

Inside the deal: analysing the investment strategy behind UK football club acquisitions - sport finance and sports law in action

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Introduction

Buying a professional football club is a process involving takeover and acquisition of an existing club. It denotes a change of ownership of the club and while this often may appear to be a private arrangement between two parties to a contract, there are public implications of such acquisitions¹. The question of how a professional football club can be purchased in the United Kingdom (UK) is one that has definitive legal connotations because there are regulatory norms that are relevant and mandatory to the process of purchase of a football club. This has implications for the extent to which sports can be regulated by the law because aspects of the process of purchasing of football clubs may be part of the private law and arrangements between the relevant parties. However, there is an acceptance of sport having an immense public purpose, an observation made by Lord Woolf in *Modahl v British Athletic Federation*². While this statement may suggest that sports are subject to regulation of the public law, the actual regulation of sports is a complex phenomenon because there is a combination of public law, private law, and even self-regulation³. Football as a sport is regulated by public law and private law and is also regulated by the rules of sport bodies at three levels, national, regional, and international⁴. As such, when engaging with the law related to the purchasing of a professional football club in the UK, it would be pertinent to engage with laws including, contract, employment, anti-trust, and competition, which are a combination of private law and public law⁵.

The aim of this paper is to identify and assess the processes and regulations that are relevant to the purchase of a professional football club in the UK. This is an area which is often overlooked in terms of the due diligence needed to conduct such a complex transaction. As such, this paper provides a contribution to both the legal and financial literature relating to football club takeovers in the UK. The following objectives are covered in this paper: (i) Identify the process and the regulations to be adhered to for the purchase of a professional

¹ Ben Fisher, How to buy a football club: new EFL guidance offers 'clearance, not approval' (*The Guardian*) accessed <<https://www.theguardian.com/football/2023/sep/14/new-efl-guidance-for-club-owners-analysis>>

² *Modahl v British Athletic Federation Ltd (No 2)* [2001] EWCA Civ 1447.

³ Ian Blackshaw, *International Sports Law: An Introductory Guide* (T.M.C. Asser Press 2017) 10.

⁴ Ian Blackshaw, *International Sports Law: An Introductory Guide* (T.M.C. Asser Press 2017) 10.

⁵ James A. R. Nafziger, 'International sports law' in James A. R. Nafziger and Stephen F. Ross (eds.), *Handbook on International Sports Law* (Edward Elgar 2011)

football club; (ii) Explain the regulatory framework relevant to the buying and running of a football club including domestic law, self-regulation in football; and (iii) role of agencies and institutions like the Football Association, the Premier League, the English Football League, UEFA and the Fit and Proper Persons test.

The paper also considers the following research questions are raised through the aim and objectives: (i) what are the laws, processes, and regulations that are relevant to the purchase of a professional football club in the UK?; (ii) how does self-regulation factor into the processes and regulations of a football club?; (iii) what role is played by Football Association, the Premier League, the English Football League, and UEFA in regulation; and (iv) and how does the Fit and Proper Persons test apply in the situation?

Steps to sale/purchase: Due Diligence

Initial negotiations between the club and potential buyer will result in the parties agreeing broad non-binding “Heads of Agreement” to guide the acquisition. In so far as the general contract law principle of “*let the buyer beware*” applies to the acquisition of a company/club, the buyer will wish to gather detailed information about the club’s legal and financial status. The purchase will therefore be subject to the satisfactory completion of a due diligence exercise.

Due diligence is a thorough investigation by the prospective buyer of a club’s finances, operations (including IT) and legal agreements, with the purpose of gaining a complete and accurate picture of the company’s legal and financial status and any other information which could affect the value or financial health of the club. As part of the initial negotiations, the seller will agree to provide the prospective purchaser with documents and information pertaining to the club’s status and activities and will make this available in a virtual data room for review and analysis by the buyer’s advisers. The buyer may also require sight of additional documents not previously made available. The due diligence exercise is not time-barred. If the club is to be sold by auction, the seller will prepare the virtual data room in advance for review by the buyers’ advisers.

Football law considerations: Due Diligence

Specific agreements of interest to the buyer of a football club in a due diligence exercise broadly include:

- The ownership or leasehold status of a club's property e.g. stadium and training facilities and their associated licenses and permissions for extended use, any third-party rights and development plans or planning permission;
- The club's loans and debts, the terms of these and dates for repayment;
- Employment contracts of players and management, their termination dates and transfer fees;
- The club's commercial contracts, such as sponsorship and partnership agreements and their key terms such as duration and exclusivity;
- Broadcasting and image rights;
- Intellectual property rights and steps taken to protect these;
- Evidence of compliance with Financial Regulations';
- Disputes and Litigation: a recent focus of the UK and European competition law authorities/courts on the sports' sector would suggest it is pertinent for any prospective buyer to get specific advice on whether competition law issues arise from any of the club's agreements, activities and associations;
- Publicly available information such as reports filed at Companies House.

On completion of the due diligence process, the club's advisers produce a report, setting out their key findings, highlighting areas for concern and making recommendations to the buyer. In parallel with the due diligence process, the parties' legal advisers will draft the sale and purchase agreement setting out the terms of the sale and if necessary, indemnities and warranties in relation to the club which serve to protect the buyer.

