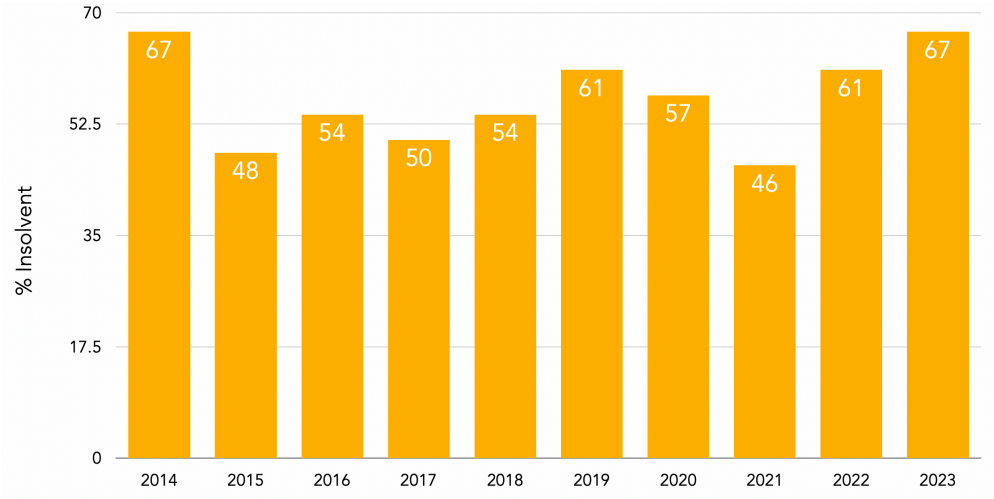
Of the clubs who competed in the 22/23 Premier League season, nine (45%) were technically insolvent. These clubs were: Manchester United, Brighton & Hove Albion, Crystal Palace, Wolverhampton Wanderers, West Ham United, AFC Bournemouth, Nottingham Forest, Leeds United and Southampton.



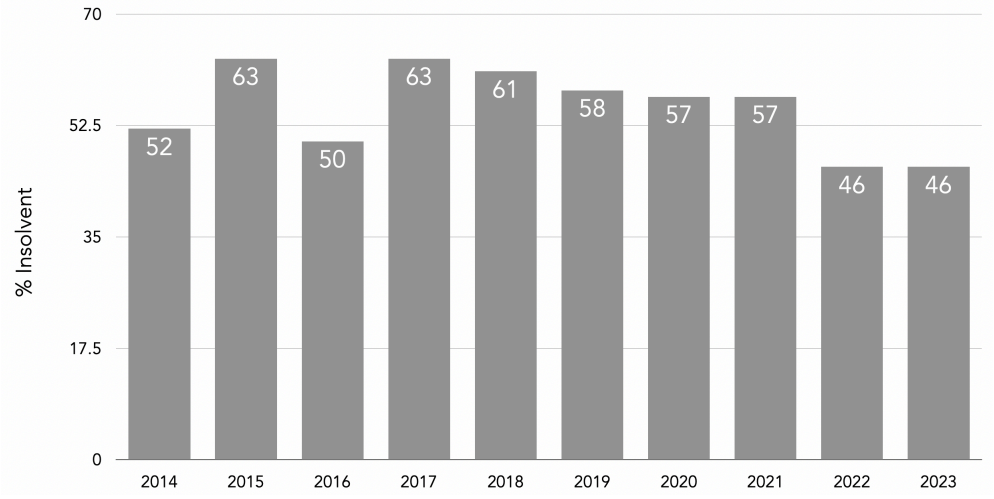
The Championship: technical insolvency



League One: technical insolvency



League Two: technical insolvency



In the 2022/23 season, the level of technical insolvencies in the Premier League and the Championship was the second highest in the last 10 years.

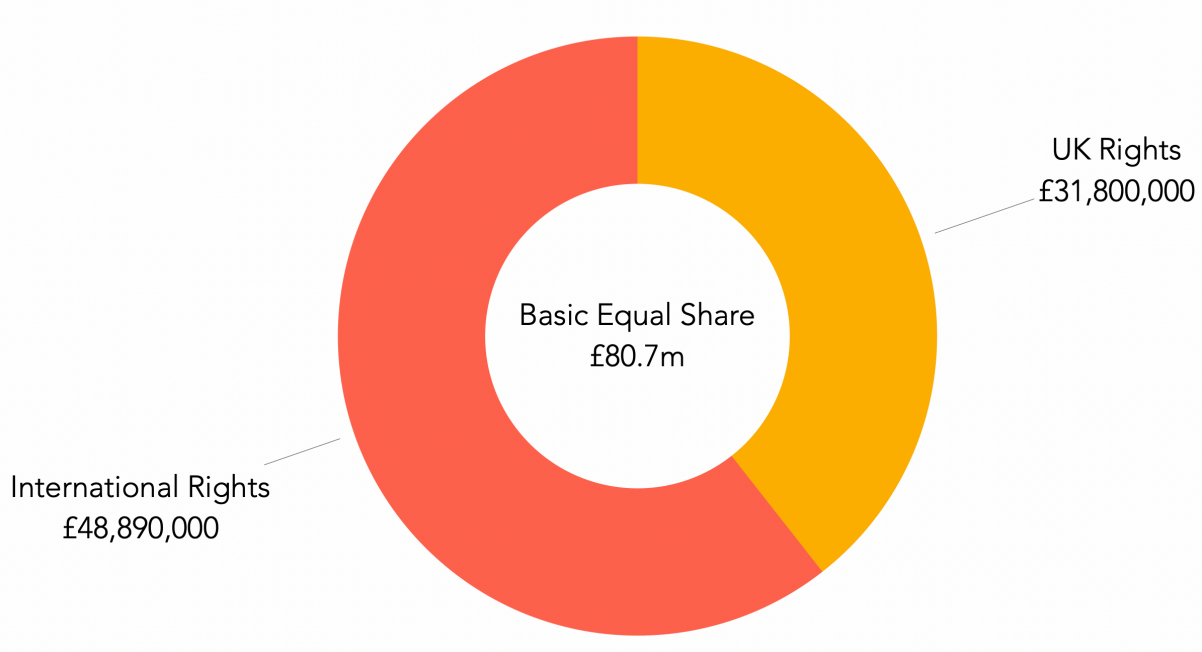
In short, the football authorities have failed to get a grip on how the game is run. And the Premier League and the Championship are setting a bad example.

