

# **Sports Law Essay Competition 2025**

## **Is there a place for the statutory Independent Football Regulator in governing club finances or are the present regulations set by the Premier League and English Football League sufficient?**

Despite the increasingly commercial and commodified nature of modern football, it is clear that clubs within the English pyramid (*Premier League, EFL and National League*) should still primarily serve a sustainable purpose. The expulsion of Bury FC from the Football League in 2019 and the collapse of Macclesfield Town in 2020 act as two extreme examples of how poor financial stewardship can lead to a football club's demise.<sup>1</sup> At present, opaque ownership structures fail to prevent financial mismanagement, permitting owners to hide behind corporate vehicles that obstruct financial auditing.<sup>2</sup> This essay will examine both the shortcomings of the current 'self-regulatory' model of governance and the potential benefits of an independent regulator, ultimately arguing that external regulation is crucial for securing the long-term sustainability of English football.

### **The State of Men's Football: A Need for Regulation**

In today's increasingly unequal and divided socio-economic climate, the football club prevails as a vital pillar of community.<sup>3</sup> However, the English game has become increasingly dominated by financial consortiums that prioritise profit over tradition. A prominent example of this absentee approach is the Glazer family's ownership, beginning with their leveraged buyout of Manchester United in 2005. This takeover faced fierce opposition from fans, who viewed burdening the club with an insurmountable level of debt as a calloused move that

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<sup>1</sup> K Maguire, 'Fan-Led Review of Football Governance: A Kick in the Right Direction or a Maoist Collective Power Grab?' (2022) 93(1) *The Political Quarterly*.

<sup>2</sup> P Duncan and N Lord, 'Fit and Proper? Analyzing the Potential for Illicit Activity through English Premier League Club Ownership Structures' (2024); H Nelen, 'Ostrageous: How Greed and Crime Erode Professional Football and We All Look the Other Way' (2022) 145.

<sup>3</sup> EFL, 'Measuring the Impact of EFL Clubs in the Community: 2022-24 National Report' (EFL 2024).

prioritised economic expansion over collectivism, sporting success and long-term sustainability.<sup>4</sup> Supporters felt that the deep bond they had with their team was being reduced to a simply transactional relationship - more like a consumer buying a product than a fan supporting a club.<sup>5</sup> In protest, a group of disenfranchised fans established FC United of Manchester in 2005. Despite sitting in the seventh tier of English football, this breakaway club has remained faithful to its sustainable founding principles, operating as a non-profit organisation and becoming the first football club in the UK to be accredited as a '*Living Wage*' employer.<sup>6</sup> The Glazers' approach exemplifies the danger of treating clubs as potential business ventures rather than cultural institutions, emphasising the need for stronger regulations to prevent similarly exploitative ownership regimes. Despite Manchester United's prevailing status as one of the world's most profitable teams on paper, the financial strain imposed by its owners in 2005 continues to affect how the club is governed today, ultimately affecting on-field performance.<sup>7</sup>

Beyond absentee ownership, the rise of state-backed '*sportswashing*' is another pressing issue in the modern game. This '*propagation of soft power*' is often used to deflect attention away from political controversies and human rights violations.<sup>8</sup> Nowhere is this more evident than in the Premier League, where the recent success of Manchester City (owned by the Abu Dhabi United private equity group) and Newcastle United (backed by Saudi Arabia's Public Investment Fund) can be significantly attributed to the vast finances they have at their

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<sup>4</sup> A Brown, 'Not For Sale'? The Destruction and Reformation of Football Communities in the Glazer Takeover of Manchester United' (2007) 8(4) *Soccer & Society* 614.

<sup>5</sup> G Mellor, 'The Janus-Faced Sport: English Football, Community and the Legacy of the Third Way' (2008) 9(3) *Soccer & Society*; A King, 'New Directors, Customers, and Fans: The Transformation of English Football in the 1990s' (1997) 14 *Sociology of Sport Journal*.

<sup>6</sup> FC United of Manchester, *Sponsorship & Partnership Brochure 2024/25*.

<sup>7</sup> M Critchley, 'The Glazers' Man United Ownership by Numbers: The Debt, Dividends and Deals' *The Athletic* (2023).

<sup>8</sup> K Früh, A Archer, and J Wojtowicz, 'Sportswashing: Complicity and Corruption' (2022) 17(1) *Sport, Ethics and Philosophy*.

disposal.<sup>9</sup> While economic influence has always been a useful asset in sporting success, the rise of state-backed investment in football has introduced some serious ethical concerns about the regimes behind these funds. Manchester City's ownership model has been widely dismissed as an attempt to suppress the UAE's appalling human rights record, while Newcastle United's Saudi-funded takeover has been criticised as a distraction from geopolitical issues, like the war in Yemen and the controversial murder of journalist Jamal Khashoggi.<sup>10</sup> The lack of strict regulations in English football allows such ownership groups to operate with minimal ethical scrutiny, promoting a '*might is right*' style of governance. The 116 alleged Financial Fair Play breaches by Manchester City over the past nine years exemplify the weak protocols that are currently in place, only serving to widen the economic gulf between the Premier League elite and clubs lower down in the pyramid.<sup>11</sup> This financial disparity extends beyond club governance, raising issues about the structure of the Football League itself.