Assuming no issues arise from the due diligence exercise, and where the parties agree the terms of sale, they will proceed to sign/execute the sales documentation and complete the

acquisition. ⁶Where the due diligence review raises issues, the prospective buyer may withdraw from the transaction, or renegotiate the purchase price, specify remedies to be undertaken before completion of the sale. Post-transaction, the new owner must fulfil the Owners and Director's Test⁷ and consider the FIFA rules regarding club licencing.⁸

One season certificate is issued for clubs to ensure that they meet the minimum criteria for UEFA club competition. All clubs that qualify on sporting merit for the UEFA competition must obtain this certificate. Introduced in 2002, it has grown and is now outsourced to the national associations to improve governance. The primary objective is to raise the standards of football in Europe and is split into two main parts: "UEFA Club Licensing and Financial Sustainability Regulations" and "UEFA Club Licensing Regulations for UEFA Women's Club Competition," both of which contain six main parts:

1. Sporting:
 - a. youth development (e.g. having a minimum number of youth teams)
 - b. medical care of players and
 - c. educational programmes
2. Social and Environmental Sustainability
 - a. Safeguarding of human rights,
 - b. fostering environmental protection (e.g. having a social and environmental sustainability strategy)
3. Infrastructure:
 - a. Minimum requirements for stadia (e.g. must be suitable for UEFA club competitions)
 - b. Training facilities
4. Personnel and Administrative
 - a. Adequate management and organisation of club (e.g. having appointed coaches with the right licence)
 - b. Coaching, medical and match organisation personnel

⁶ [Reading FC | Club Statement | Exclusivity Agreement](#)

⁷ ['Touch and go': Reading stuck in brinkmanship battle over sale as deadline looms | Reading | The Guardian](#)

⁸ https://www.uefa.com/running-competitions/integrity/club-licensing/https://editorial.uefa.com/resources/028a-1a4669b3fd84-38a84630b77b-1000/uefaeuropeanclubfinanceinvestmentlandscape_150224.pdf

5. Legal

- a. Increasing transparency
- b. Safeguarding continuity and integrity of competitions (e.g. having a legal group structure)

6. Financial

- a. Protecting football stakeholders (e.g. not having overdue payables to football clubs)
- b. Financial stability and sustainability of clubs

In addition, member associations also have a national licencing system. FIFA's Club Licensing System⁹ can be seen as an important approach created to foster the sustainability and professionalism of football clubs globally and which aims to increase and raise awareness of clubs' financial integrity, gradually increase the overall quality of football and assure compliance with key legislation.

The club licensing system is built on five key pillars that clubs must meet and follow in order to keep their licence and avoid losing it. Administrative norms require clubs to have adequate legal status and governance procedures in place. This contains a distinct legal identity and an organisational framework that ensures accountability and operational efficiency. The minimum requirements for the sporting side are defined with proper infrastructure including sufficient stadiums and training facilities both for first and youth teams. In addition, consideration is given to whether clubs are dedicated to the development of future talent and support proper youth development initiatives.

The financial stability of the club is a significant consideration in the licensing process. Clubs are evaluated to determine whether they can present suitable financial reports that reflect their financial health and management procedures. This aspect of the licensing requirement is critical for ensuring clubs operate within their resources and avoid excessive debt and financial mismanagement.

⁹ <https://digitalhub.fifa.com/m/633f42dd7d707b97/original/h9p6y6gzgzc1nolryngb-pdf.pdf> and <https://digitalhub.fifa.com/m/29b85fff31c745a3/original/rizif66eloutabq2ootr-pdf.pdf>

The human resources criteria require that important vacancies, such as management and coaching staff, are fulfilled by qualified individuals with the required skills and experience. This is critical for ensuring and promoting the quality of an efficiently managed organisation. As part of the licensing application process, clubs submit a detailed application to their national football association explaining how they comply with the given standards. These criteria can be interpreted differently from national association to national association but must remain within the framework of the standards defined by FIFA. The national associations have an important role to play in this process, as they are the controlling body and check the applications for the standards to be met.

The national federations are entitled to grant or refuse licences which authorise clubs to participate in national championships and leagues. Clubs participating in international competitions must also apply to their respective continental association (e.g. UEFA) in a licensing procedure. A granted licence requires a club to constantly monitor and comply with the regulations and to submit annual reports. In the event of non-compliance, the club faces severe penalties, including points' deductions and licence withdrawal.

In order to protect the clubs' rights, an appeal mechanism was created. Clubs can file an appeal against licensing decisions with the national associations or FIFA judicial body. The FIFA club licensing system is an important instrument for promoting financial stability and competitiveness in club football.

Analysis and critique

English football clubs are generally considered as joint stock companies and the process of converting clubs to joint stock companies took place in the late nineteenth century¹⁰. However, Hamil and Chadwick later identified three football club ownership models in the UK, which are the stock market model, the supporter trust model, and, the foreign ownership

¹⁰ S Leach and S Szymanski, 'Making money out of football' (2015) 62(1) *Scottish Journal of Political Economy* 25.

model, which each being legally binding with implications for football club governance and finance¹¹.

The legal form of the club impacts the corporate governance structure and this also includes the regulatory frameworks that are applied when clubs have to be purchased and ownership changes hands¹². For instance, if the professional club is listed on a stock exchange, investors can acquire a share of the ownership of the firm by investing on the stock exchange. Football is nuanced in this regard, however, as many English clubs delisted from the Stock Exchange during the 2000s due to the running costs associated with day-to-day professional football¹³. Since this development, many English clubs have been acquired privately by new majority investors¹⁴. The process that applies in such situations is the main focus of this paper.

Private investment in professional clubs can be done by investors who acquire majority or minority stakes. In the last few decades there has been a rise in majority stake holding by private investors, which has led to the concept of ‘sugar daddies’ who are “majority investors who create a decision autonomy that allows the investor to use the club as an instrument to foster their other businesses, gain access to particular club resources and transactions, receive public acclaim, and enjoy decision autonomy in the club¹⁵.” There is a practical need for such investors because they have the resources that the football clubs need to ensure their continuity given that there are very few football clubs in the UK and indeed Europe, that make a profit¹⁶. In England, there has also been a significant increase in the number of foreign investors since 2003 and, by 2010, foreign investors owned fifty percent of all the Premier league clubs¹⁷. Owner motivation and rationale has also been a question at the forefront of football club takeovers and no study has ever been able to provide evidence to this point, mostly because access to club owners is out of reach. However, there are financial implications of different ownership models. For example, past research on the differences

¹¹ S Hamil and S Chadwick, *Managing Football: An International Perspective* (Elsevier 2010).

¹² Marc Rohde and Christoph Breuer, ‘The market for football club investors: a review of theory and empirical evidence from professional European football’ (2017) 17(3) *European Sport Management Quarterly* 265.

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid, 278.

¹⁶ Ibid

¹⁷ Ibid

between stock market model of ownership of football clubs and private investment model, found that the former returned better financial health and was more likely to comply with industry Financial Fair Play regulations but the latter performed better on the pitch¹⁸. While not directly related to the issue of how to purchase a club in the UK, such do reflect on the aspects of regulatory mechanisms and their efficacy in protecting football clubs.