h) Parachute payments

Parachute and solidarity payments are given out directly by the Premier League to EFL Clubs.

- **Parachute** payments go to clubs that have been relegated from the Premier League in the last three years.
- **Solidarity** payments go to every other EFL club not in receipt of parachute payments.

Parachute and solidarity payments are a set percentage of the "Basic Equal Share" given to Premier League clubs. The Basic Equal Share is calculated as a percentage of domestic and international broadcast rights. For the 21/22 season, the Basic Equal Share was:



*Premier League Clubs also get **merit** payments (for league position) and **facility fees** (for their matches being broadcast).*

The percentage of the Basic Equal Share given to clubs each year is as follows:

Parachute payments

55% - to clubs in the first year in the Championship after being relegated.
45% - to clubs in the second year in the EFL after being relegated from the Premier League.
20% - to clubs in the third year in the EFL after being relegated from the Premier League.

The importance of parachute payments is growing. In each of the last five seasons, two of the three promoted clubs were in receipt of parachute payments. In the eleven seasons before that, only ten parachute payment clubs were promoted. In the most recent season, 23/24, the champions plus four of the other clubs in the top six were in receipt of parachute payments.

In total there have been 13 'parachute payment' clubs on 19 occasions which have been promoted back to the Premier League. These clubs are:

- Aston Villa (18/19)
- Birmingham City (08/09)
- Bournemouth (21/22)
- Burnley (15/16, 22/23)
- Fulham (19/20, 21/22)
- Hull City (12/13, 15/16)
- Leicester City (23/24)
- Newcastle United (09/10, 16/17)
- Norwich City (14/15, 20/21)
- Queens Park Rangers (13/14)
- Sheffield United (22/23)
- Watford (20/21)
- West Bromwich Albion (09/10, 19/20)

Notably, *all* the teams in the 2023/24 play-offs were in receipt of parachute payments.

This is perhaps not a surprise given the huge financial advantage clubs in receipt of parachute payments in the Championship have over their peers.

Remember; for every £1000 an average Premier League club gets in terms of revenue (this include facility payments for being shown live on TV

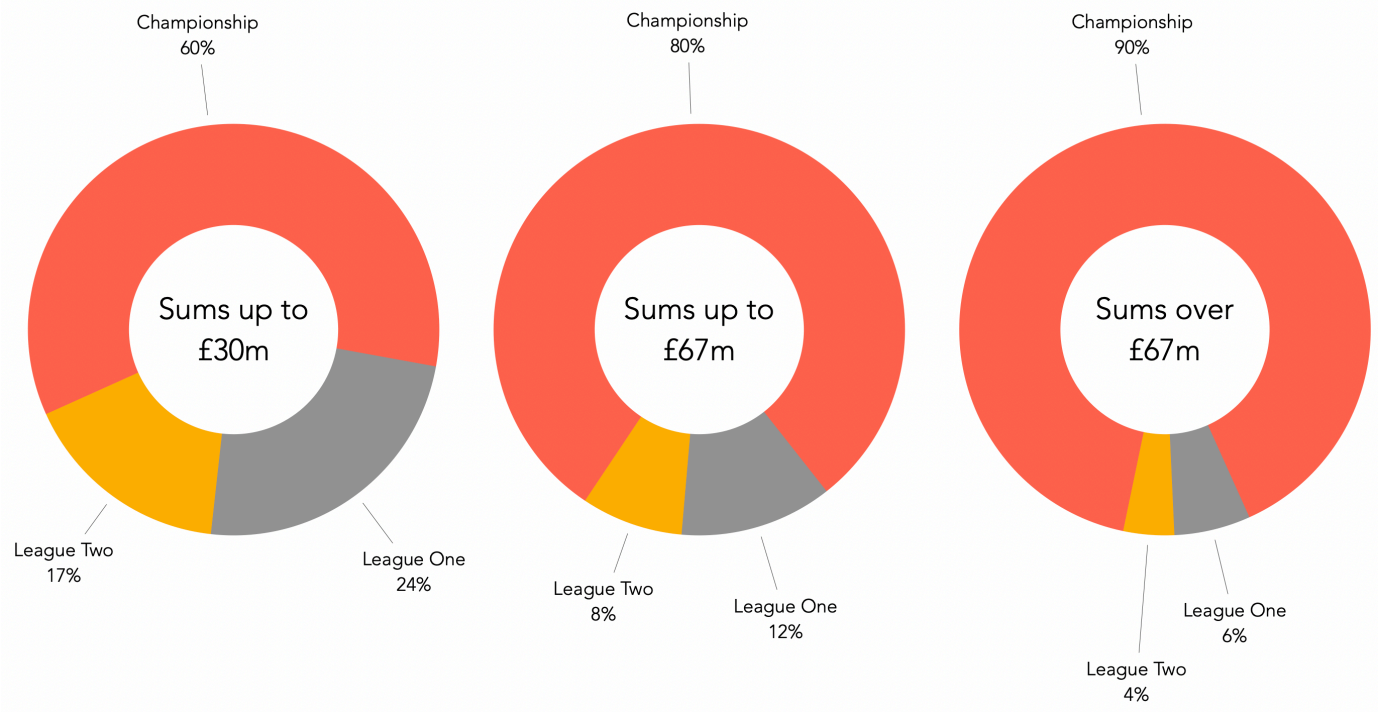
Championship club in receipt of **first** year parachute payments	Championship club in receipt of **second** year parachute payments	Championship club **not** in receipt of parachute payments
£313.27	**£256.37**	**£34.17**

