Bury AFC Submission to the Fan-Led Review

Football boardrooms are increasingly attracting the wrong people, running the wrong ownership models, with opaque and high-risk financial strategies which put clubs under threat. The existing governance frameworks have proven to be inadequate. This is visible at all levels of football. Premier League clubs operate with complex financial structures, Championship clubs operate with huge losses due to excessive playing budgets, smaller professional clubs have been subject to mismanagement due to incompetence or malevolent ownership, and in non-league football, well below the radar, there is evidence of asset stripping, tax evasion and even money laundering.

Whilst we must do as much as we can to filter the wrong people out through more stringent fit and proper tests, this will always be an imperfect, flawed solution, and will not work in isolation. There is a need to make a more fundamental structural change to football and its governance which, as a minimum, acts as a deterrent to risk takers and rogue owners, and ideally removes the features of a football club which attracts them in the first place.

These proposals recognise that we are not starting with a clean sheet of paper. It is difficult, and in some respects impossible, to unpick existing ownership models. However, we do believe that there is a huge danger in recommending a set of 'token' changes which are too easy for owners to implement in a way which does not make meaningful change.

Independent Regulator Focussed on Football Finances

Whilst the 'independence' of the regulator should be discussed further, we believe that it is almost impossible to implement many of the reforms required without an extension to the existing regulation of football.

Neither the FA nor any of the Leagues within the football pyramid have the appetite or capability to effectively regulate the key requirements for any football club's long-term survival: well-intended owners operating within an appropriate ownership model, and a transparent, well governed and sustainable financial model which underpins it.

The financial nature of this form of regulation requires experience, skills and qualifications. There are too many different models and different reasons for failure for one simple solution to be applied to all clubs. Some of the Solvency II regulations brought in to govern banks after the 2007 crash may be useful, as they bring in a number of financial ratios which can be used to moderate and report on finances, but it is important that some degree of flexibility is also built in, especially in the early years.

One supporter highlighted the French DNCG model. The Direction Nationale du Contrôle de Gestion is the organisation responsible for monitoring and overseeing the accounts of professional clubs in France. It is a dynamic organisation with a wide range of sanctions from relegating clubs on economic grounds, to compelling them to submit their monthly payroll for review to ensure that they are not over-spending.

The early intervention of reviewing accounts and budgets on an annual basis would have prevented the scenario faced by Bury FC where costs and debts were allowed to spiral out of control, with the subsequent risks to creditors, players and supporters.

The DNCG is exceptionally active. For example, in the summer of 2019, nine teams either had their promotion annulled or were relegated to a lower division. This clearly causes significant issues in terms of constituting the divisions, but demonstrates that poorly run finances can cause immediate consequences and cannot be simply 'kicked into the long grass' where the problems may become irretrievable.

The DNCG is able to specify its concerns and require a club to rectify its finances if it is unhappy with the proposed sanction. For example, in Summer 2019, Sochaux, a 2nd tier team, was due to be relegated to the 3rd tier. However, through an agreement of the new shareholder to inject funds, the sale of a young player to Internazionale, and a reduction in the coming year's payroll, a successful appeal was made, and the club was allowed to stay in the 2nd tier.

We know this will not resolve systemic risks, and French football is far from perfect with significant financial pressures at present, but highlights how regulation can be pro-active.

It is unrealistic to expect all clubs and supporters to immediately adapt to new rules, hence why this new regulator should have the powers and discretion described above to move clubs in the right direction using the most appropriate sanction or solution available at the time. We accept this opens the door to accusations of subjectivity, favouritism and decisions made behind closed doors. However, we also believe it is important that the tone set by the regulator is one of swift, decisive and firm action rather than light touch. Clear and honest communication about the decision will be vital. We can't afford another toothless organisation.