Ultimately, the process of purchasing of the football clubs in the UK does begin with finances, however. The starting point of the process is the offer that is made by the prospective investor to the club for two types of purchase, which are either purchase of shares or the purchase of assets. In either case, the next step can be a conventional sale between a buyer and a seller or purchase in an auction-style sale¹⁹. In the latter case, multiple buyers submit their bid for the purchase of the club as was the case for Manchester United and Chelsea in recent sales²⁰. In a non-auction sale, negotiations can take place between the buyer and seller directly. In both processes, due diligence is one of the parts that has to be done by both parties²¹. The process is also subjected to the quasi-legal system of FIFA, UEFA, the FA, as well as the Premier League and the English Football League because there is a level of self-regulation in the football industry²². This includes ownership eligibility criteria, financial fair play regulations, and club governance standards²³. Unless the parties are able to meet these regulations and norms, they will not be able to obtain league approval, which affects continued participation in competitions. Regulatory norms are also extended to player contracts, youth development, and stadium safety, making the process of acquiring a club very complex²⁴. As such, the regulatory norms are complex and need manoeuvring and navigating on the part of the seller and buyer when they are involved in the process of change of ownership.

¹⁸ Robert Wilson, Daniel Plumley, and Girish Ramchandani, 'The relationship between ownership structure and club performance in the English Premier League' (2013) 3(1) *Sport, Business and Management: An International Journal* 19.

¹⁹ Blaser Mills LLP, 'Pitch perfect: A guide to purchasing a football club' (26 April 2024) accessed <<https://www.blasermills.co.uk/insights/article/pitch-perfect-a-guide-to-purchasing-a-football-club/>>

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid

One of the legal principles or part of regulatory framework involved in purchase of a professional football club is meeting of the owners' and directors' test (OADT) and providing source and sufficiency funding and future financial information (FFI). This is part of the EFL regulations that are applied to ensure that the prospective purchasers of professional clubs are able to demonstrate their eligibility to buy and operate the club²⁵. One of the relevant bodies for the process is the club financial reporting unit (CFRU), which ensures that the process adheres to the FFI²⁶.

In the UK, the OADT is applied to assess whether the director is fit to be at the helm of the club²⁷. The test was developed by the Football Advisory Committee (FAC) in order to prevent persons with criminal antecedents or history from taking over the management of football clubs in the UK²⁸. Any person who owns more than 25 per cent stake in the club, must pass the test²⁹. A question may be raised as to the rationale of meeting this additional requirement for purchase of what is a private entity and subject to private and contractual arrangements. Indeed, such questions were raised when the test was first introduced in the UK³⁰. However, there are certain aspects that are to be observed as part of the corporate governance of football clubs³¹. Indeed, even in the early stages of the introduction of the test, there was an argument that such a test would be important for protecting the football industry especially from risk of fraudulent or unscrupulous directors provided that this would be part of the overall code of corporate governance for football³². As stated then, the area of corporate governance that the football clubs were particularly weak in, was in context of need for clear and transparent procedures that would apply to appointments (directors and non-executive

²⁵ James A. R. Nafziger, 'International sports law' in James A. R. Nafziger and Stephen F. Ross (eds.), *Handbook on International Sports Law* (Edward Elgar 2011).

²⁶ Ibid

²⁷ Matthew Holt, *A 'fit and Proper Person' Test for Football?: Protecting and Regulating Clubs* (University of London 2003).

²⁸ Geoff Walters and Sean Hamil, 'Regulation and the search for a profitable business model: a case study of the English football industry; in *Handbook of research on sport and business* (Edward Elgar Publishing 2013).

²⁹ Ibid

³⁰ M Holt, *A "Fit and Proper Person" Test for Football? Protecting and Regulating Clubs* (Football Governance Research Centre, Research Paper 2003 No. 2, Birkbeck, University of London.)

³¹ Jonathan Michie and Christine Oughton, 'The corporate governance of professional football clubs in England' (2005) 13(4) *Corporate governance: An international review* 517.

³² Ibid, 529

directors) and with regard to internal risk control and business planning systems³³. This was sought to be addressed through a regulatory framework or “code of corporate governance – for football that set out clear and manageable standards in these regards would do much to improve the state of the game” to “complement and strengthen the work of the FA’s Financial Advisory Unit” and help “clubs stay solvent now that the football league has introduced penalty point deductions for clubs entering administration³⁴.”

Therefore, *prima facie*, there are some important points in favour of the test. The purpose of the fit and proper test is to ensure that the administration of the football clubs is not left at the hands of people or entities with certain kinds of criminal records and that neither the owners nor the directors should be individuals who have such criminal records³⁵. The fit and proper test is now central to the question of ownership and control of football clubs and can be seen in the light of both economic or financial aspects as well as legal aspects related to transfer of ownership³⁶. From the perspective of the legal aspects of transfer of ownership, the fit and proper test ensures there are no criminal cases or other cases against them that could possibly jeopardise their ability to run the professional clubs. This is important given that clubs look to owners for funding and need them to continuously remain in operation. It may be noted that in the period between 1992 and 2009, fifty professional clubs went bankrupt, which sheds some light on the significance of the fit and proper test for the transfer of ownership or management of the clubs³⁷.

The significant number of bankruptcies have raised the question of the potential losses to the industry as a whole if it continues to face such losses every year³⁸. Due to the continued losses of the industry even after the introduction of the OADT in 2003, there have been critical questions raised as to the adequacy of the current format of the test. Such issues were raised by the then Football Association chairman, Lord David Triesman in 2008 when he argued that the fit and proper test does not do a robust job and requires a review not least because of

³³ Ibid

³⁴ Ibid, 530

³⁵ Ibid

³⁶ Sean Hamil and Geoff Walters, ‘Financial performance in English professional football: ‘An inconvenient truth’ in *Who Owns Football?* (Routledge 2013).

