

FAIRGAME

FOOTBALL GOVERNANCE BILL OWNERS' & DIRECTORS' TEST



POSITION PAPER

OVERVIEW

One of the key aspects of the Football Governance Bill is the introduction of a new Owners' and Directors' Test (OADT). Fair Game believes that the Bill is a significant step forward but that it needs to be strengthened in a number of areas. In putting together this paper, Fair Game has had input from Robbie Newton at Human Rights Watch; Bart Huby, John Parnis England, Jon Wolff, and Ashley Mould from LCP and Greg Campbell from Campbell Tickell. However, the views expressed in this paper are Fair Game's own.

What the Bill Needs to Achieve

- Ensure owners and directors are fit and proper people to own and run football clubs.
- Ensure the financial sustainability of individual clubs and of the football pyramid.
- Improve transparency and public confidence in decisions by the Independent Football Regulator (IFR) regarding prospective and current owners of football clubs.



1. FIT & PROPER PEOPLE

When issuing its White Paper last year on Reforming Football Club Governance, the Government acknowledged the fundamental problems of poor governance and financial mismanagement at many clubs. The IFR will implement a Code of Governance for English football clubs, to bring them in line with best practice in all sectors. Fair Game has worked with its member clubs to set out its recommendations, and we urge the Government to take them forward.

The IFR should set out a clear expectation that all owners and significant shareholders (i.e. above a specified ownership level) should abide by its Code of Governance and ensure that prospective owners should take this into account in their business plans.

Turning to the Bill, it addresses the issue of Fit and Proper People with two tests:

- A fitness test (owners and directors) to assess an individual's integrity, honesty, financial soundness and, in the case of directors, competence, to ensure they are a suitable custodian to run or own a football club.
- A source of wealth test (owners) to mitigate against the risk of illicit finance in football.

Summary of current bill position

- Expands disqualification criteria for fitness and propriety of prospective owners.
- Introduces the concept of 'serious criminal conduct' which includes a wide range of offences from organised crime to environmental crimes.
- Assessment also considers if an individual is subject to UK Government sanctions.
- Broadens existing criteria which previously focused on dishonesty-based offences.
- IFR may make a negative finding based on a lower standard of proof compared to criminal courts, even for acts conducted overseas.
- There is a potential discrepancy where someone who is acquitted in an English court may have an advantage over someone not charged elsewhere.
- Standard exclusions include being subject to regulatory proceedings worldwide and involvement in court proceedings, including civil or family courts.
- The practical implications of these exclusions, such as being sued, are not yet clear.
- IFR is required to consider UK Government trade and foreign policy objectives, which can impact the eligibility of prospective owners.
- Provision may lead to disqualification of owners from countries with which the UK Government has strained diplomatic relations, but could favour owners from countries with good relations, such as Saudi Arabia.
- IFR explicitly prohibited from assessing fitness solely based on connections to a nation-state, introducing political considerations into ownership assessments.



Strengthening the OADT

Ruling out State Ownership

- **IFR should prohibit ownership of football clubs by nation-states. It is not sustainable to be owned by a state as the Government could at any point change its attitude to them, for political or economic reasons.** This shares similarities with the owner-benefactor ownership model in which clubs become dependent on the emotional and financial commitment of an individual or small group of investors. If these investors are closely connected with the Government of a nation-state, it makes the club increasingly vulnerable to geopolitical developments.
- This can be seen from the example of Chelsea when sanctions were imposed on Roman Abramovich following the war in Ukraine, due to his close ties to the Putin regime. These sanctions froze Abramovich's overseas assets, which included Chelsea, and prevented him from funding the club, to the extent that it had to get the permission of the UK Government to open the club shop and to sell tickets. Although Abramovich was not officially connected to the Russian state, he was sufficiently closely connected to them due to the source of his wealth.
- Section 37(2) states that the IFR 'must' take into account the UK Government's trade and foreign policy objectives when making an assessment as to the fitness and propriety of an owner. This could allow it to disqualify a prospective owner from a country with which the UK Government does not have good diplomatic relations. But could also waive through owners with which the UK Government maintains good relationships such as Saudi Arabia.
- It further prevents IFR from making a determination as to fitness only on the grounds of connection to a nation-state. This further brings political considerations into the assessment of fitness and propriety when considered alongside section 37(2).
- One potential avenue to address this is through a relatively simple amendment to the National Security and Investment Act 2021 to add the acquisition of a professional football club within the UK as a protected industry, requiring the transaction to be notified for assessment by the UK Government before approval.
- Alternatively, in the USA, since 2022 the NFL currently has a rule prohibiting overseas investors from owning more than 20% of a team, and also prohibits sovereign wealth funds from owning teams. A similar provision could be implemented here which may be an alternative method of regulating nation-state influence on regulated clubs.
- **If Section 37(2) is not removed, there must be a transparent process from the IFR to understand what a 'good relationship' with a nation-state within football entails. This process must include an assessment of that nation-state's human rights record, notably its adherence to the rule of law, freedom of the press, and respect for LGBTQ+ rights.**

Addressing Human Rights

The Bill fails to make any direct mentions of human rights, but implied references through the requirement of the IFR to consider the UK Government's trade and foreign policy objectives, which may have crossover into considerations on nation-state ownership, particularly in authoritarian regimes where owners are more likely to have state backing and may be connected to human rights abuses.

