



Inquiry into English Football and Its Governance

This document contains the submission of UEFA to the "Inquiry into English Football and its Governance" currently being held by the UK All Party Parliamentary Football Group.

The document is structured according to the terms of reference of the inquiry and addresses the issues contained within the terms of reference: it does not address other issues of interest to UK parliamentarians and/or English football. All comments are an objective, dispassionate, external view on the relevant subjects and are intended to be as constructive as possible.

Terms of Reference

The terms of reference of the inquiry are as follows:

- 1. The inter-relationship between the Premier League, the Football League and the Football Association*
- 2. Disparities in the standards of governance between the Leagues*
- 3. The representativeness of the Leagues and the FA*
- 4. The application of the 'fit and proper person' test*
- 5. Dispute resolution between clubs*
- 6. The ability of existing governance structures to regulate the increasing demands of the game*
- 7. The probity of decision-making processes*
- 8. The ownership of English football clubs*

UEFA

UEFA, an association of 53 national associations, is the governing body of European football and organises competitions for national teams and clubs. It was formed in 1954 and is based in Nyon, Switzerland. It has a structure based on representative democracy whose main organs are the Congress (legislature) together with the Executive Committee and the President (executive). In addition, there are independent disciplinary bodies to carry out (sports) judicial functions. UEFA also has a series of consultative committees and bodies which advise the Executive Committee.

The (English) Football Association is a member of UEFA (and FIFA, the governing body of world football). As part of its decision-making process, UEFA gathers opinion not only from the FA (on behalf of English football as a whole) but also from European representative bodies of the different stakeholder groups who are organised on a European level, for example:

- clubs (via the European Club Association [ECA] which represents the top clubs in European football)
- leagues (via the European Professional Football Leagues [EPFL] which represents the top leagues in European football)
- players' unions/associations (via FIFPro Europe which represents the players' unions/associations in European football)

UEFA is also currently supporting the attempts of representative national supporter groups (like the Football Supporters Federation [FSF]) to create their own



representative body on a European level. There are also other stakeholder groups who also need to be consulted (coaches, technical staff, referees, etc). In addition to The FA, UEFA also has direct contact with other main English professional football stakeholders such as the Premier League, Football League, PFA, LMA, FSF, etc.

1. The inter-relationship between the Premier League, the Football League and the Football Association

The successful model both in football and other sports in Europe (but also throughout many parts of the rest of the world) is that of having a single governing body for each national territory – namely the national association (or federation). The primary roles of national governing bodies/associations normally include:

- to develop, protect, promote and regulate the game at all levels (men/women, professional/amateur, adults/children, etc.) in their country,
- to organise (or oversee the organisation of) competitions and to run the national team, and
- to provide a voice for football (as a whole, taking into account the views and interests of all relevant stakeholders).

While perhaps not perfect, this model has proved itself to be the most efficient at developing sport across the world. There are many reasons for this and this paper can not go into them. Alternative paths have been followed where a sport fragments: the most common example given is that of international boxing, where one governing body became two, two became three and so on.

The role of a league in European football is defined as follows: " *'League'* : a combination of clubs within the territory of a Member Association and which is subordinate to and under the authority of that Member Association." (UEFA Statutes, Edition June 2007). In practice, and so that football can develop in a coherent and balanced way, it is vital that the rights and duties of professional leagues be clearly set out in the statutes (constitution) of the relevant national association. This is so the national association can retain overall control and direction of the sport (for example, through being able to approve/veto any statutes/regulations of a league) in line with the principle of *unité de doctrine*, and it is vital that the national association has both the formal and the de facto authority to protect the interests of the sport as a whole.

The main role of a league organisation is (and should be) to organise a specific competition (or competitions). It may also be the case that a national association delegates certain tasks to a league, however the national association should retain overall control in order to ensure balanced development of the sport in question. It is self-evident that a national association can not (and would not wish to) organise the fixture lists (for example) or perform all the necessary administrative duties for every league across the land. However, the national association, as governing body, needs to set a framework to ensure coherence across the different levels of the sport and to avoid the unnecessary duplication and bureaucracy which would inevitably result from too many parties being involved in governance issues. For example, as regards disciplinary sanctions each league should have the competence to deal with disciplinary issues up to a certain degree of gravity. Nevertheless, to ensure



coherence across the sport and the country, uniform sanctions should be fixed for certain types of offences (if a player attacks a referee, for example, the sanction should be the same for a player in the highest league as in the lowest league). Furthermore, at the highest professional level, it can be dangerous for professional leagues to become involved in certain tasks such as refereeing or certain disciplinary matters. Both FIFA and UEFA policy is that professional leagues should not be involved in refereeing (appointments, etc), and that this should be a service provided by the national association. Another key subject is youth development – whilst it is clear that professional clubs are involved in youth development, the overall framework and control of development policy and technical matters should be with the national association for all levels of football.