³⁷ Ibid, 12

³⁸ Ibid

the public interest in football as a sport³⁹. This issue goes back to the financial aspect of the OADT, or the lack of the same in the test as highlighted by Lord Triesman, who demanded that the prospective owners and directors of the clubs should prove themselves to be financially capable of running the club and only upon such evidence should the ownership be transferred⁴⁰. Therefore, one of the critical issues that need to be assessed here is whether the OADT meets the objectives for which it was first introduced, which is to ensure the running of the football clubs.

Indeed, the debate around the review of the OADT has continued to simmer over the years. In 2019, the Mayor of Greater Manchester, Andy Burnham raised continuing concerns around the test when the 134 year old football club Bury FC was faced with severe financial crisis⁴¹. His letter to the EFL mentioned the importance of reviewing the test to ensure that only capable individuals are allowed to take ownership or management of the professional football clubs, which were showing signs of financial distress due to the mismanagement of the owners⁴². The overarching argument was that there is a need to reconsider how far the test is able to meet the financial aspects of transfer of ownership. More recently, he has argued: “We’ve got a fit and proper persons’ test in football in name only at times. It’s been way too weak, and I support moves towards a statutory regulator for football. In football, the governing bodies have shown they’re not capable of separating out the vested interests from the wider interests of the game. There is a need for reform in terms of how clubs can be bought and sold. You do not want to make it too stringent so no one can come in, but you do need to have checks and balances. Sadly, they have not been in place at times and a lot of the clubs, the proud names we know and love, are at risk at times – that’s not right⁴³.”

Some of the recent concerns around the OADT relate to the inefficacy of the test to protect the clubs from speculative business interests of the prospective owners who may purchase

³⁹ Ibid, 13.

⁴⁰ Ibid

⁴¹ Greater Manchester CA, ‘Mayor of Greater Manchester calls for footballing authorities to grant Bury FC a stay of execution’ (2019) accessed <<https://www.greatermanchester-ca.gov.uk/news/mayor-of-greatermanchester-calls-for-footballing-authorities-to-grant-bury-fc-a-stay-of-execution/>>

⁴² Ibid

⁴³ Gary Carter, ‘Andy Burnham calls for stronger rules for club owners as Salford raise £250,000’ (31 May 2023) accessed <<https://www.thesun.co.uk/sport/22528509/football-rugby-league-bury-salford-andyburnham/>>

clubs merely as assets that can be sold for better value⁴⁴. In other words, the difficulty with the test may be that it is not able to protect professional clubs from being transferred to owners who have mere business interests in the clubs and may treat club assets in a speculative way. Therefore, there may be a need to consider whether the financial aspects of the test need to be strengthened, and focus should not just be on the legal aspects, which are limited to assessment of criminal records of prospective owners or directors of the clubs. The argument is premised on the role of football in the British society and the traditional relationship between the sport and the supporters of the sport, which may be jeopardised when football clubs are transferred to the hands of those who indulge in financial mismanagement⁴⁵.

From the perspective of the owners of the football clubs, this is an investment, and it does have a business purpose to it, which may become one part of the experience of the purchase of the football club in the UK. When the question of purchasing a football club is raised in the context of regulatory framework, it is possible that the question may disregard the financial or business objectives of the investors and focus primarily on the rules and regulations that apply to the process of purchase and transfer of ownership. Nevertheless, the financial or business aspect should arguably not be seen in a vacuum or as separate to the regulatory aspect because the former may impact the experience of the latter, not least from the perspective of the investor as a stakeholder in the regulatory framework.

As argued by Hamil and Walters: “Since the beginning of the twenty-first century, we have witnessed the increasing importance of club ownership owing to changing economic incentives, the increasing prevalence and financial leverage of private investors, and the increasingly important role of private investors from a sporting perspective. Because European football clubs typically follow financial and/or sporting objectives such as profit or win maximization, academic scholars have established a growing research stream studying the impact of club ownership and governance systems on the financial and sporting

⁴⁴ Ibid.

⁴⁵ Sean Hamil and Geoff Walters, ‘Financial performance in English professional football: ‘An inconvenient truth’ in *Who Owns Football?* (Routledge 2013).

performance of football clubs. Additionally, club managers, owners, and regulators are interested in understanding the implications of football club investments⁴⁶.”

Therefore, the ways in which different stakeholders in the purchase of the football club experience the process or regulatory framework that facilitates and allows this process, cannot be separated from the framework itself because there could be gaps in the framework that does not respond to the business objectives of the investors adequately. Returning to the OADT as an example for this argument, the legal principle seeks to ensure that those with criminal records do not become owners or directors of the clubs. However, it does not respond to the speculative tendencies of the investors who may wish to purchase clubs as speculative assets and who then harm the continuity of the club or mismanage it financially. Since the OADT does not take into considerations such speculative tendencies of the investors, it can be said that there is a gap between the legal principle and the practical or financial motivations of the investors, which may also harm the continuity of the football clubs.

Recently, some changes have been proposed which will be relevant to the transfer of ownership; these changes are proposed under the *Football Governance Bill*, which proposes to establish a new Independent Football Regulator (IFR) as a new public body for elite football⁴⁷. The Bill also sets out the three stated primary objectives: “Club financial soundness to protect and promote financial sustainability of individual clubs, ensuring that clubs take sensible financial decisions and consider the long-term when taking risks; systemic financial resilience to protect and promote the financial resilience of English football as a whole, ensuring that systemic risks and structural issues like the distribution of revenue through the pyramid are managed appropriately; and heritage - to safeguard the traditional features of English football that matter most to the fans and local communities of clubs⁴⁸.”

⁴⁶ Marc Rohde and Christoph Breuer, ‘The market for football club investors: a review of theory and empirical evidence from professional European football’ (2017) 17(3) *European Sport Management Quarterly* 265, 266.

