

Independent Football Regulator  
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To whom it may concern,

### **IFR Licensing Regime (Consultation Paper 5/25)**

The Chartered Governance Institute is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead effective governance and efficient administration of commerce, industry, and public affairs working with regulators and policymakers to champion high standards of governance and providing qualifications, training, and guidance. As a lifelong learning partner, the Institute helps governance professionals achieve their professional goals, providing recognition, community, and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, the Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and many other countries and regions including the Caribbean, parts of Africa and the Middle East.

Since 2020, the Chartered Governance Institute UK & Ireland has worked in partnership with all five Sports Councils of the UK to deliver the Sports Governance Academy, a National Lottery-funded project to train, support and develop those working in governance roles across the sport and physical activity sector in the UK. The Institute has been involved in the development and review of governance codes and frameworks across all sectors, including the review of the Code for Sports Governance in 2020/21.

We are grateful for the opportunity to provide responses to the questions contained in the consultation document for the proposed Licensing Regime. These responses are restricted to the section of the consultation dealing with corporate governance.



#### **14. Do you agree with the IFR's proposal for a single Club Code that applies to all licensed clubs?**

##### **Initial comments**

The proposals for the introduction of a Football Club Corporate Governance Code are currently among the weaker provisions set out under the Licensing Regime, both in terms of the IFR's ability to enforce the Code's implementation under the legislation, and also in the detail provided at present. The development and publication of a code of governance for football was a key recommendation of the Fan-Led Review and the benefits of a robust, comprehensive and well-drafted framework are evident across all sectors, including in sport. It was disappointing to see the proposed document receive a little over four pages in the middle of a wider consultation document. We believe that greater engagement is required from the IFR on the likely content of the Club Code and expect that further consultation will be carried out on the proposed text in full.

In paragraph 4.9, it is stated that clubs will have discretion with regard to which governance practices are most appropriate for their circumstances. We appreciate that this is intended to provide proportionality. However, it is not clear whether there will be any 'non-negotiable' practices that the IFR would like to see all clubs adopt.

Paragraph 4.12 points out that the Act does not allow for the IFR to take direct enforcement action against clubs failing to apply the Club Code. The IFR's response to non- or incomplete application of the code highlighted in the subsequent paragraph seems unlikely to compel the most recalcitrant clubs and we therefore have some reservations about the efficacy of this element of the proposed licensing regime.

##### **Single code**

We are firmly of the view that for good governance to be sustainable, it must also be proportionate. We recognise that the IFR intends (paragraph 4.9) that clubs adopt practices appropriate to their circumstances. The IFR's remit covers a vast range of clubs, from those publicly listed to National League clubs with a turnover of less than 2% of that of their Premier League counterparts. Ensuring a Club Code that is sufficiently detailed to speak to the former, while remaining attainable for that latter, will be challenging.

A three-tiered code was recommended by the Fan-Led Review. This approach has without doubt been one important factor in the successful implementation of the Code for Sports Governance, which has helped to raise the standard of governance across the publicly funded sector. The approach allows for more onerous governance requirements to be applied only to organisations in receipt of the greatest public funding, which tend to be those with more resource to implement them. Such a code could operate with common principles, but with more clearly identified recommended practice for clubs of different sizes and complexity. The Code for Sports Governance provides a clear example that the Club Code might follow, both in terms of its structure and of the requirements and recommended practice it contains. A number of our suggestions below for additional areas of coverage are included in the Code for Sports

Governance, which is more comprehensive than the consultation paper indicates the IFR intends the Club Code to be.

In fairness, we note that frameworks in other sectors have taken a single code approach and that within the broader football system, the Capability Code of Practice which is applied to 116 charitable foundations within the game, has not to date adopted a tiered approach.

If the approach of a single code for all clubs falling under the licensing regime is maintained, care will need to be taken when drafting to ensure that sufficient detail is provided in terms of recommended practice and potential ways in which clubs may choose to meet the code's provisions in order to offer a clear roadmap to application of the code to an acceptable standard, taking into account individual circumstances. It is difficult to offer a view on the applicability or otherwise of the Code for clubs of varying size, complexity, resource, etc. until the draft content of the Code in full is available.

The success of the Code for Sports Governance has, in our judgement, been largely down to three factors: its mandatory nature (attached to public funding), its tiered structure, and the accompanying support and guidance packages. As it stands, the Club Code does not have mandatory status (as highlighted in paragraph 4.12) and it is unclear as to how its scalability will be framed. We would urge the IFR to ensure that the third element of the Code for Sports Governance's success receives appropriate and necessary focus by providing clubs with a comprehensive training and guidance offering to upskill those engaged in football governance and facilitate the implementation of sound and robust governance practices.

