

Written evidence submitted by the Everton Fan Advisory Board, supported by Sir Brendan Barber, Rt Hon Andy Burnham, Dame Sue Owen & Peter Reid (FGB06)

We write to seek your support in strengthening the Football Governance Bill which enters Committee stage this week. In parallel, we are submitting, along with the West Ham United Independent Supporters' Committee, a petition to Parliament seeking a response from Government, and, hopefully, a Westminster Hall debate, on the issues we raise here with you. We are copying this submission to the DCMS Committee.

The Bill represents a unique opportunity to ensure that our game is managed fairly for the benefit of all clubs, supporters and communities. It includes provisions for the establishment of an Independent Football Regulator (IFR) to promote the financial sustainability of clubs, as well as requirements for consultation with supporters to ensure that the heritage of clubs is protected. We welcome the direction of travel, in particular the backstop provisions the Bill makes for redistribution from the Premier League (PL) to the English Football League (EFL)¹.

However, the draft Bill does not go far enough, in particular on financial sustainability and on genuine and meaningful fan engagement, which we believe should include direct liaison with *independently* elected Fan Advisory Boards.

Financial Sustainability and Profit & Sustainability Rules (PSR)

The Bill currently gives the IFR only partial oversight of financial sustainability, with no authority or oversight of Profit and Sustainability Rules (PSR). We do not understand why the Government have done this. Football supporters want a *predictable, transparent, principled, proportionate, fair & timely* system applying PSR rules. These qualities are reflected in part in the English Football League (EFL), but the chaos and confusion caused by the Premier League's (PL) handling of PSR has proven that it is not able to meet these requirements; see attached analysis. We believe that the IFR should therefore have full authority for financial sustainability, including the oversight of PSR. In line with the recommendations of the Fan Led Review, this should include:

- Full authority in applying sanctions for breaches of financial sustainability rules;
- Published guidelines on how sanctions will be applied;
- A guiding principle that sanctions do not unfairly impact fans, but instead target club ownership/ leadership/ management;
- Full consideration and involvement of fan representation in any sanctions process.

¹ Though we would further strengthen the Bill in this regard with the following amendment, adding (iv)

Clause 7(2):

"(2) The IFR must have regard to the desirability of exercising those functions in a way that avoids any—
(a) effects on the sporting competitiveness of any regulated club against another regulated club;
(b) adverse effects on the competitiveness of regulated clubs against other clubs;
(c) adverse effects on financial investment in English football;
(d) *unfair distribution of funding within English football*"

Enhancing Fan Engagement

On fan engagement, it is notable that the word “fan” only appears 16 times in the entire 140-page Bill. We believe it is critical that the IFR understands the perspectives of supporters and the implications its work can have on them, football clubs, club employees and local communities as it carries out its duties. The Bill is currently silent on how the IFR will engage with supporters, how issues can be referred to it with no clarity on how it will develop or measure effective supporter engagement.

In order to ensure that the interests of supporters are adequately factored into the governance and strategic decision making at the highest levels of the game, the Bill should ensure² that the IFR includes:

- Independently elected fan representation on the IFR Board and Expert Panel, who should not be a club director, employee or appointee;
- Independently elected fan representation on the Premier League and EFL Boards and EFL who should not be a club director, employee or appointee;
- Implementation of published standards and guidance on effective fan engagement and representation, developed in consultation with independent fan groups which specifically precludes clubs being able to force a director, employee or appointee on their Fan Advisory Board.

Whilst most Premier League clubs have now set up, or are in the process of setting up, Fan Advisory Boards, very few have independent groups. It is unacceptable for clubs to foist club directors or employees on such groups, or to dictate who should chair them. The PL reports that it speaks to fans regularly through the FSA, but we believe it should also be speaking to fans through fan groups who are not funded by the PL, so this should also include independent Fan Advisory Boards.

We thank you in advance for considering the issues we have raised above, which we believe can help ensure the right safeguards are in place to protect our beautiful game, a game that is enjoyed by millions across the country. The draft Bill falls short of the pioneering aspirations set out in the Review by Dame Tracey Crouch MP. We can't let this opportunity pass and look for your support to ensure that the regulator has real teeth and the power to rebalance self-interest and deliver in the interest of all fans.

Everton Fan Advisory Board
Sir Brendan Barber, Rt Hon Andy Burnham, Dame Sue Owen & Peter Reid

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² Perhaps by amending **Clause 8 to add (iv)**

"The IFR's regulatory principles are that—

(a) it should use its resources in the most efficient, expedient and economic way;
(b) it should, so far as reasonably practicable, co-operate, and proactively and constructively engage, with
(i) clubs,
(ii) owners, senior managers and other officers of clubs, and
(iii) competition organisers; *and*
(iv) *independent fan advisory boards"*