⁴⁷ Department for Culture, Media & Sport, ‘Fact sheet - the Independent Football Regulator (IFR)’ (25 March 2024) accessed <<https://www.gov.uk/government/publications/football-governance-bill-supportingdocuments/fact-sheet-the-independent-football-regulatorifr#:~:text=Prospective%20owners%20and%20directors%20of,be%20found%20to%20be%20unsuitable.>>

⁴⁸ Ibid

Within these stated objectives, there is arguably potential for the responses to the gaps in the process of purchasing of football clubs. This is reflected in a number of powers that are proposed for the IFR. These include the tests that the prospective owners and directors have to meet including, a fitness test (owners and directors), a source of wealth test (owners only), and a requirement for financial plans and resources (owners only) "to make sure a club's custodians are suitable and protect fans from irresponsible owners"⁴⁹. As per the proposed changes, the prospective owners and directors have to pass these tests before buying it or joining it⁵⁰. Furthermore, the proposed changes also seek more fan engagement for ensuring heritage protections so that they can discuss key strategic matters and club heritage⁵¹. Although not directly related to the issue of process of transfer of ownership, this is an important point given that one of the critiques of the process is that the fit and proper test does not consider the intentions of the investors and the possibility of speculative practices involved in investment⁵².

The regulatory framework within which the transfer of ownership of football clubs takes place is an important aspect of the entire process which involves many stakeholders. As part of this process, the prospective investors may have to consider how the regulatory norms affect their decisions and negotiations. The ways in which the investors may approach these norms and are affected by these are discussed in the next section, which provides the findings of the analysis of some primary research conducted in this paper.

Findings

This section of the paper details findings from three interviews conducted with relevant stakeholders who are involved in the process of football club takeovers. The first interview is with an American investment Group. The second interview is with a global agency that act as

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

⁵² Gary Carter, 'Andy Burnham calls for stronger rules for club owners as Salford raise £250,000' (31 May 2023) accessed <<https://www.thesun.co.uk/sport/22528509/football-rugby-league-bury-salford-andyburnham/>>

buyers for investors. The third interview is with a Venture Capitalist from England who invests in football clubs. The purpose of the interviews was to collect data highlighting the themes that are relevant to understanding the process and the regulations to be adhered to for the purchase of a professional football club, assessing the understanding around the regulatory framework relevant to the buying and running of a football club and understanding around the role of agencies and institutions. The questions posed in the interviews probe the purposes for making decisions regarding purchase of the football clubs, the legal and regulatory processes that the purchases face or go through and the other aspects of their experience with the process.

One of the purposes for the investors to purchase a football club can be to connect to the community given that sports have a significant public interest component; this is suggested in the interview with the American investment group, in which it is noted that sport organisations have a “strong and loyal connection in the most part to the community” and therefore, their approach is to “engage the community and take them on this journey with us” and leave the organisation “in a better place than when we acquired it” (Interview 1). Similarly, in Interview 2, other related themes of public interest in the sports and how this plays a role in purchase decisions, are revealed. The interview with the Global Agency that act as buyers for investors reveals that there is an interest in purchasing football clubs because of the potential of this asset to improve the investor’s overall value in the global marketplace and to also soften “power politically and to brand their other much bigger businesses on a global platform” (Interview 2). The public interest in the sports can also be seen as an emotional connection that the public has with the sport and how this affects the decision to purchase by the investors. This is revealed in the third interview, which was with a venture capitalist from England, who noted that some of his previous investments in the clubs were based on his own emotional connect to the game, and his current and future decisions are likely to be guided by the more practical goal of improving brand image and helping other “business ventures globally that afford me to build a Multi-club-ownership group which will also be investing in multiple sports not just football” (Interview 3). Albeit different in tone, all these responses speak to the soft power of the football clubs, which can be related to the interest that the general public has in the sport and the organisations related to it.

The component of public interest in sports and the role that it plays in how the regulatory framework is shaped in the UK, is one of the areas that can be related to this theme (discussed above) revealed in the interview data. Going back to the statement made by Lord Woolf in *Modahl v British Athletic Federation*, where he highlighted the public interest in sports⁵³, it can be argued that the acceptance of sports having an immense public purpose means that it cannot be limited to the regulation of private law alone and there is a need for public law component to ensure the regulation of football clubs in the UK. Sports can therefore be subjected to regulation of the public law, albeit in a limited sense because also applicable are private law and self-regulation⁵⁴. The awareness of the way in which the public interest in the sport of football is manifested in the UK can be seen from the response of the American investor group, which notes that “the history of the game football is in the DNA of the English people, the tradition of the clubs, many of which are known all over the world” and the way in which this impacts the shaping of regulations in the UK, such as “self-governance, financial fair play, the government potentially being involved with a regulator” (Interview 1).

With regard to the process of purchasing a football club in the UK and the ways in which rules and laws and regulations impact this process, interview 1 revealed that central to the process of purchasing the club, is the question related to the attention to financials, key revenue streams, wage costs, projected EBITDA, strength of brand, evaluation of playing squad, impacts of promotion and relegation, real estate and, club valuation (Interview 1). These are more business-related aspects and have only indirect bearing on the rules and regulations to the purchase of the club in the legal sense. In the latter context, what is significant is the drawing up of the valuation agreement, which highlights the current fair market value of the club in terms of the sale of controlling a majority ownership stake or the expected price that the club would change hands for between a willing buyer and a willing seller. This is part of the contract law, which becomes applicable to both the parties involved in the transaction of the purchase of a football club or a stake in the same. In the legal sense, purchase of a football

⁵³ *Modahl v British Athletic Federation Ltd (No 2)* [2001] EWCA Civ 1447.

⁵⁴ Ian Blackshaw, *International Sports Law: An Introductory Guide* (T.M.C. Asser Press 2017) 10.

club is a private arrangement between two parties⁵⁵ and the transaction includes within itself regulatory aspects of contract, employment, anti-trust, and competition, which are a combination of private law and public law⁵⁶. In many cases, there are negotiations between the buyer and seller directly, and due diligence has to be done by both parties where they also consider ownership eligibility criteria, financial fair play regulations, and club governance standards⁵⁷. The practical aspects of due diligence are concerned with the profitability of the venture, which can be done by the purchaser considering whether the purchase would be successful in terms of winning games, building brand value, increasing EBITDA, and enhancing asset value (Interview 2). The legal aspects of the process of due diligence are concerned with player registrations, third party relationships, and regulatory frameworks the club is operating in the UK (Interview 3). Therefore, the purchasers or investors are interested in assessing the broader regulatory issues as well when undergoing the process of purchase.