Better Financial Reporting and Financial Transparency

A new regulator is required to design and enforce a new system of financial transparency which will reap longer term dividends as club accounts are made available in a consistent and timely manner. Whilst greater financial reporting may introduce more costs for small semi-professional clubs, there is little reason why the majority of clubs cannot provide high quality financial information to both supporters and its regulator. At Bury AFC we provide our 1650 members with monthly management accounts, an example of which can be found here.

It has been suggested to us that it is not possible to continue with this level of public financial transparency as it would remove competitive advantage but we are yet to see any evidence of this versus the benefits it brings. A lot of commercial and financial information is in circulation already.

There may need to be an examination of where in the football pyramid these measures are introduced, but we have suggested the following as examples:

Tier 10 (above grassroots but not elite) and above – appointment of an independent auditor, with service term limits.

Tier 7 and above – production of quarterly management accounts for all shareholders/members.

Tier 6 (elite football) and above – production of monthly management accounts, and standardised financial reporting to the regulator via an online portal.

Greater Protection of the Club and its Assets

We believe this can be divided into two main themes:

1. Protection from rogue or reckless ownership by better screening
2. Removal of the attractiveness of football clubs to rogue or reckless owners

Protection from rogue or reckless ownership

We have already stated that Owners' Tests are a piecemeal solution. Even with the utmost rigour applied, it is impossible to determine exactly what an owner will do with a club in the future. Hence the reason for the new and ongoing financial regulation outline above.

Owners' tests should be re-examined to include:

- Greater in-depth profiling of the owner's background, connected parties and any related businesses. Professional and personal references obtained.
- In-depth scrutiny on the source of funds, not just proof of funds. It was the source of funds which caused the problems at Bury FC under Stewart Day's ownership. This may also highlight systemic or concentration risks. For example, Burnley's takeover was funded by MSD UK Holdings, who also provided funding to Southampton and Derby County. Should this concern us?
- Requirement to hold and maintain an individual/personal owner's licence, which can be rescinded by the regulator, to prevent owners absolving themselves of personal responsibility by hiding behind a corporate entity and re-appearing at new clubs.

Removal of the Attractiveness of Football Clubs to Rogue or Reckless Owners

There are a number of measures which clubs can implement which make a football club unattractive to buy for anything other than footballing purposes.

Statutory Asset Lock

Bury AFC along with similar Community Benefit Societies (the main vehicle used to manage shareholdings within fan-owned clubs) use an asset lock within their society rules which prevent the assets, which could be surplus profits or property, within the organisation from being moved outside the football club to third parties unless structured criteria are followed. This is sufficient to remove the threat of 'asset stripping'. Asset locks can also be found within the Articles of Community Interest Companies.

We believe this is the most effective way of protecting the club's assets and all new clubs should adopt this where possible, and potentially be rewarded for this, as it may encourage existing clubs to adopt this model. The Football Supporters' Association can assist clubs converting their existing model to this format.

Standardised Articles of Association

Adoption of a standard set of articles of association at the point of incorporation would help new football clubs structure their company in the right way.

Good Stewardship Obligations in Shareholder Agreements

For the sale of private shares, it is possible to place constraints on the activities of both purchasers and sellers, by setting out certain requirements in a separate Shareholder Agreement. This could include use of debt, disposal of assets and dividend policies. Importantly, the Shareholder Agreement can oblige the seller to only sell his or her shares to a buyer who also subscribes to these terms. For privately-owned businesses this is a simple, and effective way of entrenching corporate responsibility into the line of future succession. Portsmouth is an example of a club who used this device with their private shareholders when they diluted their Supporters' Trust shareholding.

Expanded Role for Football Supporters' Association (FSA) Overseeing Supporters' Trusts

Supporters' trusts need more support to be trusted by fans and clubs alike. Trusts face a number of challenges, and need to evidence that they are running their own organisation effectively if they want to have an influence on the clubs to which they are attached. We believe that they should be audited and key decisions should be referred to the FSA for guidance. They face a number of issues:

1. Supporters often disengage with trusts and only take an interest when there is a problem with the club. This is often too late.
2. Succession can be a challenge and, as with any voluntary organisation, there can be an overreliance on too few individuals.
3. Supporters can make poor choices, however well intentioned, and may lack the specialist knowledge required on occasions. They need experienced professionals to counsel them.
4. Clubs can artificially discharge their responsibilities too easily, and ignore trusts or bypass them by setting up their own supporter groups.