COMMENTARY ON HOW THE PREMIER LEAGUE ARE UNFIT TO JUDGE BREACHES OF THE PSR REGIME

Desirable attribute for PSR sanction	Have the Premier League (PL) demonstrated?	Comment
<i>predictable</i>	<p>No.</p> <p>No published guidelines other than a 9-point deduction³ on entering administration.</p> <p>In the current season 5 different independent commissions have ruled on 3 cases with different conclusions each time.</p>	<p>Everyone knows what happens after two yellow cards; no-one knows what happens with a PSR breach. The EFL do at least have “sentencing guidelines”⁴, the PL do not, claiming the process is handled entirely independently.</p> <p>An independent regulator could set and publish guidelines in advance, that could still be flexed for individual circumstances.</p> <p>We would like to see the IFR issue sentencing guidelines, akin to those issued by the Sentencing Council for use in English courts. Any club charged with a PSR breach should know the range of sanctions they can expect, and whether the alleged breach is considered suitable for a sporting, or financial sanction, so that they can prepare for a fair hearing. The PL argue the current arrangement was voted for by clubs. This isn’t entirely true. Clubs voted, in 2013, for there to be PSR rules, but they did not, specifically, vote for the process by which breaches would be adjudicated, or sanctioned.</p>
<i>transparent</i>	<p>No.</p> <p>The PL Board agreed guidelines at a private meeting on 10 August and have refused to publish the minutes. They later claimed these were not guidelines, just their views.</p>	<p>The PL have been asked several times for these minutes⁵. It is unacceptable not to set out their thinking nor to publish the PL witness statements. For the PL even to advance views was tantamount to an abuse of process; their views were ruled out by the first Commission as infringing the Commission’s powers & independence.</p> <p>Any guidelines should be contained within the PL Handbook. This runs to 700 pages, yet has no such entry. At the 16/1/24 DCMS select committee hearing, PL CEO Richard Masters described the process as “unclear, but fair”.</p>
<i>principled</i>	<p>No. The PL took no account of the impact on fans & local community, nor of the additional financial impact of</p>	<p>The PL focus has been on Club owners, with little regard for the views of fans, nor the impact on them, the local community and businesses; yet the driver of the</p>

³ PL rule E37

⁴ The EFL tariff is a 12 point deduction for losses of £15m(38%) above the permitted £39m 3-year loss. The points deducted are scaled back from 12 for smaller excess losses, eg a loss of £6-8m (15-20%) above the £39m would get a 6 point deduction, a loss of £4-6 m above £39 m (10-15%) would get a 5 point deduction. Other factors can then be taken into account to vary the scale of the deduction at the margin, or indeed the timing.

⁵ by Andy Burnham on 23 November 2023 & 2 December 2023, by Sir Brendan Barber, Mark Carney & Dame Sue Owen on 12 January 2024, and by Dame Caroline Dinenage, Chair of the DCMS Committee on 26 January 2024.

	<p>sanctions. This contradicts the guiding principles of the Fan Led Review, which asserts that sanctions should not unduly affect fans.</p> <p>Nor should the rules generate perverse incentives for creative accounting to avoid breaches.</p>	<p>legislation to reform football governance is “to put fans right back at the heart of football”.</p> <p>The independent Everton Fan Advisory Board were able to submit a witness statement at the Everton appeal⁶. This should be standard practice for independent supporter’s groups.</p> <p>Creative accounting stories abound; one club apparently selling a hotel to themselves and billing the owner £1m per year for their corporate box.</p>
<i>proportionate</i>	<p>No.</p> <p>A relatively small breach of £19.5m (18.6%) above the PL permitted threshold of £105million over 3 years was recommended for a bigger, sanction than the much more serious offence of entering administration.</p> <p>Fines, not sporting sanctions should also be considered for small breaches.</p> <p>The very serious offence of 6 clubs trying to break away into a Super League only attracted a small fine.</p>	<p>Such recommendations inevitably invite expensive appeal cases. Everton’s appeal reduced the initial draconian 10-point sanction to 6 points.</p> <p>Sporting sanctions are also effectively fines (loss of points money & expensive legal costs) which can exceed the amount of the PSR breach itself⁷. Clubs pay the PL’s legal costs, so it follows that if they are successful (or partly successful) in their appeal, they should be able to claim back all (or part of) those costs, and those costs should be excluded from future PSR calculations.</p>
<i>fair / consistent</i>	<p>No.</p> <p>Everton received a bigger sanction for a £19.5m (19%) breach even after appeal than Nottingham Forest did for a £34.5m breach (33%).</p> <p>Both clubs were sanctioned for single</p>	<p>Again, there is a feeling of double standards with clubs regularly at the top of the PL getting favourable treatment. The PL even referred to “big” and “small” clubs in Parliament. One reason given for Everton receiving a higher sanction than Nottingham Forest was that the latter had cooperated with the PL in the investigations, whilst they had said Everton “did not act in good faith”. This was found to be untrue at the appeal</p>

⁶ <https://efc-fanadvisoryboard.com/wp-content/uploads/2024/01/FAB-Witness-Statement-Only.pdf>

⁷ Everton’s 6 points deduction costs £12-18 million in lost league place money, and together with legal costs, including those of the PL, exceed the loss of £19.5 million which is being punished! This financial penalty is compounded as attracting commercial investment and sponsorship becomes harder for any club with the spectre of sanctions hanging over them.

	offences ⁸ whereas cases with multiple alleged breaches have not, to date.	against the first charge and by the commission on the second charge. ⁹
timely	Partial. Two clubs were charged in March 2023, but one case has still not been heard. Everton's 2 nd offence & Notts Forest 1 st were addressed in the current season.	The PL told Parliament, in January, that they knew the date when the other hearing would take place, but refused to say what that date was, and still have not released that date. Clearly everyone wants the outstanding process to be treated fairly and consistently. In future all cases should be addressed in the season the alleged offences occur and charges are made.

⁸ Everton's second offence was a breach of £16.6m (15.8%) though this included 2 of the years already sanctioned

⁹ Para 256 of the second commission on Everton concluded "*In our view, many if not most of the criticisms levelled against the Club in this respect by the PL are unwarranted, overstated, or both.*"