The contractual aspect of the regulatory framework is also brought out in the responses given by the English Venture Capitalist in the third interview because there are aspects of the contractual law that becomes applicable in the process of purchasing the club or a stake in it. These aspects include the entering into a nondisclosure agreement (NDA) by the interested parties, which becomes the basis for further negotiations between them (Interview 3). The other aspects of contractual law include the entering into other documents prior to the final contract, such as, a deal sheet, which is a short document setting out the important elements like the potential purchase price, period of exclusivity for negotiation, confidentiality clauses, and the time for completing the deal (Interview 3). The next document is the Sale Purchase Agreement (SPA) as per which the final terms of the agreement are settled. These are particularly contractual aspects of the regulatory framework and the responses by the interviewees suggest that a major part of the negotiations and the outcomes is dealt with under the contractual law. For instance, Interview 3 describes the entire process of purchasing the club as one that commences with approaching the agreed club/s to ascertain if they have interest in selling, providing proof of funds and entering into an NDA with

⁵⁵ Ben Fisher, How to buy a football club: new EFL guidance offers 'clearance, not approval' (*The Guardian*) accessed <<https://www.theguardian.com/football/2023/sep/14/new-efl-guidance-for-club-owners-analysis>>

⁵⁶ James A. R. Nafziger, 'International sports law' in James A. R. Nafziger and Stephen F. Ross (eds.), *Handbook on International Sports Law* (Edward Elgar 2011)

⁵⁷ Ibid

prospective club, negotiations on the price based on approximate valuation and due diligence, entering into a Deal sheet or heads of terms and finally entering into a 'Sale Purchase Agreement' on successful completion of DD.

One of the aspects that is relevant to the regulatory structures in the UK, as well as the broader European context is related to the changes in the FIFA transfer system under the recent European Court of Justice ruling, under which the existing FIFA rules have been considered to be in breach of EU law related to freedom of movement, proportionality, and competition law⁵⁸. The ECJ has held that the FIFA rules create barriers to the free movement of workers/players, restrict competition between football clubs, and are disproportionate to the legitimate goal of maintaining the integrity of soccer competitions⁵⁹. This ruling has also been referred to in the interview data, particularly in the interview with the English venture capitalist who has noted that this will lead to a “quiet time for club investment/acquisition – I think investors may be spooked and will take a back seat to see how this plans out. The issue here is if investors then focus on other leagues around the world particularly in Spain, Italy etc., maybe even in Brazil as they have now changed their ownership rules” (Interview 3). This statement is also a reflection on how regulatory norms can impact the investor sentiment and decision making. In other words, the business and practical side of such decisions are influenced by the legal and regulatory framework within which the investments take place.

The EU law continues to be an important element of this regulatory framework as also noted in a judgment last year by the ECJ in *Superleague case*⁶⁰ where the ECJ held that the rules adopted by sports federations generally fall within the scope of EU law unless such rules were adopted exclusively for non-economic reasons and for matters of interest only for the sport. Although these judgments are related to the transfer of players only, the important aspect to consider here is that there can be different areas in which the EU law can become relevant to the regulatory framework and can impact the investments in football clubs. Due to this, it is to be expected that the investors would be impacted by the regulatory framework in how

⁵⁸ *Fédération internationale de football association (FIFA) v BZ ("Diarra")*, C-650/22, 4 October 2024.

⁵⁹ Ibid

⁶⁰ *European Superleague Company SL v Fédération internationale de football association (FIFA), Union of European Football Associations (UEFA)*, C-333/21, 23 December 2023.

they make their decisions with regard to the purchase of football clubs. As noted in the Interview 2, “Additionally, ownership regulations in some regions may impose restrictions on foreign investors or limit the ability to own multiple clubs, complicating their investment strategies.” This suggests that the regulatory framework concerns are a significant aspect of the decision-making processes of the investors.

Investors are guided by practical considerations when they are looking to purchase football clubs. For instance, the American investment group representative noted that prior to the purchase of the club they look at the projected EBITDA over the period of the tenor and are also concerned about the strength of the brand, the league they play in, their fan base and their brand value around the UK and the world (Interview 1). Considering these aspects are an important part of their strategy (Interview 1). Similarly, the interview with the global agent also revealed similar concerns in strategy around purchasing a football club; he noted “Like many industries, football clubs are not immune to the effects of deals and corporate partnerships and are particularly vulnerable during times of economic recession as the businesses may reduce their marketing and advertising budgets. In addition, fans may cut back on discretionary spending, leading to a decline in ticket sales, merchandise purchases and subscriptions of pay per view or streaming services. Economic instability can therefore have a significant impact on the club's financial health” (Interview 2). Again, these are practical concerns around the decision for purchasing the clubs and the investors are likely to think about the risks that the investment may pose.

Also relevant at this time, according to the third interviewee, is that the new owners should pass the Owners and Directors Test (ODT) with the EFL in particular. These responses do suggest that those interested in investing in a professional football club are aware of the legal formalities that are required to be followed by them and that there is a strong contractual base to these formalities as well as other regulatory requirements such as OADT that have to be met. The legal requirements are also an important part of consideration for the investors as revealed by the responses in the interviews; the American investment group representative specifically referred to some aspects of the legal requirements in the interview. For instance, he noted “we have a multidisciplinary team to consist of lawyers,

accountants, and specialists, data analysts, football specific experts. We are acutely aware of the owner and directors test, which is very important in the UK. We will then utilise our network for more specific areas such as the owners and directors test when purchasing the club. It's my understanding that this process will start early on with both ourselves and the selling club" (Interview 1). The same references are made in the Interview 2 by the global agent where he notes "What's important for us is to also understand the rules and regulations such as the owners and directors test, the independent regulator which has been spoken about in the UK, and any potential rule changes to financial fair play or financial sustainability."

