

By Online Survey

**Fair Game -Code of Governance for Football Clubs (England) Consultation**

**Link: [Consultation: Governance - Fair Game \(fairgameuk.org\)](https://www.fairgameuk.org)**

8<sup>th</sup> December 2023

Dear Sir / Madam

The Chartered Governance Institute UK & Ireland 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 to 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 in many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in companies' governance arrangements. They are therefore well placed to understand the issues raised by this consultation document. In preparing our response we have consulted, amongst others, with our members. However, the views expressed in this response are not necessarily those of any individual members, nor of the companies they represent.

Our views on the questions asked in your consultation paper are set out below.

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## **General comments**

Do you believe clubs will need extra resources in the following to implement the Code (Yes or No)

**Training in Code requirements YES**

**Additional staffing to manage Code and other regulatory compliance YES**

**Financial support NO**

The implementation of a robust code of governance alongside a regulatory regime equipped with appropriate sanctions will not alone ensure raised levels of governance practices. The improvements being sought will necessitate cultural and behavioural change across football. Based on our experience of the introduction of governance codes across all sectors, including the sports sector, we believe that clubs will require additional resources to implement the new Code of Governance effectively and to promote a positive governance culture for clubs to instil ethical behaviour, transparency, and accountability.

Specifically, there will be a need for financial support for training programmes to familiarise staff, volunteers and board members (both executive and non-executive) with the Code requirements as well as embedding an understanding of the principles of sound and sustainable governance. Additionally, access to a bank of guidance documents and peer-to-peer learning will be a valuable support for those charged with code compliance as well as those engaged in governance roles. 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, now scheduled to become a mandatory requirement for CFAs from the 2025/6 season.

**Please elaborate on your answers above, and indicate if there are any other resources not specified above**

The experience of the implementation of codes of governance in the sports sector since 2016 has demonstrated unequivocally that the provision of a quality governance framework document is only part of the equation in terms of effecting meaningful improvements in governance. Accompanying support, guidance and development alongside appropriate and compelling imperatives (be they sanctions or inducements) are vital to the success of the project.

In addition to financial/developmental support and potentially additional staff, we suggest bolstering Principle 2.8 to include hiring a company secretary or a suitably qualified governance professional. However, we understand that it may not be feasible for all clubs to employ a full-time company secretary or governance professional.

For the implementation of the new Code of Governance, it is reasonable to expect that there should be a phasing in of the requirements, recognising that full compliance will prove challenging for some clubs, but especially the smaller ones in Bands 2 and 3. One suggested approach might be to expect compliance on the basis of:

- (a) Band 1 – within one year of the regulator introducing the Code;
- (b) Band 2 – within two years; and
- (c) Band 3 – within three years.

**Do you believe those timescales are fair? If not how could they be improved.**

We believe that these timescales are fair. They align with those introduced by UK Sport and Sport England when they made their Code of Sports Governance mandatory in 2017: 12 months for Tier 3, 24 months for Tier 2, 36 months for Tier 1. It should be noted that ‘compliance’ for this purpose was considered to be not necessarily meeting all stipulated requirements, but agreeing on a timetable for meeting them where immediate attainment was not practicable. Additionally, in the case of organisations funded at Tier 1 and Tier 2, the identification of which of the Code for Sports Governance’s requirement were to be met was a process involving conversation between the Sports Council(s) and the funded body. In implementing the Code, the approach adopted by the Sports Councils was (and continues to be) supportive rather than punitive. This has proven to be productive, both in terms of compliance rates and also the engendering of a culture of good governance.

The issue of structured fan engagement within clubs is included in the draft code. One section needs careful consideration:

### **Supporter directors**

The board should include a minimum of two directors appointed by a recognised democratic supporters’ trust (where this exists) or otherwise elected by accredited supporters of the club. The board should consider specifying a gender balance in the appointment of supporter directors.

### **Should clubs have supporter directors on the club board? (Yes No)**

**No**

In our judgement, the inclusion of individual special interest directors on a board can be problematic. Directors ought to be appointed on the basis of the skills and experience they will bring to the board and how these will help to further the long-term strategic objectives of the organisation. While we recognise the views which have grown in favour of supporter directors in football, we would counsel caution with regard to this step. Should the move for supporter directors be taken, our suggestion is that this be reduced to a maximum of one.

Furthermore, it is crucial to emphasise that supporter directors (adequately trained in their role and the principles of governance) are subject to directors’ duties as laid out in company law. Under section 172 of the Companies Act 2006, a director has an obligation to act and make decisions in the interests of the company for the benefit of its members as a whole. A director is not the representative of a particular constituency. While they may have regard to certain stakeholders and can bring the perspective of, in this instance, the supporter body, they must legally act in a way in which they believe will benefit the club as a whole. This is a point of law, but it could require a significant shift in the mindset of both the supporter director on the board and those who might otherwise consider them to be their ‘representative’. The nominating or electing party will need to be cognisant of the legal obligations placed on all directors in this regard to avoid unreasonable expectations.