This means that a relegated club gets over **9x** the amount given to a club in the same division not receiving parachute payments.

i) EFL's Divisional Allocations

The EFL's articles of association spell out clearly how any funds in its central Pool Account should be allocated. It strongly favours the clubs in the Championship.

Payments from the Pool Account in respect of any season are allocated to each Division in accordance with the following provisions:



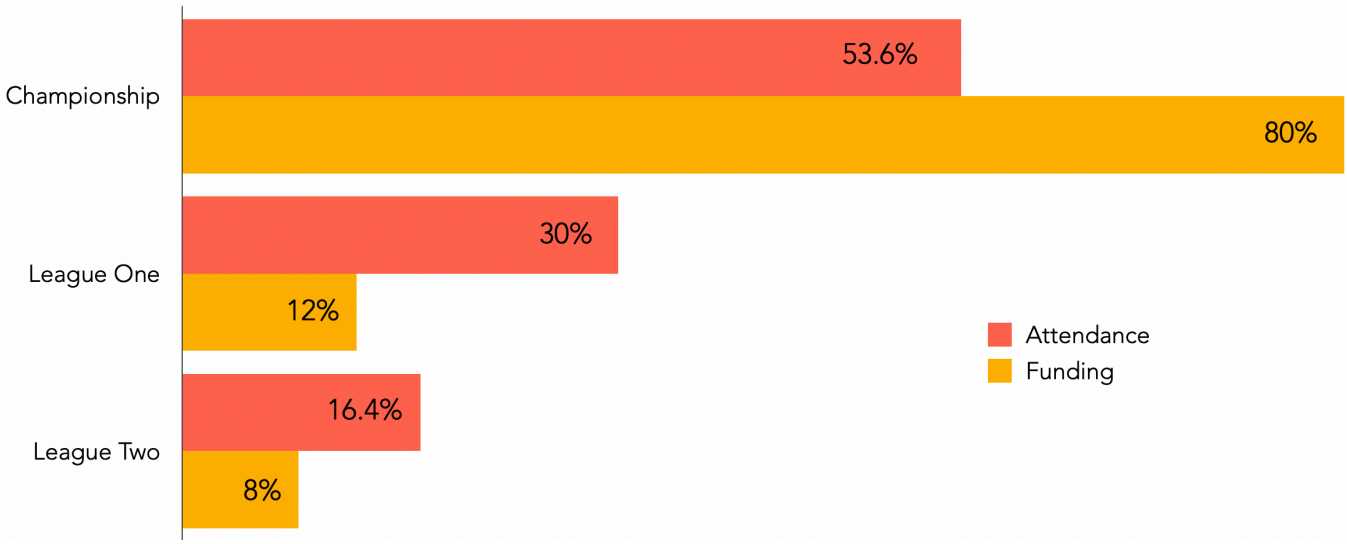
Solidarity payments

Solidarity payments are given to EFL clubs by the Premier League. The payments depend on what division the club is in, and are based on a percentage of the Basic Equal Share given to a Premier League club each year (currently the **£80.7m** as stated above).

The percentage breakdown is as follows: **6%** to clubs in the Championship not in receipt of Parachute Payments, **0.9%** to clubs in League One not in receipt of Parachute Payments, and **0.6%** to clubs in League Two.

Divisional attendances

These splits, however, don't reflect the divisional attendances, and weigh heavily against teams in the lower two divisions. In 2022/23, 847,858 people attended matches in the EFL.



