

Independent Football Regulator
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To whom it may concern,

Second Consultation on the Independent Football Regulator's Licensing Regime

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, granted 130 years ago, 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 goals, providing recognition, community and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, the Chartered Governance Institute UK & Ireland (CGIUKI) 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, CGIUKI 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 documents for the second consultation on the proposed Licensing Regime. These responses are restricted to the sections of the consultation dealing with corporate governance: the corporate governance statement required from clubs and the draft text of the Club Corporate Governance Code.



Question 1: Do you have any specific comments on the IFR's proposed Licensing Guidance, in relation to:

4. Chapter 4 (Corporate Governance)?

We remain of the view that clubs should be required to produce their corporate governance statement on an annual basis.

The IFR's response to the previous consultation (paragraphs 5.21 h)-j)) has not convincingly made the argument for biennial statements, particularly if, as indicated, it wants to encourage meaningful, timely and up-to-date information being made available to stakeholders, including the Regulator. The publicly funded sector requires national governing bodies to produce annual governance statements and such a statement is a common feature of annual reports across other sectors.

It is stipulated under paragraph 4.9 that the first corporate governance statement be submitted by 31 October 2027 and subsequent statements be submitted every two years. We anticipate that there will be some flexibility applied to the precise timing of future statements so that they may be produced in line with clubs' existing reporting requirements. For example, clubs which include a corporate governance statement as part of their annual report should be able to submit to the IFR at a time which accords with their corporate calendar to avoid duplication of effort.

We recommend a slight adjustment to the wording used in paragraph 4.12 to reflect that the corporate governance statement may be signed by a director on behalf of the board, but that the statement is approved by the whole board. As currently drafted, there might be the assumption that the statement can be signed by a single director (or other individual), rather than the whole board exercising collective responsibility for verifying the statement.

We agree with the requirement in paragraph 4.13 that clubs publish their statements promptly on their website and suggest the further recommended practice here and in paragraph 4.18 that the information be presented in easily accessible language and formats.

We agree with the requirement in paragraphs 4.15 and 4.16 that material changes in clubs' corporate governance arrangements be reflected in updated governance statements. While we also agree with paragraph 4.17 that non-material changes can be included in the two-year cycle, clubs should still take the opportunity to promptly update details on their website or in other channels of communication.

We have additional comments on expectations set by the Code and the amount of recommended practice it contains. These are provided in the question below relating to the Code document itself.

Question 5: Do you have any specific comments on the IFR's proposed Football Club Corporate Governance Code?

Initial comments

We welcome this opportunity to provide comment. We would, however, have liked to have seen a fuller consultation on the draft of the Club Code. In the previous consultation exercise, a very limited amount of provisional text was provided in a much wider consultation document. The understanding at the time was that an opportunity to submit detailed observations on the proposed text would accompany a more advanced draft of the Code.

Whilst on this occasion the Code is presented as a document in its own right, only one consultation question invites feedback from the football and governance communities on its text and once again this is framed as part of a much wider consultation on the licensing regime. We appreciate that the IFR is facing a challenging timeline in order to take up its role and provide effective regulation. However, the Code will form a central pillar of clubs' application of sound corporate governance and as such their compliance with the licensing regime. It will also provide key guidelines and expectations as to how they can demonstrate that they operate responsibly and sustainably. It is therefore disappointing once again that the consultation does not allow for detailed, nuanced feedback on the document.

General application of the Code

Proportionality

In our response to the first consultation, we acknowledged the merits and de-merits of adopting a single code of governance over a tiered document. In its response to the consultation and in its publication of the draft Club Code, the IFR has reaffirmed its position that a single code be implemented. Once again, we assert the concern that at present insufficient guidance is available by which the application of what is 'proportionate and appropriate to [individual clubs'] own circumstances' is to be judged. The Club Code as currently drafted offers far less in the way of recommended practice than is commonly found in codes and frameworks across multiple sectors, and the sports sector in particular. The IFR might wish to:

- a) Set minimum expectations with regard to the governance structures, processes and behaviours that might be deemed to constitute good governance and that can be implemented by clubs of all sizes. In its response to the first consultation, the IFR (paragraph 5.21 a)) says that it cannot mandate certain practices. It can, however, give a more complete steer as to what ought to constitute minimum good practice.
- b) Provide an indication – or examples – of good governance considered either applicable to larger, more complex clubs or which can be adopted by those wishing to exercise ambition in their approach to governance. We are firmly of the view that good governance should be both achievable and aspirational: clubs should be encouraged to stretch – though not overreach – themselves in the implementation of good governance.