A clear example of financial inequality in the EFL is the parachute payment system. Originally introduced to reduce the financial burden on teams relegated from the Premier League, it has instead stifled competition in the Championship. For example, Burnley, Norwich City, Sheffield United, Watford and West Bromwich Albion reaped the benefits of these payments in the 2022/23 season, enhancing the average revenue of these five clubs to £66 million.<sup>12</sup> This financial advantage was proven decisive, particularly for Burnley and Sheffield United, who utilised their resources to secure promotion back to the Premier League. With an average revenue of just £22 million, the remaining 19 Championship clubs

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<sup>9</sup> C Kearns and others, "'Best Run Club in the World': Manchester City Fans and the Legitimation of Sportswashing?" (2023) 59(4) *International Review for the Sociology of Sport*.

<sup>10</sup> House of Lords Library, 'Sportswashing: History, Governing Bodies, State Investments and English Football Club Ownership' (2024).

<sup>11</sup> C Kearns and others, "'Best Run Club in the World': Manchester City Fans and the Legitimation of Sportswashing?" (2023) 59(4) *International Review for the Sociology of Sport*.

<sup>12</sup> Deloitte, *Annual Review of Football Finance 2024* (Deloitte, 2024) 25.

struggled to compete for promotion to the top flight,<sup>13</sup> with only Luton Town managing to achieve promotion to the Premier League in that season without the benefit of parachute payments. It is evident that the current structure only encourages clubs to take financial risks in pursuit of promotion and the revenue associated with playing Premier League football, with former top-flight teams like Wigan, Bolton and Reading suffering severe financial consequences as a result. In response, many EFL clubs are calling for reform; a fairer distribution of revenue throughout the pyramid and the introduction of an independent regulatory body.

Even within the Premier League itself, financial disparities still persist, particularly between the traditional '*Big Six*' clubs and the rest of the league. These clubs consistently enjoy a disproportionate share of commercial sponsorship deals and Champions League revenue, further entrenching their dominance at the top of the table. During the 2022/23 season, the Premier League's '*Big Six*' clubs each generated an average revenue of £591 million - more than three times the £184 million average earned by the 14 other clubs in the league.<sup>14</sup> This ever-widening gap makes it increasingly difficult for mid-table and bottom-half teams to compete, threatening the Premier League's best asset - its reputation as an exciting and unpredictable competition.

### **The Football Governance Bill: Imposing an IFR**

Recognising this reality (and perhaps in an attempt to gain favour from a wider, football-loving voter base) successive Conservative and Labour governments have held consistent cross-party support for a Football Governance Bill, aimed at protecting and promoting sustainability in English football.<sup>15</sup> The Bill, which is about to be debated in the House of

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid, 14.

<sup>15</sup> *Football Governance HL Bill* (2024–25) (82), art 1(3).

Commons, aims to impose a statutory Independent Football Regulator (IFR) that will be funded through a levy on licensed clubs. The regulator aims to fulfil three objectives: ensuring '*club financial soundness*,' strengthening '*systemic financial resilience*' and protecting '*club heritage*.'<sup>16</sup>

### The '*Financial Soundness*' Objective

As outlined in the Football Governance Bill, an IFR would have the power to scrutinise both existing and future club ownership structures. Under the proposed protocols, every professional club would have to meet strict financial standards in order to obtain and maintain an official IFR licence. This step would mark a shift away from the insufficient '*fit and proper person*' test and the Premier League's current Profit and Sustainability Rules.<sup>17</sup> The regulator would require owners to submit detailed strategic plans that explicitly outline their long-term vision for club stability. With the IFR's influence, responsible stewardship would finally become a non-negotiable standard.

### The '*Financial Resilience*' Objective

The IFR aims to tackle the reckless financial practices that threaten the wider integrity of the football pyramid. In spite of massive earnings from broadcasting and sponsorship deals, clubs have had 5 consecutive years of losses across the Premier League, alongside a £685 million before-tax deficit in the 2022/23 season.<sup>18</sup> The inflated transfer market and long-term amortisation of expensive contracts only worsen the situation, diverting funds away from grassroots football and the development of future talent.<sup>19</sup> To address this, the Football Governance Bill introduces Squad Cost Rules, capping squad spending to 85% of a club's

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<sup>16</sup> Ibid, art 6.

<sup>17</sup> P Duncan and N Lord, 'Fit and Proper? Analyzing the Potential for Illicit Activity through English Premier League Club Ownership Structures' (2024).

<sup>18</sup> Deloitte, *Annual Review of Football Finance 2024* (Deloitte, 2024) 14.

<sup>19</sup> Football Supporters' Association, *The Case for Independent Regulation in English Football* (2024).

total revenue.<sup>20</sup> This ties a club's wage bill to its actual earnings, ensuring that it operates within its means.