In short, when it comes to solidarity payments (which also reflects the EFL's middle-band distribution model), **League One gets only 40%** of what it should receive if finances were dealt out proportionately according to attendances, while **League Two receives only 49%**.

j) Voting structures

The voting structures of England's two main football leagues are stacked heavily against meaningful reform.

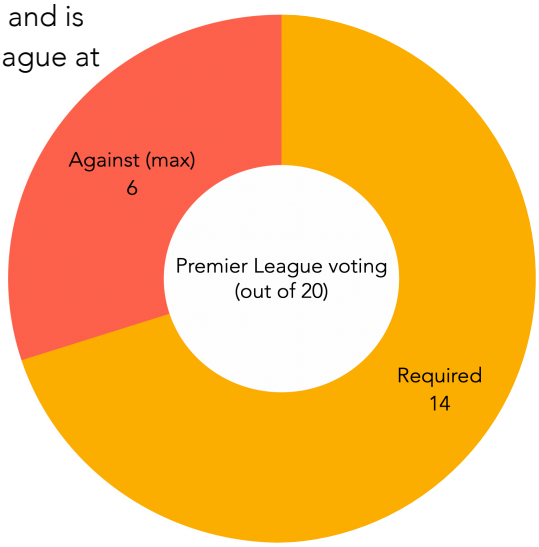
The Premier League

The Premier League is a private company limited by shares and is wholly owned by its 20 Member Clubs who make up the League at any one time.

Clubs have the opportunity to propose new rules or amendments at shareholder meetings.

Each Member Club is entitled to one vote and all rule changes and major commercial contracts require the support of at least a two-thirds vote, or 14 clubs, to be agreed.

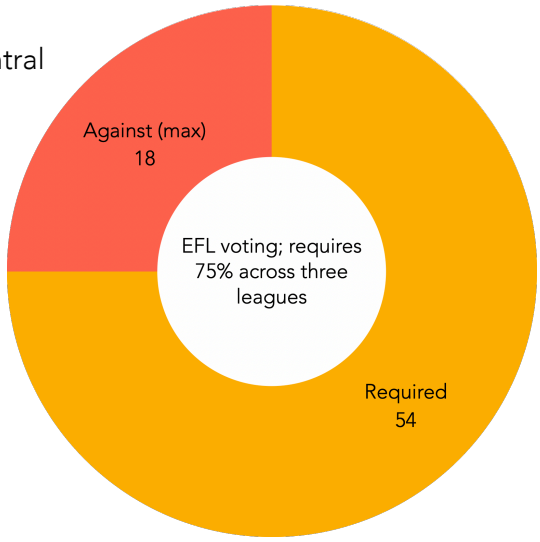
Under current rules, seven clubs qualify for one of UEFA's European competitions, and in effect **these seven have a blocking vote on any changes.**



The EFL

The EFL's articles of association stipulate how the central pot of money from the broadcasting deal is divided.

A change of the articles of association, as per company law, requires the approval of shareholders holding at least 75% of the voting rights clubs to vote for it. As each EFL club holds one share (and therefore one vote) this means that 19 clubs are able to block any change. There are 24 clubs in the Championship and so they, if voting largely in unison, can block any change.



k) Conclusion

Every indicator points to a growing divide within and between divisions. To progress, there is only one answer - to overspend. The consequence is technical insolvency.

In any other sector such high levels of financial mismanagement would not be tolerated. Yet, the only bodies that the Bill considers capable of turning it around are the very same bodies that have overseen a chasm growing within the football pyramid.

The failed financial flow is the number 1 cause of the problems within the game and the only sensible solution is to ensure the regulator has the power to have strong controls over how the money is distributed.

This means enhancing the powers of the Bill's proposed 'Independent Panel of Experts', and giving the Panel the power to set parameters that financial proposals (including broadcast deals and parachute and solidarity payments) must meet.

These parameters must include measures to close the growing financial gaps, rewarding clubs that are financially sustainable, and supporting community and grassroots initiatives.

The Independent Regulator must also have the power to impose a deal if these parameters are not met.

In the next section, we outline in detail how the Bill can be amended to achieve these necessary changes.

PART TWO:
PROPOSED AMENDMENTS

FAIRGAME
In the wider interests of football

Proposed amendments

We have identified issues in the draft Football Governance Bill and have addressed them by amending the Bill. Our changes are divided into eight categories:

1. Fairer financial flow in football
2. Vested interests
3. Support to clubs
4. Owners and directors test
5. Protection of club heritage
6. The "Wimbledon Clause"
7. Environment
8. EDI

We have colour-coded our amendments to the Bill as set out above and they can be seen on request in a full review of the Bill. We've summarised the changes required below.

1. FAIRER FINANCIAL FLOW IN FOOTBALL

1.1. Ensuring a fairer financial flow in football is integral to the purpose of the regulator and largely centres around the distribution of income that arises from the broadcast deal. This is dealt with in Part 6 of the Bill.