The third interview also makes reference to the Owners and Directors test (OADT) in the strategy part of the decision-making process. Clearly, the regulatory processes are known to the investor, and they are concerned about fulfilling these requirements as part of the process. Similarly, the global agent mentions regulatory risks of the investment as one of the important aspects of their strategy noting that the investors that they represent need to understand regulatory risk the sports industry football which is "subject to a range of regulations, regulatory requirements including financial fair play rules that govern spending and financial sustainability, particularly in European football, violations of these regulations can result in hefty fines, transfers, restrictions, or even exclusion from competitions" (Interview 2). Also, part of the regulatory environment, which affects the decision making of the investors are tax policies and regulations, which the Interview 2 specially refers to as these can have a significant impact on the financial performance of a club and the investors need to account for the potential changes in tax laws, particularly those relating to player wages or international earnings, that can alter financial projections for clubs.

With regard to self-regulation, the responses of the interviewees suggest that there may be a preference for more self-regulation and less involvement of government. For example, Interview 3 with the English Venture Capitalist revealed that there is a sentiment of aversion to government involvement: "we have seen for decades how government has been a negative for business, there involvement is not at all good for football and I believe this will put off many overseas investors, they will take their money elsewhere" (Interview 3). At the same time, an awareness around the role of the EU football associations in regulation is also

demonstrated in the response in Interview 2, where the global agent notes that “particularly in European football, violations of these regulations can result in hefty fines, transfers, restrictions, or even exclusion from competitions” (Interview 2). Therefore, there is an aspect of over- regulation also that may be a concern for prospective investors.

In the interviews, there is no reference to the Fit and Proper Persons test, which may suggest that the test is not one that is primarily a source of concern for prospective investors. The lack of adequate reference to the test may suggest that the test is either irrelevant to the investors or it is not effective. This coincides with the issues highlighted by Lord Triesman, who demanded that the prospective owners and directors of the clubs should prove themselves to be financially capable of running the club and only upon such evidence should the ownership be transferred⁶¹ and Andy Burnham, who has raised continuing concerns around the fit and proper test being able to meet the financial aspects of transfer of ownership⁶². Indeed, there have been concerns around the inefficacy of the test to protect the clubs from speculative business interests of the prospective owners who may purchase clubs merely as assets that can be sold for better value⁶³. At the very least, the lack of reference to this test when the interviewees were probed about the process followed for purchasing football clubs in the UK, suggests that there may be some merit to the argument that the test is not meeting the financial aspect of ownership transfer and is not proving to be effective.

Concluding thoughts and future directions

The increasing acquisition of football clubs by “trophy owners”, including wealthy individuals, sovereign wealth funds, and multinational companies, has transformed club ownership into a tool of global prestige and soft power. Although such investors often provide considerable financial inflows, their involvement has highlighted significant concerns regarding governance, transparency, and regulatory compliance, ultimately forcing legal and institutional reforms that could affect potential future owners.

⁶¹ Sean Hamil and Geoff Walters, ‘Financial performance in English professional football: ‘An inconvenient truth’ in *Who Owns Football?* (Routledge 2013).

⁶² Greater Manchester CA, ‘Mayor of Greater Manchester calls for footballing authorities to grant Bury FC a stay of execution’ (2019) accessed <<https://www.greatermanchester-ca.gov.uk/news/mayor-of-greatermanchester-calls-for-footballing-authorities-to-grant-bury-fc-a-stay-of-execution/>>

⁶³ Ibid.

An example could be seen in the 2021 acquisition of Newcastle United by Saudi Arabia's Public Investment Fund (PIF), which sparked intense concern about potential state involvement and sportswashing. In response, the Premier League demanded legally binding assurances that the Saudi government would not control the club⁶⁴. As a result of this case, the Owners' and Directors' Test was amended in March 2023 introducing disqualification criteria for individuals who violate human rights as specified by the UK's Global Human Rights Sanctions Regulations⁶⁵. Consequently, new investors must now satisfy higher legal and ethical standards in addition to financial benchmarks, which highlights the increasing interdependence of financial capital, legal oversight, and normative considerations in football governance.

Private equity and venture capital have reshaped football club ownership, enabling financially driven investors, often with limited football experience, to enter the market. Firms like 777 Partners and RedBird Capital use multi-club ownership models, creating new investment avenues but raising concerns over transparency and competition law. The Premier League's emphasis on long-term funding and financial credibility was brought to light by 777 Partners' unsuccessful takeover attempt of Everton FC. Additionally, the Financial Services and Markets Act 2000 plays a critical role in governing investment structures and upholding standards of financial integrity. Private funding has made club ownership more accessible, but it has also increased the demand for more robust legal protections. Future potential owners will therefore probably be subject to more regulatory scrutiny and will need to prove their long-term financial stability.

The future direction of financing through women's sports, esports, and crypto/digital currency presents new opportunities and challenges for club owners. Investing in women's

⁶⁴ Aaron Ettinger, 'Saudi Arabia, Sports Diplomacy and Authoritarian Capitalism in World Politics' (2023) 15 *International Journal of Sport Policy and Politics* 1
<<https://www.tandfonline.com/doi/full/10.1080/19406940.2023.2206402?scroll=top&needAccess=true#abstract>> accessed 3 April 2025.

⁶⁵ Will Unwin, 'Premier League to Block Owners Guilty of Human Rights Abuses under New Rules' *The Guardian* (30 March 2023) <<https://www.theguardian.com/football/2023/mar/30/premier-league-block-owners-guilty-human-rights-abuses-new-rules>> accessed 3 April 2025.

sports offers significant growth potential, with rising valuations and increased media attention driving interest from both traditional and new investors. Esports is becoming a key element in club portfolios, offering additional revenue streams through sponsorship, media rights, and brand partnerships, while raising legal issues around intellectual property and cross-border competition⁶⁶.

Digital currency ventures represent one of the most experimental financing tools in football ownership. The example of a digital currency-based currency raise is Watford FC, who in June 2024 announced that they would be seeking to raise £17.5m by selling approximately 10% of the share capital, thus valuing the organisation at £175m⁶⁷. It has not been a success and it is believed the Club has raised approximately one third of its target, with the strong potential that the funds collected to date will be returned in the near future. This could be seen as extremely damaging to the future of raising capital through digital currency but the conditions for each raise should be looked at on an individual basis including the timing of the announcement, the amount being raised, the purpose of the capital, position of the club and its stewardship by the ownership group.