In providing minimum expectations and examples of ambitious practice, the IFR can offer clubs a clearer picture of the standard of governance expected of those operating under different circumstances or at different stages of governance maturity. In the absence of a tiered code, this

approach could provide an indication of how clubs at various levels can effectively implement a single code.

At present, the Code risks falling between two stools: it does not adopt a principles-only approach, but also does not provide comprehensive recommended practice or a clearer picture of what 'good' governance looks like in reality for clubs at different places on the maturity spectrum.

Principle 1: The board purpose and strategy

This principle addresses an area of football governance on which the need for clarity is among the most pressing for the game. We are in firm agreement with the intention of the principle and believe strongly that the board should be the ultimate decision-making body for the club. Even in privately owned companies, directors have statutory duties under company law and it is essential that the Code and the Licensing Regime reflect both the obligations of directors and the practical relationship that they may have with the owner or owners.

The concern remains that influence will continue to accrue to particular individuals, given the ownership models prevalent across the game. Paragraphs 1.3, 1.5, 1.6, 3.1 f) and 3.5 b) in the Code seem to reflect this concern to reconcile the influence of owners or dominant shareholders with the collective responsibility that the board bears for primacy in decision making. The Code may still need to emphasise yet further how clubs can mitigate the potential for dominant individuals. Paragraph 1.3, for example, currently reads that the board *should* be the ultimate decision-making body, rather than *must*.

One area that seems to us to warrant additional emphasis is the board's responsibility for setting, embedding, demonstrating and having effective oversight of the organisational culture which it has agreed. Reference is made to board culture (paragraph 3.13) but not to that of the club as a whole. Such a culture ought to infuse all that the club is engaged in, from boardroom culture and strategic decision making to operational activities and interactions with stakeholders.

Additional comments on Principle 1:

- Outcome b) could be amended to read that the 'views' or 'interests' of fans, stakeholders and local communities be taken into account, rather than their 'needs'.
- Paragraph 1.1 could also include risk and, as noted, organisational culture as responsibilities of the board. These are more apparent later in the document, but including them in Principle 1 would help to underscore the importance of the board's role in their management.
- Paragraph 1.2 could be extended to emphasise that decisions should be taken with the club's long-term sustainability at their core. This could also be added to paragraph 1.8.
- The separation of chair and chief executive roles ought to be strengthened in paragraph 1.4. It is a common feature in UK corporate governance that these positions be held by different individuals and we would recommend stronger wording than 'clubs should consider the value' of this separation.
- We agree with the provision in paragraph 1.5 for the separation of board and management meetings and we appreciate that in some organisations (especially smaller ones) the distinction between these functions can lack clarity in practice. With this in mind, we recommend additional wording that draws the attention of those performing multiple roles to recognising the capacity in which they are acting at any particular time.

- In paragraph 1.12, we agree with the importance of trusted whistleblowing mechanisms. However, we are of the view that the wording should be strengthened from ‘should consider’. Furthermore, we believe that the recommended practice in this paragraph should include a separate code of conduct for board members, the signing of a declaration of good character upon appointment (though we recognise that the ODSE regime may provide some overlap in this regard) and more detail on conflicts of interests and their management at board level.

Principle 2: Risk oversight and controls

The issues of risk and control are clearly two of the most pressing problems facing individual clubs and the game as a whole. These have been well documented and are evidenced in levels of both debt and spending, heavy reliance on single sources of income, the near ubiquitous loss-making throughout football and the underwriting of those losses by owners. The cultures of risk-taking, spending and loss-making play a large role in creating the perilous state the game is currently in. With this in mind, there is a disappointing lack of attention paid in the Code to these issues. This is particularly true of the provisions relating to policies and procedures (just one out of ten listed under Principle 2).

Though the board’s assurance regarding the presence of internal controls is referenced throughout the Principle (paragraphs 2.2, 2.6), we believe that more detail should be provided to help clubs understand what policies and procedures they ought to implement to ensure sound financial controls. Additionally, good governance would cover a wide array of policies that organisations of all types should have in place, none of which are referenced here.