The UK pledged in 2016 to implement the UN Guiding Principles on Business and Human Rights (UNGPs), a set of guidelines for states and businesses to prevent, address and remedy human rights abuses where they occur in business operations, across all its Government departments. This made the UK the first country in the world to officially implement the principles through its National Action Plan. The UNGPs include a responsibility to conduct due diligence to identify any risks of contributing to human rights harm.

Since the publication of the Principles in 2011, they have quickly become the authoritative framework for addressing human rights in sport, having been adopted by major sports governing bodies, including FIFA and the IOC in recent years. The Government should follow-suit and ensure that the IFR is compliant with the UNGPs across its entire sphere of influence.

Clarifying the source of income

The Bill states that the IFR must determine whether the funds have come from serious criminal conduct. This is likely to involve a comprehensive review of an applicant's business interests and where their wealth came from. The Premier League currently undertakes this assessment through enhanced due diligence checks undertaken by bodies such as the Financial Conduct Authority and the National Crime Agency.

The Bill should clarify that the practice of making a comprehensive review of an applicant's business interests and sources of wealth should continue and will apply to all clubs that will fall under the IFR's remit as clubs at the lower end of the football pyramid are often at the greatest risk of unsuitable owners.

<https://www.atlanticcouncil.org/blogs/menasource/gulf-states-soccer-sports-sovereign-wealth-fund/>



2. FINANCIAL SUSTAINABILITY

Summary of current bill position

Clubs' reliance on owner funding is a substantial barrier to the game being financially sustainable. Ensuring that there is a legal obligation on owners and / or other parties to continue to support a football club would therefore be a significant step to reducing the likelihood of clubs getting into serious financial difficulties and, in extreme circumstances, ceasing to exist.

To ensure the financial sustainability of clubs, prospective owners must have sufficient financial resources. They must also provide the IFR with their proposed plan to operate the club, an estimate of the costs to do so, how those costs will be funded and the source of such funding.

- Assessment of prospective club owners involves evaluating their financial soundness.
- This includes ensuring they have adequate funds to operate the club, and verifying that these funds haven't been acquired through serious criminal activities.
- Assessment involves a thorough review of the applicant's business interests and the source of their wealth.
- The new test also includes standard criteria regarding bankruptcy or insolvency, prohibiting applicants who have been subject to such proceedings.
- The Bill removes the requirement in existing tests for a minimum number of bankruptcy events, unlike the current tests.
- The Bill treats new and existing owners differently. New owners undergo automatic assessment, while existing owners are assessed only if doubts arise.
- Affirmative determinations on suitability remain until an owner leaves, raising concerns about oversight.



Strengthening the OADT

Current Owners vs New Owners

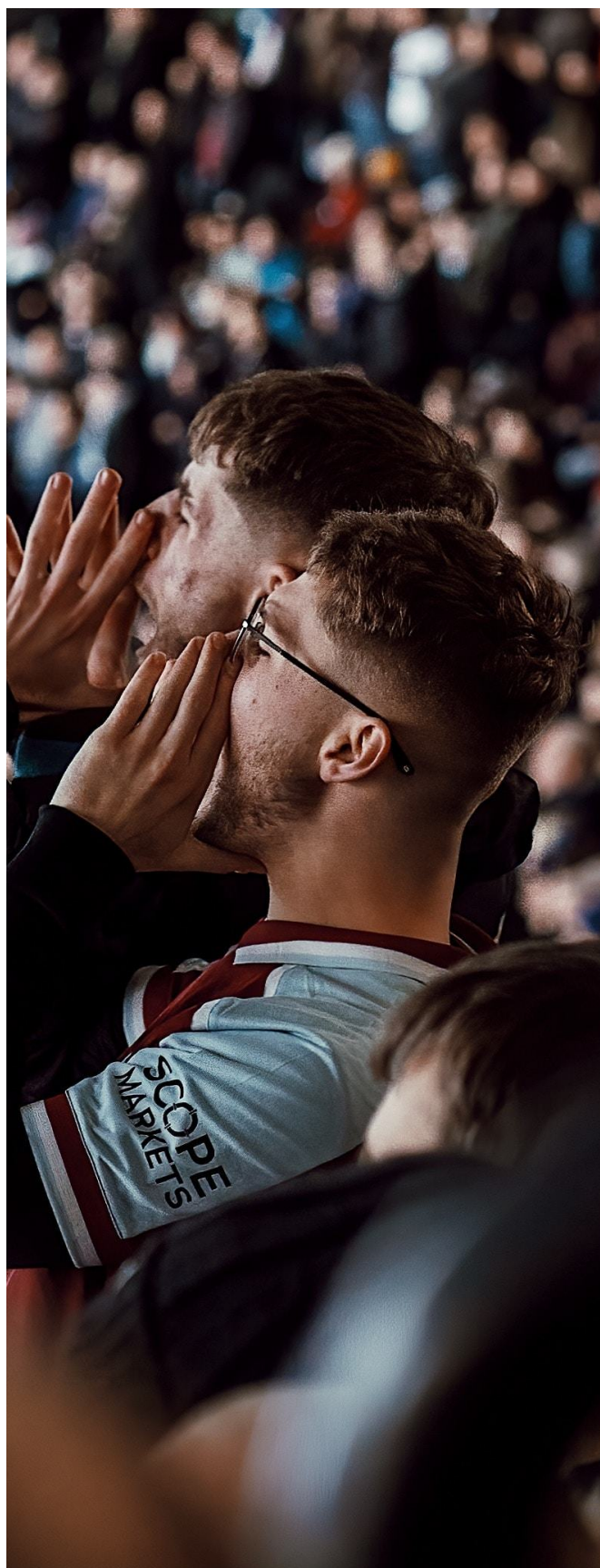
The Bill should make it clear that the requirements for financial sustainability should apply to current owners as well as prospective ones. It should commit the IFR to an early review of how this would apply in practice, covering issues such as frequency of reviews, triggers for reviews, adjustment periods for clubs not in compliance and how it would publicise its findings.