1.2. **The original draft of the Bill was fundamentally flawed in this respect because:**

1.2.1. it assumed that there would be just two "specified competition organisers" between which the distribution agreement would be made. We believe that this is an error based on our discussions with DCMS. This must allow for flexibility for the National League (and potentially other competition organisers further "down" the pyramid) to be party to that agreement;

1.2.2. it gave the specified competition organisers complete autonomy to reach an agreement between themselves without the agreement having to meet any minimum requirements and without the regulator's approval;

1.2.3. it only enabled one of the specified competition organisers to refer the deal to the regulator (and no other stakeholders, including the regulator itself);

1.2.4. if the mediation process set out in the Bill was unsuccessful, only the specified competition organisers could make proposals to the regulator for consideration, and the regulator had to choose between those proposals (with no flexibility to make its own proposals, or invite proposals from third parties);

1.2.5. when considering the proposals, the regulator had recourse only to some very general principles and not to any specific issues caused by the existing distribution agreement;

1.2.6. even where the regulator made a distribution order, that order would be revoked if the specified competition organisers subsequently came to an agreement, and there was no requirement that this agreement needs to meet any minimum requirements or be approved by the regulator;

1.2.7. it fails to address the growing divide in football's finances, a key barrier to delivering financial sustainability in football;

1.2.8. it failed to address decisions made by the Premier League acting in concert with the FA in respect of the FA Cup, as well as other domestic cup competitions; and

1.2.9. it expressly excluded from the regulator's remit the issue of parachute payments. It is clear that the distribution of parachute payments from the Premier League to clubs relegated to the Championship is a key point of contention between the Premier League and the English Football League (see this DCMS report, at paragraphs 40-43) and that they form an important piece of the jigsaw making up a picture of financial flow in football. Whether or not parachute payments are agreed as part of a distribution agreement between those two competition organisers, parachute payments *must* be within the regulator's remit.

1.3. **Taken together, these issues show that the current draft of the Bill does not empower the regulator to fulfil a key part of the role that it is supposed to fulfil: to ensure a fairer financial flow in football.**

1.4. **The amendments to Part 6 address these concerns by:**

1.4.1. providing for flexibility in the identity parties to the distribution agreement (i.e. not assuming that there will be just two specified competition organisers)

1.4.2. ensuring that any agreement reached by the specified competition organisers meets certain minimum requirements and requires regulatory approval;

1.4.3. including in the minimum requirements any issues flagged by the newly introduced "financial distribution committee", which will assess existing distribution agreements against the principles in the Bill;

1.4.4. enabling the triggering of the mediation process by the specified competition organisers but also by the regulator independently;

1.4.5. ensuring that any agreement entered into under the mediation process must meet the minimum requirements and if the parties fail to reach an agreement, the regulator may impose its own deal on them;

1.4.6. ensuring that, if the specified competition organisers enter into an agreement after a distribution order has been made, it must still meet the minimum requirements and be approved by the regulator;

1.4.7. enhancing regulatory oversight of rule changes to relevant competitions (such as the FA Cup) by requiring wider consultation with all regulated clubs and regulatory approval if the proposed change will affect the revenue received by regulated clubs; and

1.4.8. removing the exclusion of parachute payments from the regulator's remit.

1.5. **These changes would lead to three options under a new approval process**

1.5.1. **OPTION 1:** the parties reach an agreement between themselves. In this case, they would seek regulatory approval. If it is forthcoming, the parties may enter into the agreement. If it is not, then the regulator self-refers the issue and the mediation process starts. All parties may make proposals to the regulator and the regulator may either accept one of those proposals or, if none satisfies the minimum requirements, impose its own.

1.5.2. **OPTION 2:** the parties are unable to reach an agreement. In that case, any party may submit a notice to start the mediation process, or the regulator may do so. Again, if the mediation process fails to result in a distribution agreement which is agreed between the parties and approved by the regulator, the regulator can impose its own deal.

1.5.3. **OPTION 3:** the financial distribution report identifies significant issues which an existing distribution agreement materially fails to address OR other circumstances requiring intervention are present (for example, there is a material change in circumstances). The regulator shall self-refer the matter to mediation and the mediation process starts (ultimately concluding with a regulator-imposed deal if mediation fails).

2. VESTED INTERESTS

2.1. It is essential that the regulator is free of any vested interests. This is the case on the board and on any expert panel or committee established by the board.

2.2. The draft Bill was not totally inadequate on this point. In Schedule 2, paragraph 7, it stated that "A person ("A") may not be appointed as [a] member of the Board unless the person appointing A is satisfied that A does not have a conflict of interest." The same process applied, with minor changes, for membership of the expert panel in Schedule 2, paragraph 8. Conflicts of interest in relation to specific decisions were dealt with under paragraph 22 of that Schedule.

2.3. **However, there are a few problems with the Bill as it was initially drafted:**

2.3.1. first, the Bill does not say that a person cannot be on the board and have a conflict of interest, it just says that the person appointing them has to be satisfied that they do not;

2.3.2. secondly, the process for declaring a conflict of interest is quite strange, relying on the appointor ensuring to their satisfaction that there is no conflict of interest;

2.3.3. thirdly, the process for removal of a board member with a conflict of interest only applies to non-executive directors and is left to the discretion of the Secretary of State; and

2.3.4. finally, the Bill defines conflict of interest (section 91(1)) but does not state what specifically would constitute a conflict of interest.

2.4. **To resolve these issues we propose the following amendments:**

2.4.1. To address the first problem, the Bill now states that a person with a conflict of interest cannot be on the board or on the expert panel.