Therefore, whilst the theory of having three or more competing governing bodies – each trying to expand its own area of competence as far as possible – in a particular sport in a particular country may bring some benefits (e.g. through competition between the different bodies), such benefits are relatively minor and the net effect of having competing regulators in the same territory is generally inefficient and detrimental to sport. For example, it tends to result in confusion, new levels of unnecessary red tape/bureaucracy, a general lack of uniformity and disparities in standards of governance between leagues, all of which create fragmentation and incoherence in key policy areas (such as youth development or refereeing). Consequently, UEFA is of the view that there is (and should be) a single governing body responsible for English football and that is The Football Association. This in no way detracts from the fact that the Premier League and The Football League organise excellent club competitions and are obviously the two most important leagues in terms of audience size and income generation in England. As such, they have a particular position which needs to be taken into account.

It might be asked whether the Football Association could be further strengthened in its role as regulator and governing body in England and, in this respect, it may be noted that England (and the rest of the UK) is unlike many other European footballing nations in that there is currently no “enabling” sports legislation which: (a) defines the limits of governmental intervention; (b) eliminates the risk of unnecessary inefficiencies and bureaucracy being created through different regulators; and (c) empowers the national governing body to fulfill its functions.

In summary, the inter-relationship between the FA and the two main professional leagues should be the FA as national governing body and overall regulator responsible for the sport; and the two main professional league organisations responsible for organising the top-level club competitions in England.

2. Disparities in the standards of governance between the Leagues

It is the experience across European football and sport that, almost without exception, breakaway leagues do not help the development of the sport as a whole (although they may benefit a small interest group). Where there are breakaway leagues the inevitable result is disparities in the standards of governance which, because this means (by definition) a degree of incoherence and fragmentation, is generally not good for the development of the sport and results in an increase in disputes as well as unnecessary bureaucracy. In this connection, having, for



example, three separate types of "fit and proper persons test" (as currently exists for the top levels of English football) would appear to be an example of the existence of different layers of regulation which may complicate the governance of English football and not serve the best interests of the game.

The FA has improved governance in various areas, for example, as regards agents or child protection, and other countries are looking to England to learn in this respect. The Football League has introduced many innovative good governance practices for the second, third and fourth levels of professional football in England. Moreover, in certain areas (for example as regards salary caps), The Football League is already implementing measures that are being discussed elsewhere in European football. The Premier League is a leader in other ways (generating revenues, safety and security at matches, etc). It appears that there are disparities in terms of transparency as well, as the different organisations have different approaches towards the value of transparency. In this respect we believe that transparency is a key element in improving good governance. Thus, for example, although not required to by Swiss law, UEFA publishes on www.uefa.com detailed audited accounts which go way beyond the financial information available on many publicly listed companies.

To conclude, ensuring that there is a single genuinely empowered governing body per sport per country should reduce possible disparities in standards of governance.

3. The representativeness of the Leagues and the FA

As UEFA understands it, the representativeness of the FA and the Leagues (assumed to be the Premier League and the Football League for the purposes of this heading) is as follows:

- The FA represents its members, namely its shareholders, the members of its Council (county FAs, professional leagues, players, coaches, fans, etc.) and the constituents of the FA Board, namely the county FAs and the professional leagues (together with an independent Chair and CEO),
- The Premier League represents the interests of its members, namely the 20 Premier League clubs, and
- The Football League represents the interests of its members, namely the 72 Football League clubs.

However, it is not the sole task of these organisations to be "representative" in a narrow sense: they also have other roles attributed to them (e.g. to organise a competition in the case of the professional leagues, to regulate English football or set youth development policy in the case of the Football Association, etc.).