We are mindful that this is likely to result in material problems for a considerable number of clubs and/or their owners. Part of the IFR's early review of how the new regime would apply to existing owners should include transitional provisions for existing ownership arrangements to give them adequate time to adapt to the new requirements.

In addition, the IFR needs to set out how it would address a situation where it has disqualified an existing owner, who is unwilling or unable to sell their shares. This would leave the club unlicensed and unable to participate in the competition in which it plays - not the fan-focused outcome that the IFR is intended to seek. 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.

It should commit to a mandatory annual assessment of clubs participating in European competitions due to the increased reputation and profile of those clubs.

For all other clubs, the IFR should review compliance every three years. In interim years, it should adopt a risk-based monitoring approach, with clubs providing annual updates, with the IFR investigating further where it has concern.



Commitment to provide ongoing financial support

To ensure financial sustainability, two main features should be central to an effective OADT framework. They would provide the necessary protection for clubs from key issues such as lack of financial planning, irresponsible levels of financial risk and owner abandonment.

The IFR should require all owners to provide a forward-looking financial business plan for how the football club will be run that is robust and shows how downside scenarios would be managed. Where owner financing is expected to be required to cover losses (either on an ongoing basis or in some downside scenarios), the source of such funding should be documented, clear and unambiguous.

This business plan should cover a minimum three-year period. Where investment in the club is part of the business plan, the sources of funds for this should be made clear. Where the investment is significant, the IFR should request an independent report outlining the affordability of the committed investment for the owner / company. It should encourage football clubs and owners to seek appropriate advice when developing business plans.

Business plans should test multiple plausible scenarios (e.g. relegations / promotions), and include 'worst case' scenario planning, and critically how such adverse events will be supported. In considering the viability of a business plan, the IFR should not give credit to unreliable income streams such as potential player sales.

Given the many examples of significant problems caused by owners ceasing to provide funding, the IFR should create a legal obligation on owners to provide ongoing funding. This could take multiple forms (e.g. legal guarantees from the owner, suitable strong related parties and / or legally enforceable security over physical assets). In addition, an owner should be legally required to provide the funding that it has committed on an ongoing basis (as set out in the business plan). Any material deviation from this plan should be agreed with the IFR.

At the same time, it is critical that the IFR focuses its resources on potential or existing owners where the risks are higher and avoids imposing unnecessary burdens on well-run clubs. Legal commitments for each should be proportionate to the IFR's analysis level of risk. In situations where an owner plans to run a high level of business risk, or there is less certainty / clarity over the ability of an owner to meet its committed investment, the IFR should consider negotiating appropriate contingent legally binding support.

The IFR should require all owners to make it clear which individuals, corporate entities or other organisations have a legal obligation to support the finances of the football club. If any party is relied on to demonstrate the financial ability to support the club's business plan, there should be a legal obligation for that party to underwrite such funding support.

Transparency of ownership

Increasingly, football clubs are being acquired by organisations with large and complex group structures. The IFR should therefore require prospective owners to provide:

- full transparency on the ownership structure, without any ambiguity over who ultimately owns and / or controls the football club.
- proof of sources of funds, which correlates directly with both the initial purchase price and the required future funding / investment as set out in the accompanying business plan.

3. TRANSPARENCY OF THE IFR

The IFR should seek to publish the outcomes of its regulatory approval process, and report publicly on situations where it has intervened. This could include publishing information received in an investigation, which demonstrates the impact on an owner of reckless behaviour. This would promote good governance by acting as a deterrent. However, it should be mindful that information with market or commercial sensitivity should be treated with care.

The IFR should publish an annual summary of its reviews of existing owners.

The overall process of reviewing current and prospective owners should be reviewed annually by the Culture, Media and Sport Select Committee, with its analysis and recommendations published.



CONCLUSION

Fair Game believes that the new Owners' and Directors' Test, proposed in the Independent Football Regulator Bill, alongside its other provision, has the potential to fix the many urgent problems facing our national game. This paper has set out a number of recommendations which will ensure the new Owners' and Directors' Test delivers what football needs.