We believe that an independently managed 'traffic light system' which rates both the effectiveness of the trust and the engagement of the club with the trust, would give supporters an early warning system to alert them to a problem with one of those two areas. This helps make supporters accountable for their own clubs.

Rather than force all clubs to adopt one or more of the recommendations mentioned above, a rating mechanism would allow some flexibility and choice for clubs before intervention is required. We would like to see some reward offered to clubs that rate highly and protect their clubs properly, and greater controls (e.g. inability to take on debt) placed on those that do not.

More Respectful Commercial Decisions

Whilst it might appear a minor point, a large number of supporters we've spoken to are frustrated by commercial decisions which they don't understand and make them feel used and disrespected by the club. Low quality, high margin food and beverage, lack of choice and annual replica kit changes are regular complaints and clubs seem unwilling to engage with fans about why these are necessary or what the alternatives are.

The result goes beyond the complaint itself. There is a sense that clubs are overly commercial, treat supporters with contempt and are exploiting their loyalty.

A better feedback mechanism and genuine engagement strategy would help to reverse this sentiment.

We have not only been praised by fans for consulting with them where we can, it has yielded better commercial results. We also receive complaints, but these can at least be explained by a transparent thought process.

Examples of this at Bury AFC include:

Our feedback survey from November 2020, which includes a Net Promoter score. You can also download the full results here.

Our article explaining how we approach replica kit design and sales (resulting in 2500 shirts sold in a season).

We are currently in discussions with the Housing Association on how they are working with Government, post-Grenfell, around tenant engagement, and they have agreed to share some of their ideas on how the powerful modelling they plan to use could be used in the football sector.

Funding the Cost of Professionalism

We want to acknowledge that increased professionalism and greater regulation described above comes at a cost, and will need to be funded. Rather than leave this to the top leagues and clubs to decide how wealth is distributed throughout the pyramid, and to avoid the dangers inherent in simply handing this money directly to clubs and owners, the costs can be funded by a levy on each club proportionate to turnover, or some similar ad valorem charge. There is also the potential to look at a levy on transfer fees.

To provide an indication of effective regulation in another sector, we have looked at the Housing Association sector. Their regulator, the Regulator of Social Housing (RSH), covers all Housing Associations which have a combined turnover of £21bn, at a cost of £18m for regulation. They cover a wide range of issues, including customer service, governance and financial standing, and issue financial and governance ratings for all Housing Associations. The cost is around 0.85% of turnover.

The total cost of financial services industry regulation in 2019 was around £1.7bn, but this includes a number of bodies and compensation schemes. The Financial Conduct Authority itself cost £547m. The size of the sector in 2019 was estimated at £132bn. Taking the higher number of £1.7bn, the cost is 1.29% of turnover, and the cost of just the FCA is 0.41% of turnover.

Deloitte reported a combined Premier League and EFL turnover of £6.2bn for 2018/19, pre-Covid. Shortly after the demise of Bury FC, the EFL advertised a role for one accountant at a salary of £45,000 pa to provide financial diligence on firms. Clearly this is insufficient. A 1% charge on total turnover for Premier League and EFL alone would provide £62m to fund a regulator.

As a club with a very small turnover of £250,000, Bury AFC would have no concerns contributing £2,500 annually to a fund which protected the whole football pyramid. One of the rewards which could be given for adopting a statutory asset lock (or other measures) could be a reduction in the annual premium, as a regulatory dividend for a lower risk football club at 0.5% and a higher percentage contribution for clubs with higher risk, complex ownership models which require greater regulatory time.