Additional comments on Principle 2:

- In paragraph 2.4 we would recommend that the board establish and maintain a ‘*robust* risk management framework’. This may seem a minor semantic change, but the language used in the Code is important in establishing standards and expectations that the IFR ought to have of clubs.
- Further to the risk register being regularly reviewed by the board (paragraph 2.9), it should serve as a living document and be applied to clubs’ operational activities as well as to board-level decisions. In addition to the contents of the register which are listed, assigning responsibility for each risk to an identified person will increase accountability and ownership of each item.
- There is in our view insufficient attention paid to remuneration in the Code. This area will have particular applicability for clubs as regards both expenditure (and consequently its impact on cost controls) and the alignment of incentives with performance and long-term financial sustainability.

Principle 3: Board composition and accountability

Principle 3 provides more than one example of how the Code would benefit from providing a better steer to clubs subject to it. We would like to draw attention to two in particular:

- **Board size.** Principle 3 a) and paragraphs 3.1 a) and 3.5 refer to the board’s size reflecting that of the club and the complexity of its activities. While we recognise that this may be an area for the exercise of proportionality, providing a range of recommended board sizes would

be useful for clubs and will help the IFR effect structural change. It is noteworthy that research demonstrates that some of the most complex clubs – those in the Premier League – have some of the smallest and least diverse boards. Typically, governance codes recommend that boards contain no fewer than seven members (or five for smaller organisations in the third sector) and no more than 12. We recommend that the Code include such a target range. The lower limit allows for the range of skills, expertise and independence which the Code mentions, smoother succession planning and changes in composition, as well as mitigating against the concentration of decision-making power. The upper limit also guards against the board becoming too unwieldy in its deliberations and decision making.

- **Independence.** We agree with the importance of appointing independent members to the board. We would like to see the final draft strengthen the language used in paragraph 3.20 that clubs ‘should consider’ appointing NEDs and would recommend that the Code provides the proportion of the board it feels is appropriate to be composed of independent members. The UK Corporate Governance Code, which like the Club Code operates on a comply/apply or explain model, recommends (Section 2: Provision 11) that ‘at least half the board, excluding the chair’ should be independent non-executive directors. The Code for Sports Governance (Requirement 1.12) and other codes and frameworks across the sector stipulate 25%. Whichever figure is adopted, this would again provide clearer expectations from the IFR which will in turn promote the change that it wants to see.

We would like to see paragraph 3.24 provide a stronger steer as regards board term limits. These are an effective mechanism both in preventing the accumulation of influence and also to allow for orderly succession planning to ensure that board continues to provide effective leadership and oversight in changing operational landscapes.

Additional comments on Principle 3:

- We agree with the concern expressed in 3.1 f) about the risks associated with the concentration of decision-making power in any one individual (or small group of individuals, for that matter) and urge the IFR to embed mitigations against this throughout the Code.
- We agree with paragraph 3.7 that the quality of information sent to the board is more important than its volume and with paragraph 3.8 that board papers should be clear, concise and accessible. The Code could go further on the latter point by drawing attention to how people digest information differently and that accessible formats benefit both particular individuals and also the board more widely – this is an opportunity to embed inclusivity into board practices.
- We note that in its response to the first consultation, the IFR takes the view that it is for clubs to arrange training for their directors (paragraph 5.20 c)). In the draft Code (paragraph 3.11) this approach appears even more diluted, opting for clubs to ‘encourage’ rather than ‘provide’ ongoing professional development for directors. In our experience, training and development opportunities are essential for effective boards and should be a more firmly worded recommended practice. Indeed, we would go further and suggest that the IFR should itself consider providing training opportunities centrally, as for example the Sports Councils do for the wider sector. This becomes even more crucial when one considers ongoing efforts to diversify the composition of boards. By definition, those from backgrounds under-represented at board level may need additional support to help them understand their responsibilities and to fulfil their role effectively. The need for training is brought into sharper relief by the current absence of commentary and/or detailed recommended practice in the Code.