2.4.2. To address the second problem, we have stated that all board members must declare their own conflicts and their appointors (for non-executive directors) must also ensure that their appointees do not have conflicts.

2.4.3. We have addressed the third issue by stating that an individual with a conflict has 30 days to remedy the conflict, failing which membership of the board automatically terminates. Any dispute as to whether they have a conflict of interest is resolved by the Chief Executive (or, if the conflict relates to the Chief Executive, by other executive members of the board, provided that they do not also have the same conflict).

2.4.4. To address the final problem, the Bill now includes a list of circumstances in which a person will be deemed to have a conflict of interest. These include being employed by, or engaged as a consultant by, a specified competition organiser or any of their group companies or any company that they have majority funded in the past year. It also includes anyone connected with a person who has a conflict of interest. We would encourage the Parliamentary draftspeople to consider, in consultation with relevant stakeholders (including Fair Game), if this list is sufficient and exhaustive.

2.5. **We have also clarified the application of Schedule 2, paragraph 22 (interests affecting specific decisions), such that there are two levels of conflict:**

2.5.1. fundamental conflicts of interest (these are the "vested interests" that must be avoided and are those defined in section 91(1) and expanded upon in Schedule 2, paragraph 7); and

2.5.2. "direct or indirect interests in a matter falling to be considered at a meeting of the Board." This line was drawn by the original Bill, but not explained as clearly. It might be difficult to draw this line in practice. We have given the Chief Executive the right to decide which of these two categories it falls in.

3. **SUPPORT TO ALL REGULATED CLUBS**

3.1. **The original Bill stated that all licensed clubs must pay a levy, to be determined in accordance with levy rules which are established by the regulator. We spotted two key issues with this:**

3.1.1. First, the regulator was given quite wide discretion to determine the extent of the levy. This creates a concern that it will not be proportionate to the size of a club (notwithstanding the requirement that the regulator must "have regard to the financial resources of each licensed club"). We do not think it is appropriate to dictate what the levy should be, but we do think that it is important that it is proportionate to a club's revenue. We have, therefore, included in section 52(9) a requirement that "the starting point for calculation of the levy payment applicable to a particular club shall be a percentage of annual revenue."

3.1.2. Second, the Bill does not include any guarantees that clubs will be given any assistance in transitioning to the new regime, nor in their continued compliance with its requirements. There is a particular concern that smaller clubs will face a disproportionate compliance burden. Section 52(3) set out certain costs that the regulator can take into account when determining the levy rules, including costs "it will incur in exercising its leviable functions." We were concerned that, unless the Bill expressly requires the regulator to provide assistance to clubs, that would not constitute a "leviable function" and therefore could not form part of its budget for use of the levies it collects.

3.2. **To resolve these issues we have proposed the following changes:**

3.2.1. We have introduced a new section 53A stating that the regulator must provide "reasonable and proportionate assistance" to:

a) regulated clubs seeking to obtain a provisional club licence;
b) clubs with a provisional club licence seeking a full club licence; and
c) unregulated clubs who are reasonably likely to become regulated clubs in the next football season, as well as providing such assistance to regulated clubs in complying with the regime. In determining the extent of the support provided, the regulator must have regard to each club's resources and the league that they play in.

4. NEW OWNERS AND DIRECTORS TEST

4.1. The Bill introduces a new owners and directors test. It requires clubs to obtain a "determination of suitability" for new owners and directors (sections 28 and 29) and gives the IFR the power to monitor the suitability of incumbent owners and directors (sections 34 and 35). All decisions have to be made public.

4.2. One major issue with the Bill as drafted is the provision stating that the IFR must have regard to "the foreign and trade policy objectives of [the government]." This is problematic because:

4.2.1. the IFR's actions are dictated by the whims of whatever government happens to be in power at a particular point in time;

4.2.2. it excludes state owned clubs from the same rigour applied to privately owned clubs under the owners test, setting a different regulatory standard for those clubs owned by states and with whom the UK government wants to pursue its interests;

4.2.3. it would allow to continue the issues such as those seen in the mess created in Roman Abramovich's disposal of his ownership of Chelsea FC; and

4.2.4. it would perpetuate the sportswashing evident in certain state owned clubs at present.

4.3. We have sought to address this issue, not by removing the reference to the foreign and trade objectives, but by caveating it in two ways:

4.3.1. ensuring that the regulator has to take into account the UK's legal obligations in respect of human rights and the environment; and

4.3.2. outright excluding the possibility that an owner of a club could be a state or state-controlled person or entity.

4.4. The proposed owners and directors test does not accommodate any human rights requirements at all.

4.4.1. Amnesty has written about the existing Premier League "fit and proper person" test and criticised it in the same way. It has pointed out that this falls far behind other industries and general business practice.

4.4.2. The UN Guiding Principles on Business and Human Rights (UNGPs), which the UK was the first country in the world to officially implement through a National Action Plan, require all states and businesses to prevent, address and remedy human rights abuses where they occur. This includes a responsibility to conduct due diligence to identify any risks of contributing to human rights harm. As such, the UK government should ensure that the regulator is compliant, to the extent that it is reasonably possible, with the UNGPs across its entire sphere of influence.