**15. Do you agree with the IFR's proposed principles of the Club Code? Do you think these principles are proportionate and will effectively promote good corporate governance within football clubs?**

We expect that a draft of the full Code will be made available for consultation for more complete feedback on the principles as well as on the accompanying guidance and recommended practice.

We are in broad agreement with the five principles which have been identified. They are, however, set at a relatively high level. The extent to which the Club Code will effectively promote good corporate governance will be determined less by the principles themselves and more by the underlying recommended practices as these will be the policies, processes and behaviours which are enacted within the activities of the clubs. Similarly, the proportionality of the principles themselves is somewhat theoretical. The proportionality of the practices will determine the degree to which football governance is improved.

**16. Are there any additional principles you would suggest, or any changes to the existing proposals?**

As noted above, the absence of the full content of the Club Code makes it difficult to offer a comprehensive view on any changes we consider will be required.

The Club Code is currently silent on a number of provisions that one might expect to see in a governance code of this nature. These include remuneration, conflicts of interest, independence

of board members and ESG considerations, to name a few. These may be addressed in the accompanying commentary and recommended practice.

We offer the following observations and/or questions on the content provided in this consultation document:

### **Principle 1: The board, strategy & purpose**

- The Club Code will need to establish the role of the board in respect of the varied ownership structures at play in football. Under the proposed principles set out under 4.14 it is stated that ‘the intention of the principle’ is that the board acts as the club’s ultimate decision-making body. The use of ‘intention’ would seem to introduce a grey area, especially in light of some clubs being owned by a single individual and in some cases the board being appointed by the owner. Even in privately owned companies, directors have statutory duties under company law and we would like to see the Code reflect more fully both the obligations of directors and the practical relationship that they may have with the owner or owners. The Code for Sports Governance is more explicit in its requirement (1.1a) that ‘The Board of the organisation shall be the ultimate decision-making body and accordingly exercise all of the powers of the organisation’. The stated intention in the consultation document is also a little stronger than the given text under Principle 1a) that the board ‘takes collective responsibility for the sustainable success of the club’.
- This principle would be an appropriate place to include a board’s understanding of the responsibilities it bears for protecting the heritage and the long-term future of the club.
- We would expect to see a provision relating to assessment of the performance of the board and of the wider governance structure. The explicit reference to an ‘effective board’ is clearly linked in part to Principle 3 on composition in terms of personnel, skill and experience, but a crucial factor will be periodic review of the board’s performance. Regular and timely evaluation of the board, the board members and the governance arrangements is critical to the optimal running of an organisation. An external board performance review objectively highlights strengths and weakness and assesses the capacity to deliver the long-term objectives of the organisation. Typically, a board and governance review would be undertaken internally on an annual basis and facilitated by an external provider every three or four years.
- Board members should be provided with a full, tailored induction programme and sufficient provision should be made for their ongoing developmental needs.

### **Principle 2: Risk Oversight & Controls**

- This principle is of the utmost importance: many of the financial problems which have befallen a number of clubs stem from excessive risk-taking, over-reliance on certain sources of funding and lack of robust cost controls. Clubs’ willingness to take on debt also has the potential to store up potential problems for the future. These are important cultural considerations which the IFR must be instrumental in addressing.
- As it currently stands, this principle lacks a good deal of the detail that we expect to see in the final code. While some of the above will be addressed through compliance with other parts of the IFR reporting regime, there remains a place for their inclusion in the Club Code. We anticipate that the recommended practice and commentary will provide much more guidance on: committee structures and composition; arrangements for financial controls and risk management; the policies and processes that clubs should have in place

to satisfy their legal and regulatory obligations as well as for the creation of sustainable organisation and safe, inclusive workplaces.

- The licensing regime requirements for business planning, financial forecasting, etc. should be facilitated by appropriately aligned internal structures and policies.

### **Principle 3: Board Composition**

- Will the Code offer a guide as to the optimal size of a board? Board size is currently referenced in terms of reflecting the club's activities, but no guidelines are given.
- Will the Code set an expectation around the proportion of the board which ought to be considered independent? Independence and objectivity are an essential feature of a board's decision-making and oversight functions. The Code for Sports Governance stipulates that at least 25% of the board shall be independent non-executive directors. Under the UK Corporate Governance Code, at least half of the board should be considered to be independent. The currently stated intention in the consultation document that independent challenge is 'encouraged' ought to be firmed up by an indication as to the conditions that constitute independence and the preferred proportion of the board which satisfy these.
- The consultation document also references the risk of any one individual having uncontrolled decision-making power. This is an important consideration vis-à-vis the influence wielded by owners or majority stakeholders. It might also be considered to translate into the need for the implementation of term limits for directors. Fixed terms also have the advantage of allowing an organisation to effectively plan for change of personnel and for the incorporation of new thinking to adapt to shifting landscapes or to provide oversight of a new strategic direction.
- Principle 3 e) and its accompanying commentary should make clear the advantages of an open, transparent and rigorous process for the recruitment of directors, aligning the requisite skills for effective oversight of the agreed strategy and identifying whether those skills and experience are currently held by the board.