Actors in professional football are many and varied – the national association, clubs, leagues, players, coaches, supporters, referees, agents and so on. This is reflected in the structures of the decision-making bodies in many of the other main footballing nations where the relevant board will often have representatives of players, coaches and referees, as well as technical staff in some cases – all of whom are technical (football) people. The lack of such representatives in the relevant bodies in English football may, almost by definition, lead to discussions focused more on commercial



and football-political issues and less on football issues. For example, in some countries it would be difficult to imagine the national technical director not being on the board of the national football association. One inclusive model from continental Europe is to have the board of the top Professional League with representatives of clubs (from the top two divisions), players, coaches (managers), non-playing club employees, referees, the national association and independents (the national technical director may attend the league board meetings, albeit with no voting rights). Lastly, it may be noted that, in England, organisations such as the Professional Footballers Association, the League Managers Association and the Football Supporters Federation are both representative and respected.

4. The application of the 'fit and proper person' test

There are two main observations here. The first observation is that, during the ENIC case in 1999 heard by the Court of Arbitration for Sport in Lausanne the concept of a "fit and proper person" test was evaluated by the court and considered to be impractical for application to owners or officials of clubs participating in UEFA club competitions. The CAS considered such rules to be inherently subjective and very difficult to apply in practice on a Europe-wide level. To our knowledge, such rules do not exist in other European countries. Nevertheless, the concept appears to be worthy of further consideration and could have the potential for a positive impact if it can be effectively enforced.

The second observation is that, if there is to be a "fit and proper person" test operating in the top levels of English football, then it should be applied in a similar manner by a single regulator (the governing body) with overall competence in the matter. Otherwise, there is a risk of excessive and inconsistent regulation designed to tackle the same problem.

5. Dispute resolution between clubs

Where not already provided for by the relevant rules of the national association (and/or the relevant league), as a general principle UEFA favours arbitration as a means for the resolution of disputes, as long as such bodies are independent and recognised as such by the relevant national legislation. There are many reasons as to why arbitration is desirable as an alternative to recourse to civil courts such as, for example: speed, cost, expertise, consistency and finality.

6. The ability of existing governance structures to regulate the increasing demands of the game

This point has been addressed already under points 1 to 4. However, it is worth reiterating that the UK/England is one of the few main European footballing nations where there is no legislation to empower national associations to: run their sports, to set the limits of government interference, to ensure coherence in key areas (e.g. youth development), to eliminate the excessive red tape caused by duplication of regulatory tasks, and so on. Such legislation is relatively simple to draft and implement and can help to protect different sports from the unwanted side-effects of the hap-hazard way that sport has developed – by helping to ensure that sporting objectives are prioritised for example.



In certain countries (including England), the absence of a proper legislative framework means that the control and development of top-level sport can simply end up being the outcome of pyrrhic turf wars between sports bodies, with generally negative results for the sport and country in question. It is clear that national parliaments and governments should not run sport – sport should run itself – but the experience of many other countries is that the parliament and government can help sport to run itself, in particular by the adoption of appropriate “supporting” legislation and not simply sitting by as sports develop as a function of the outcome of turf wars.

There appears to be a perceived paradigm in English football whereby the "professional game" is considered to be separate to The FA – in fact the "professional game" is part of The FA (e.g. represented by five board members). This paradigm constitutes a problem since trying to spin off the professional game from the rest of the game is, in our view, equivalent to a US-style split with no structural link to the grassroots and in direct contravention to the European sports model which integrally links the professional game with the grassroots (and which lies behind much of the success of football itself). It is impossible to have "amateur game youth development" or "professional game youth development" – youth development happens in both, and for youth development to be successful it needs to be coherently overseen on a national level in order to be effective (as all the countries with successful youth development records illustrate).

7. The probity of decision-making processes

UEFA has no specific information on which to comment under this heading.

8. The ownership of English football clubs

All governing bodies, where they are able, have a duty to try to ensure that football develops in a balanced way across the territory that they cover – on UEFA's level, this means to consider whether it is helpful to the balanced development of European football that investment and development funds go to the parts of Europe where they are least needed.

While there is no uniform European concept or tradition regarding ownership of football clubs, the fan ownership model seen in certain parts of Europe (e.g. at clubs such as Barcelona and Real Madrid) has many positive features, not least the stronger intrinsic link that this structure creates with local and regional communities and the relative degree of stability that may be achieved as a result of this. Whilst such associative structures bring their own set of challenges, it cannot be denied that such systems do not permit clubs to be “bought and sold” or otherwise “traded”, as such clubs will always belong to their fans. For these reasons, UEFA has supported the Supporters Direct initiative in the UK and is currently in the second year of a project looking at the feasibility of rolling out the excellent work of Supporters Direct UK across the rest of Europe.

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