4.4.3. We have, therefore, updated the "individual ownership fitness criteria" to include reference to human rights and some other amendments based on Amnesty's proposed amendments to the previous Premier League test.

4.5. Finally, we are concerned that the Bill does not adequately address enforcement of the test:

4.5.1. If the regulator disqualifies an incumbent owner, we are not clear how they might be forced to sell their shares. It could, in the case of a difficult owner (or one who is unable to find a buyer at all – or at the right price), result in a situation where the club is unlicensed and therefore unable to participate in the competition in which it plays, but the owner is unable or unwilling to sell up. This is not the fan-focused outcome that the regulator is intended to seek.

4.5.2. Additionally, the regulator should ensure that clubs have sufficient reserves to meet ongoing operational costs in the event that an owner is disqualified; and/or it should maintain a central sinking fund to help cover interim costs. We therefore encourage the Parliamentary draftspeople to consider these issues, perhaps with reference to sanctions legislation.

4.5.3. It is not clear how the regulator would force a director to resign from the board of a club. We would recommend that the draftspeople consider if including a mechanism for the resignation of a director in a club's Articles of Association would be appropriate.

5. PROTECTION OF CLUB HERITAGE / THE WIMBLEDON CLAUSE

5.1. The original Bill set out restrictions on what clubs need to do in relation to certain heritage characteristics. However, there are several incidents where the Bill states that fan consultation is not required.

5.2. Disposal of a home ground (including its use as security) required the approval of the regulator, which must be given if it would not undermine the club's financial sustainability. However, it did not require any fan consultation (section 46) or any assurance that there would still be a home ground for the club to use. We have, therefore, amended section 46(6) to state that:

5.2.1. in the case of a regulated club, the regulator must be satisfied that either the disposal will not affect the club's continued long term use of the ground, or there must be a suitable alternative home ground for the next season; and

5.2.2. a sale of the home ground must only be made with the fans' approval.

5.3. Relocation of a club required regulatory approval (which must be granted if it would not undermine the financial sustainability of the club and would not cause "significant harm to the heritage of the club"). However it did not require any fan consultation (section 48). It is impossible to determine whether something would cause "significant harm to the heritage of the club" without consulting the fans.

5.3.1. We have, therefore, introduced a requirement to obtain fan approval on this question.

5.4. Changing the crest or home shirt colours required the club to "take reasonable steps to establish that the changes are supported by a majority of the club's fans." Changing the name required the approval of the FA but not fan approval. We have rectified this.

5.5. The original Bill did not deal with the making of any substantial changes to a club's ground or the site on which it is situated.

5.5.1. We have therefore included an amendment requiring fan approval for any "substantial changes" to a home ground or the site on which it is located, and the regulator must also be satisfied that any such changes would "enhance" the facility

5.6. The Bill fails to enshrine licence requirements in club's articles of association

5.6.1. The original Bill stated that compliance with these heritage restrictions was part of the "full licence test" (section 18(3)) and gives the regulator the right to revoke a club's provisional licence (section 19). Where a club holds a full licence, breach of the heritage restrictions constitutes a "relevant infringement" (section 64; Schedule 7), which empowers the regulator to impose fines and suspend or revoke the full licence (Schedule 9). However, that requires the regulator to properly enforce the provisions of the Bill, which is not guaranteed. It might, for example, take a very lenient approach to the fan consultation requirements outlined above.

5.6.2. For this reason, we have included a requirement in section 49A that clubs incorporate fan consultation into their Articles of Association. The Articles of Association are a contract between each shareholder and the club in which they hold shares. There are various company law rights for shareholders to bring actions against the club for breach of the Articles. This is not much use to fans who are not shareholders in clubs, and in relation to certain clubs this would not be particularly useful, but it does provide another line of defence against breach of the licence conditions for some clubs.

5.7. We were also concerned that it was not a condition of the licence for a club to have and maintain a suitable home ground, and nor was there a condition requiring clubs to have security of tenure over those grounds for any specific period of time.

5.7.1. We have, therefore, introduced as a fourth "threshold requirement" (see section 18(3) and Schedule 4) a "home ground threshold requirement." This requires a club applying for a licence to have a suitable home ground for a minimum period of 20 years (or such other time as the regulator may determine based on relevant factors). We have included some further detail as to when the regulator shall consider that requirement to be satisfied.

6. ENVIRONMENTAL SUSTAINABILITY, EQUALITY, DIVERSITY AND INCLUSION, AND SOCIAL PURPOSE

6.1. The Bill does not mention environmental sustainability or any issues concerning equality, diversity and inclusion (EDI). This is not only at odds with standard business practice, but with the UK government's own legal and moral commitments.

6.2. There are two reasons why such issues must be included in the Bill;

6.2.1. first, environmental and EDI issues are integral parts of financial sustainability (as explained below); and

6.2.2. second, The Bill's long title states that it is a Bill to: Establish the Independent Football Regulator; to make provision for the licensing of football clubs; to make provision about the distribution of revenue received by organisers of football competitions; **and for connected purposes**.Therefore, even if it is not accepted that environmental and EDI issues form an integral part of financial sustainability, the Bill already gives the regulator the right to regulate issued which are "connected" with that purpose, and such issues are certainly "connected".