These financial innovations could be seen as promising but can also pose risks to competitive balance and sporting integrity, thus needing legal intervention. The proposed Independent Football Regulator (IFR) is expected to oversee financial sustainability and fair competition. Moreover, the growing integration of financial and legal factors in contemporary football is demonstrated by UEFA's changing Financial Fair Play (FFP) and Squad Cost Rules (SCR). The regulatory structure going ahead needs to find a balance between supporting the legal ideals of openness, equitable competition, and long-term club stability and promoting financial innovation.

New/Current regulatory landscape

⁶⁶ Daniel Plumley and Rob Wilson, *The Economics and Finance of Professional Team Sports* (Taylor & Francis 2022).

⁶⁷ <https://europe.republic.com/insights/blog/efl-championship-team-watford-fc-to-offer-equity-shares-in-the-club-through-digital-investment-platform-republic>

Although official statements regarding the Independent Football Regulator (IFR) provide an indication as to its responsibilities, it should be noted this is subject to change as happened with removal of the “foreign and trade policy” considerations⁶⁸, however, as currently stated we know:

- It will be concerned with tiers 1-5 of English football⁶⁹.
- It will undertake Owners and Directors Tests (ODTs), as a recommendation, a consolidated test would replace each of the current tests from the Premier League, EFL and The FA⁷⁰. Pinsent Masons observed that a new test may require existing owners to sell their stake but that it is “unlikely”⁷¹.
- The ODT will include a fitness test, source of wealth test and requirement for financial plans and resources⁷².

If the ODT is passed the IFR then places constraints on running a club including issues which were heretofore not in the purview of regulation and that can impact freedom of commercial decision-making, including:

- Enhanced financial regulation, with the IFR able to introduce bespoke conditions if there is a concerning level of risk;
- Fan engagement regarding ticket pricing and club heritage, although the type of engagement is not stated;
- IFR approval needed for a resale or relocation of the stadium;
- Prohibiting clubs from joining breakaway or unlicensed leagues, particularly those of an unmeritocratic nature;
- Backstop to intervene in the distribution of broadcast revenue.

⁶⁸ <https://www.gov.uk/government/news/strengthened-football-governance-bill-launched-to-protect-clubs-and-support-fans#:~:text=The%20Regulator%20will%20no%20longer,independent%20of%20government%20and%20industry.>

⁶⁹ <https://www.bbc.co.uk/news/articles/cnvz96qydyo>

⁷⁰ <https://www.gov.uk/government/publications/fan-led-review-of-football-governance-securing-the-games-future/fan-led-review-of-football-governance-securing-the-games-future>

⁷¹ <https://www.pinsentmasons.com/out-law/analysis/football-governance-bill-approaches-biggest-test-parliament>

⁷² <https://www.gov.uk/government/publications/football-governance-bill-2024-supporting-documents/fact-sheet-the-independent-football-regulator-ifr>

Of course, the competitions in which the club in question is involved will impact the regulations to which it is exposed. Both the PL⁷³ and EFL⁷⁴ have separate financial controls. With the threat of significant sporting sanction (Everton⁷⁵ and Nottingham Forest⁷⁶ points deductions), the PL and EFL exercise rules which limit spending by clubs. Within the EFL, in League One and League Two, the Salary Cost Management Protocol (SCMP) limits player spend to a proportion of revenue. The Championship like the PL is subject to Profit and Sustainability Rules (PSR) which place a cap on losses over a three-year period.

In the PL as things stand, there is due to be a switch from PSR to Squad Cost Rules (SCR), which would limit player spending to a proportion of revenue, combined with anchoring the absolute figure this can rise to. However, this is not due to come into force for at least one more season⁷⁷. For clubs which also take part in UEFA competitions, regardless of PL rules, they must abide by SCR, limiting squad cost to 70% of revenue⁷⁸. For these clubs, a switch from PSR to SCR domestically is unlikely to have much impact and may simplify considerations slightly. Rules on Associated Party Transactions (APTs) aim to prevent deals between clubs and entities linked to owners are not priced at fair market value⁷⁹, however, due to recent challenges to these, their long-term form, or existence is not currently clear⁸⁰.

An increase in multi-club ownership?

The ever-growing model of multi-club ownership is an increasing phenomenon in contemporary football. UEFA regulates this matter in Article 5 and aims to preserve integrity of the competition. The primary objective of Article 5 is to avoid conflicts of interest that can arise from the ownership of multiple clubs when they compete in the same continental competition.

⁷³ https://resources.premierleague.pulselive.com/premierleague/document/2024/12/11/e9aa1b9e-a7d5-4788-8afe-6e07b8a5f5fc/TM1603-PL_Handbook-and-Collateral-2024-25_11.12_DIGITAL.pdf

⁷⁴ <https://www.efl.com/governance/financial-regulation/>

⁷⁵ <https://www.premierleague.com/news/3788486>

⁷⁶ <https://www.premierleague.com/news/3936397>

⁷⁷ <https://www.bbc.co.uk/sport/football/articles/c30demg4pv2o>

⁷⁸ <https://documents.uefa.com/r/UEFA-Club-Licensing-and-Financial-Sustainability-Regulations-2024/Article-94-Squad-cost-rule-Online>

⁷⁹ <https://www.premierleague.com/news/4144827>

⁸⁰ <https://www.premierleague.com/news/4244928>

Article 5 is designed to ensure that no organisation, whether individual or corporate group, has decisive influence or control over clubs participating in the same UEFA competition and focuses especially on scenarios in which a single organisation manipulates results, player transfers, or other match variables to gain an unfair advantage. Article 5 extends beyond the simple recording of direct ownership. UEFA has defined the concept of 'decisive influence', which, regardless of the ownership structure, also analyses and assesses influence in shareholdings, the recruitment of key employees and direct influence on strategic decisions. Article 5 is subject to change, due to the evolving nature of modern football ownership and UEFA acknowledges the need for a nuanced interpretation and strong enforcement procedures to maintain competition integrity. In the past UEFA has granted individual exemptions, as the recent Red Bull ownership example shows. The increasing number of multi-club ownership arrangements presents both opportunities and disadvantages, requiring ongoing discussions between innovation and regulation to ensure the long-term viability of European club football.

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