### **Principle 4: Equality, Diversity and Inclusion**

- If the IFR was able to enforce adoption of the Club Code, this might have been an opportunity to make significant headway towards more equitable board composition than is currently observed in the game. The Code for Sports Governance was able to achieve this in defined demographic areas by its inclusion in 2016 of specific targets. We appreciate that a less target-driven approach has since been employed in the revised version of that code and that it is difficult to address diversity more broadly through the use of targets. We note the reference in paragraph h) that clubs will be expected to set EDI strategies in line with requirements and objectives set by competition organisers, governance bodies and the law. These have not to date yielded diverse, inclusive boards in football. The introduction of the Club Code could be used as a catalyst for progress in this regard.
- We urge the IFR to acknowledge that well-rounded and truly equitable approaches to diversity go beyond the protected characteristics under equality legislation and should incorporate serious attempts to make board, leadership and other roles with clubs more accessible to wider under-represented groups, including lower socio-economic

backgrounds, those with lived experience where appropriate, neurodivergent individuals, for example.

- We agree with the intentions of Principle 4 and hope that the recommended practice provides a steer as to how clubs can implement these.

### **Principle 5: Stakeholder Relationships & Engagement**

- We agree in large part with this principle. One additional area that we would like to see addressed is for a clear provision that the impact on the communities in which they operate and on the wider environment is factored into decision making and strategic planning. While this is in part covered by the legal duties of board directors, we believe that football occupies an important status in terms of profile and potential for role-modelling which can be leveraged to effect meaningful societal and environmental change. The publicly funded sector is currently in advance of professional football by incorporating this requirement into the Code for Sports Governance and placing Tier 3 organisations under a specific obligation as part of their funding agreement.
- We are pleased to see that the IFR is minded to incorporate fan engagement via a variety of mechanisms that clubs may follow, rather than through the use of fan directors. Fans are an important stakeholder group for clubs and it is important that their voice is heard. Enabling clubs to adopt a number of strategies means that they can choose the most appropriate approach for them and this is in line with other sectors' approaches to engagement with key groups. The IFR will need to ensure, however, that this engagement is meaningful and effective.

#### **17. Do you agree with the IFR's proposal that all clubs publish and submit their corporate governance statements every two years?**

While we appreciate all appropriate efforts to reduce the compliance burden on clubs, we are of the view that the IFR should consider requiring them to submit their corporate governance statements annually. It seems entirely reasonable that clubs report on their governance arrangements as part of their annual report and this should be extended to provide any additional information required by the IFR if it is not otherwise published.

#### **18. Do you agree with the IFR's proposal to prepare and publish its corporate governance report every two years?**

In line with our thoughts on clubs reporting on their corporate governance, we believe that the IFR should also report on an annual basis. Certainly, this should be the case for the early stages of the IFR regime and at least until all clubs are moved from holding provisional licences to full licences.

#### **19. Do you have any other comments on the IFR's proposals for corporate governance?**

The implementation of a robust Club Code alongside regulatory and licensing regimes equipped with appropriate sanctions, watchful oversight and ongoing dialogue between the IFR and clubs are all welcome moves. They will not by themselves, however, ensure raised levels of governance practice and a shift in the cultures which currently prevail across football. Based on our experience of the introduction of governance codes across all sectors, including the publicly funded sports sector, we believe that clubs will require additional resources to implement the

Club Code effectively and to promote a positive governance culture which instils ethical and responsible behaviour, transparency and accountability.

Specifically, there will be a need for training programmes to familiarise staff and board members with the code's principles and recommended practice, as well as to help embed an understanding of sound and sustainable governance. Access to a bank of guidance material and potentially to peer-to-peer learning will be a valuable support for those charged with code compliance as well as those engaged in governance roles. The need for this will likely be felt more keenly further down the football pyramid. Provision of this sort has unquestionably benefited the roll-out of the Code for Sports Governance across the publicly funded sports sector since 2016 and also the implementation of the FA's Code of Governance for County Football Associations, compliance with which is now mandatory.

If you would like to discuss either the above comments in further detail or how the Institute can support the IFR, please feel free to contact me.

Yours sincerely,

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