- To those areas of training identified under 3.11 we would also add financial literacy and risk management. These are key areas, germane to the problems facing football, that club directors would benefit from understanding more completely.
- The inclusion of provision 3.14 to provide access to independent professional advice is welcome. This could be extended to include access to an appropriately qualified and experienced governance professional. This resource will be invaluable to clubs seeking to embed the highest standards of governance and to meet the standards of corporate governance being set by the Regulator.
- It should be recognised that a number of the provisions that apply to the composition and operation of the board – skills, independence, diversity, professional and governance support, for example – can also be reasonably applied to the committee structure. Furthermore, the scheduling of committee meetings should be timed to support the main board’s decision making.
- Whilst we do not take issue with the recommended practice identified in paragraphs 3.16ff., their intention is to create more effective boards. However, presumably in order to keep the document as concise as possible, they omit similarly valuable recommendations. This might be a position that the IFR wishes to consider in any revised version of the Code and seek to avoid the situation identified above of falling between two types of code.
- We agree with the inclusion in paragraph 3.18 of regular evaluations of the performance of the board as a whole and of individual directors. Again, we recognise the intention to allow proportionate application of the recommended practice, but we suggest that guidelines as to the frequency of such undertakings be provided. Annual internally conducted reviews are a standard recommendation, with externally facilitated board performance reviews being undertaken on a three-to-four-year basis. This approach balances the financial and resource costs with an appropriate level of objective assessment. We agree that the outcomes of reviews should lead to action to address issues identified (paragraph 3.19) and might further suggest that the resultant action plans (or a summary thereof) are made publicly available, through the annual report/governance statement, for example.

Principle 4: Equality, diversity and inclusion

Football clubs occupy a unique role in social and cultural life. It is important, therefore, that they both reflect the communities they serve and also act as role models to wider society in terms of how organisations create open, inclusive and welcoming environments and provide equality of opportunity for all.

We recognise that clubs are subject to various EDI requirements and so appreciate that the code of governance need not restate the contents of other relevant documents. However, further thought might be given to providing clearer expected outcomes from board’s approaches to EDI. Whilst a target-based approach is known to yield results, we appreciate the difficulty in applying this across broader demographic categories and in different areas of the country and recognise that a more holistic approach to improving diversity has strong merits. We hope, however, that the IFR remains alive to any lack of movement in the absence of specific targets being identified in the Code.

Where clubs are recommended to set their own diversity targets for boards and senior leadership teams (paragraph 4.11), we would further suggest that such targets be made publicly available to promote transparency and accountability. This is recommended in paragraph 4.9 for clubs’ diversity ‘goals’.

In the interests of promoting genuine diversity and inclusion, we suggest that clubs seek to look beyond the Equality Act's protected characteristics. While we understand the focus on these nine characteristics as they are specified in the legislation, there are other important categories that are not, including neurodivergence, socio-economic background and lived experience which can provide a wealth of insights from which boards would benefit. A consequence of them not being specified in the legislation is that they are often de-prioritised in practice. Their inclusion in the Code would be a welcome corrective to this.

We agree with the sentiments expressed in paragraph 4.15 but would extend this to include the wider recruitment process, starting with how vacancies are advertised, the use of inclusive language and gaining access to under-utilised networks when seeking to bring fresh voices to the board.

Principle 5: Stakeholder relationships and engagement

From our perspective, the most noticeable omission from this principle is an attempt to encourage clubs to factor into their decision making the environmental impact that their activities have. Whilst it can be argued these considerations form part of directors' duties under company legislation, it is becoming increasingly common for governance codes to make explicit reference to an organisation's environmental impact and to promote efforts to mitigate this. 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. The Club Code risks being seen to lack an interest in encouraging football to play its part in reducing the game's environmental footprint – through its facilities, operations, travel – and failing to leverage the influence which the sport and its clubs could deploy to tackle an existential problem faced by all. Items a) and b) in the preamble to the principle include references to local communities and social well-being. This could easily be extended to include environmental impact. Moreover, outdoor sports such as football are directly affected by changes in climate. As such, it is in their long-term interest (as well as that of wider society) that effective steps be taken to mitigate adverse impacts on the environment, and they should play their part in this.

Additional comments on Principle 5:

- We concur with paragraph 5.11 that clubs should be transparent and provide clear, timely and accurate information on significant matters. However, we suggest that more detail is provided as to a) what might be considered 'matters of significance' and b) the type of information that clubs might be expected to provide.

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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