### The 'Heritage' Objective

Thanks to its '50+1' rule, the German Bundesliga serves as a model example of sustainable ownership at the elite level. Under German Football League (DFL) rules, no club can compete in Germany's top two divisions if outside investors hold a majority share.<sup>21</sup> This model ensures that ardent supporters, or 'members,' hold a majority stake in their club, enabling them to protect its heritage and prioritise sporting success. By amplifying the voice of fans and promoting affordable ticket prices, the DFL has ensured that football remains accessible to everyone, regardless of economic background. Despite concerns that these financial policies may disadvantage German teams against wealthier opponents, they have consistently remained competitive at the highest level of European football. Since the '50+1' rule was first enforced in 1998, Bayern Munich have claimed three Champions League titles, with Eintracht Frankfurt also winning the Europa League in 2022.<sup>22</sup> The German model stands as an example of how sustainability regulations preserve the long-term stability of a domestic football pyramid and also help to cultivate a distinctive fan culture that is admired globally.<sup>23</sup> By restricting absentee owners from making impulsive decisions that disregard club heritage, an IFR could help prevent controversies like Cardiff City's infamous kit and badge change in 2012<sup>24</sup> or Hull City's attempted rebrand to '*Hull Tigers*' in 2015.<sup>25</sup>

Additionally, the IFR would seek to prevent the formation of breakaway competitions like the

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<sup>20</sup> Sky Sports, 'Premier League's Profitability & Sustainability Rules to Stay Next Season After Delay to Squad Cost Ratio Rules' (2025).

<sup>21</sup> Bundesliga, 'Explaining the Bundesliga's 50+1 rule' (2023).

<sup>22</sup> UEFA, *UEFA Champions League History: Winners*; UEFA, *UEFA Europa League History: Winners*.

<sup>23</sup> U Merkel, 'German Football Culture in the New Millennium: Ethnic Diversity, Flair and Youth on and off the Pitch' in *Exploring the Cultural, Ideological and Economic Legacies of Euro 2012* (Routledge 2016).

<sup>24</sup> BBC Sport, 'Cardiff City: Bluebirds confirm home kit colour change to red' (2012)

<sup>25</sup> BBC Sport, 'Hull City: FA Council Reject Tigers Name Change for Second Time' (2015)

European Super League, which faced overwhelming opposition from fans in 2021. As the financial gap between fans and players continues to grow, the IFR's role in protecting continuity and accountability has become more crucial than ever.

### **Would a Football Regulator be Truly Independent?**

The establishment of a Football Governance Bill has sparked significant debate among club owners. Some opponents of the Bill argue that granting extensive power to a single regulatory body could interfere with their right to a fair trial, to property and to privacy under the European Convention on Human Rights.<sup>26</sup> One concern is the potential for conflict with Article 6 of the ECHR, which emphasises the right to a fair trial.<sup>27</sup> The IFR's '*backstop powers*,' which grant it full discretion to dismantle ownership structures and impose financial penalties as it sees fit, may initially seem concerning. To address this, the Bill introduces a 'Competition Appeal Tribunal,' a process of appeal created to thoroughly scrutinise any decision made by the regulator.<sup>28</sup>

Other owners have expressed concerns about how the independent regulator's powers (such as the ability to obtain private financial information and enter business premises under a warrant) may infringe on their right to privacy under Article 8 of the ECHR.<sup>29</sup> When addressing these concerns, the government argued that these prerogative powers are essential for achieving its three main sustainability objectives.

The IFR's authority to redistribute resources is another concern among wealthy owners. Opponents to the Bill argue that this power could lead to overreaching, specifically under Article 1 of Protocol 1 of the ECHR.<sup>30</sup> However, the government defends such interference,

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<sup>26</sup> Football Supporters' Association, '*The Regulation of Football: Debunking Myths*' (2024)

<sup>27</sup> European Convention on Human Rights, Article 6.

<sup>28</sup> Government of the United Kingdom, *Football Governance Bill 2024: Supporting Documents: ECHR Memorandum* (2024)

<sup>29</sup> European Convention on Human Rights, Article 8.

<sup>30</sup> European Convention on Human Rights, Protocol 1, Article 1.

asserting that football clubs are not merely private possessions but instead serve as vital institutions of community.<sup>31</sup> In this context, the government argues that any restriction on property rights is done in the public's interest, with the goal of protecting a culture institution. In essence, the government believes that the overall benefits of an IFR overshadows any concerns about undue interference in private property.

It is clear that the current self-regulatory model of governance in English football has proven inadequate in securing the long-term sustainability of the football pyramid. Frequent financial mismanagement and the growing gap between the wealthiest clubs and the rest of the pyramid show an urgent need for reform. By pursuing three key objectives - strict financial standards, financial resilience and protecting club heritage - the proposed statutory Independent Football Regulator offers a promising solution. Ultimately, establishing an independent regulator is vital for ensuring a more competitive, exciting and sustainable future for English football.

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<sup>31</sup> Government of the United Kingdom, *Football Governance Bill 2024: Supporting Documents: ECHR Memorandum* (2024)