6.3. It is impossible to divorce environmental issues from issues of financial sustainability and there are numerous sources which show that it would be negligent to exclude environmental sustainability from the regulator's remit:

6.3.1. **These are not radical amendments**. A recent legal opinion found that the existing company law duties under the Companies Act 2006 already require directors to take into account nature-related risks. In addition, the IFR is – as a public body – required to comply with The Climate Change Act 2008, which requires the government to ensure that the UK achieves net zero by 2050 (and note that this includes the private sector).

6.3.2. **There are already plans to introduce similar regulation.** A Government Consultation outlined an intention to 'introduce mandatory climate related financial reporting in line with TCFD recommendations for all UK companies above a certain size' by 2025.

6.3.3. **This is not unorthodox.** The UK Government has already recognised 'climate related risks' in financial sustainability considerations. Recent Government Guidance has outlined steps the public sector should take to align with the recommendations of the TCFD.

6.3.4. **Considering nature related financial risk may already be a fiduciary duty.** A report by the United Nations Environment Programme Finance Initiative sets out that contemporary fiduciary duties already include environmental considerations. This was cited in a UK Parliament Research briefing on nature related financial risk.

6.3.5. International Banking Standards are beginning to incorporate nature related risk.

a) The Basel Committee on Banking Supervision, which sets out key framework for UK banking regulation, is consulting on introducing regulation for climate related financial disclosures.

b) The Network for Greening the Financial System, of which the BoE is a member, has outlined in a recent report that 'the degradation of nature, and actions aimed at preserving and restoring it, will affect our economies and financial systems'. They suggest introducing a framework to mitigate climate related economic risk.

6.3.6. **The EU is regulating financial risk mitigation due to nature considerations.** A European Insurance and Occupational Pensions Authority report outlines and encourages investors to consider nature related risks in financial investments, particularly reviewing disclosures made mandatory by the EU Sustainable Financial Disclosure Regulation. They warn that economic activity detrimental to biodiversity could lead to a global economic loss of between €1.7 trillion and €3.9 trillion annually. EU regulation 2019/2089 outlines that to 'maintain the proper functioning of the internal market for the benefit of investors'. There must be regulation to mitigate nature related risk.

6.3.7. **Academic research highlights nature-related risks are pertinent to business.** A report by Cambridge University, 'Handbook for Nature-Related Risk', found that there are credit, market, business, and liquidity risks associated with biodiversity and nature degradation.

6.3.8. **International standards are changing to incorporate similar regulation.** UK regulation must recognise nature related financial risk to uphold international industry standards. The Insurance Core Principles (ICP) have proposed changes to their guidance to ensure long-term financial viability. The proposal includes a factoring in climate-related risk into organisation's credit ratings, directly impacting their financial viability (15.2.**3**)**.** The UK has a high observance with ICP standards.

6.3.9. **Long term sustainability is key to corporate governance.** The UK Corporate Governance Code sets out that companies must consider longer term sustainable success, including their contribution to wider society. Given insurers and lenders are about to be mandated to take long term nature-related financial risks into account in their decision making and due diligence process, it will become necessary to consider nature-related financial risk to comply with the code.

6.4. Similarly, EDI issues are already recognised by the FCA as crucial to its role as a regulator and there are countless studies showing that EDI is a core part of financial success (read *sustainability*).

6.5. We have made amendments in three areas to accommodate the lack of mention of environmental sustainability and EDI in the Bill:

6.5.1. First, we have introduced a new limb into the definition of "sustainable" in section 1(3) to accommodate environmental sustainability as a core tenet of the Bill. The term "sustainable" (or derivations thereof) are not used much in the Bill. The key is in section 1(1): "The purpose of this Act is to protect and promote the sustainability of English football." By incorporating environmental issues in the definition of sustainability, they become within the ambit of the Bill and therefore the regulator.

6.5.2. Second, we have introduced a requirement that the IFR's "state of the game report" must include an assessment of performance on EDI / environmental sustainability issues (sections 10(2)(e) and 10(6)). We have given the SoS the power to make regulations governing what metrics / principles performance on EDI / environmental sustainability must be measured.

6.5.3. Third, we have introduced a "corporate responsibility requirement" into the mandatory requirements in Schedule 5. This requires clubs to:

a) incorporate considerations of the society and the environment into their decision-making processes;
b) take reasonable steps to improve their performance on environmental and EDI metrics; and
c) report in their corporate governance statements on their compliance with these requirements.

6.5.4. By incorporating these factors into the Bill, the IFR has the right to request further information on EDI and environmental issues (sections 64 and 65) without making any amendments in that regard.

6.5.5. Finally, we note that the Bill does not make any mention of the social purpose of regulated clubs. Charities already fulfil an important role within professional clubs and are an important way in which clubs interact with the communities in which they operate. We think that it would be beneficial to include, in the corporate responsibility requirement, a condition that a club must "have a material positive impact on the community in which it (or its associated charitable entity) operates." The specifics of this can be fleshed out in the legislation, but we want to enable the regulator to deal with this important issue in the Bill.

To obtain more background to the proposed amendments, or for any other detail, data or insight about football finance, please contact:

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In the wider interests of football