### **Should clubs operate a formal shadow board or supporters committee? (Yes No)**

**Yes**

Maintaining regular and effective engagement with a key stakeholder group such as supporters should be an indispensable part of a club’s governance. We are of the view that an advisory committee of supporters is a more appropriate mechanism for fan engagement than a requirement for one or more supporter directors. We would, furthermore, advise against the establishment of a formal shadow board in order to avoid creating misconceptions about the status and powers of the body constituted for this purpose. Rather, establishing either

a broader "stakeholder committee" or a more fan-focused "supporters forum" more accurately reflects the role of such a body in representing diverse interests without implying powers beyond its advisory capacity. While we recommend a holistic approach to engaging with all relevant stakeholders, the particular status of fans in the life of a football club warrants, in our opinion, a dedicated supporters forum. A structured forum, which is genuinely valued and heeded by the club, can become a conduit for fostering a stronger connection with the fan base and community.

Whichever is set up, it is essential that it be furnished with explicit and focused terms of reference, delineating clearly the function of the committee or forum, how it is constituted, its composition and expectations around its channels of communication. Equally important is clarity around its areas of competence or where it has the right to be consulted. The Fan-Led Review has highlighted a number of issues on which the fan voice should be heard. Clubs may of course wish to expand this scope. The body should be genuinely reflective of the stakeholders it represents in terms of its composition and diversity, underscoring clubs' wider commitment to ED&I, and should be appropriately resourced to allow it to fulfil its purpose effectively.

### **Are there other formal fan engagement mechanisms a governance code should consider? (Yes No)**

#### **Yes**

Under the UK Corporate Governance Code, boards are mandated to actively engage with employees and the broader workforce, thereby amplifying the 'employee voice' within the boardroom. To achieve this, the UKCGC provides a range of mechanisms, including the appointment of a director from the workforce, the establishment of a workforce advisory panel, the designation of a non-executive director to represent workforce interests, or a combination of these approaches, such as a designated non-executive working in collaboration with an advisory panel. In cases where a company chooses not to adopt any of these specified mechanisms, it is required to select, explain, and justify an alternative approach.

Building on these principles, we recommend considering similar mechanisms to engage fans and ensure their perspectives are heard within the boardroom. This may involve: appointing a fan representative as a director (subject to the qualifications above and a maximum of one); establishing, as noted, a fan advisory panel; designating a non-executive director specifically to represent fan interests, or adopting a hybrid approach. What is appropriate and practicable may vary from club to club. The key is to facilitate a structured and effective channel for fan engagement in the decision-making processes of the organisation.

We think that, adopting any of these mechanisms, encourages clubs to proactively involve their fan base in governance structures, promoting transparency and responsiveness to the diverse interests of supporters.

The purpose of this code is to set out guiding tenets, principles and provisions for the governance of football clubs in England. It focuses on the responsibilities of the club board and senior executives, as the people who have the power to make decisions that affect every aspect of clubs and in turn, their supporters. It is designed to provide direction for club owners and executives to exercise effective and robust governance of their clubs. The code is intended to provide a basis for assessment of individual clubs' compliance.

**On a scale of 1 to 5, how well does the code address the need for effective board governance.**

### 3

In general terms, the code addresses the need for effective board governance in a fairly comprehensive and relevant way, and it provides a clear framework for clubs to follow and improve their governance. The proportionate, tiered approach is welcome. However, it should be recognised that codification alone will not be sufficient to change the cultural and structural issues facing football governance. As noted above, cultural change, effective sanctions and support to embed a positive culture of governance are required to ensure a holistic approach to tackling the problems currently facing the game, both within individual clubs and across the sport taken as a whole.

While the code contains many of the recommended requirements for boards, one question that it does not address – and perhaps is in practice unable to – is the locus of decision making within clubs.

The code uses language such as clubs being ‘led by an effective and professional board’ (Principle 1 A) and identifies a number of functions and responsibilities that the board should perform (key items include Principle 1 B-F and Provisions 1.4, 1.6, 1.7 and 1.11), but does not specify that primacy in decision making is held by the board. Principle 1 of the Code for Sports Governance, for example, states that the board is ‘exclusively vested with the power to lead’ the organisation. The preamble to this question states that the board and senior executives are ‘the people who have the power to make decisions that affect every aspect of clubs’, before switching to the code’s purpose being ‘to provide direction for club owners and executives to exercise effective and robust governance of their clubs’. One factor in the current malaise of English football is the conduct of single owners or consortia of investors and the vulnerability of clubs to their power, motivations and long-term commitment to their investment. It is unclear in the current document how the duties of the board and its leadership functions relate to ownership models where the ultimate decision-making authority (theoretically or de facto) lies with the board, and whether boards can effectively hold to account or steer the behaviour of an owner.

Additionally, some specific amendments might be made to the code, including:

- Provision 1.7 (Band 3) – stronger wording than ‘likely’ will need to be employed as regards to policies relating to health and safety, risk, etc.
- Provision 3.1 – we would recommend a minimum board size of 7.
- Provision 3.5 – while re-election every three years is set out in the code, there is no indication of limits to the overall time served by a director.

**On a scale of 1 to 5, how well does the code address issues of integrity and probity.**

### 3-4

The code addresses reasonably well issues of integrity and probity insofar as a board-led single entity is concerned. However, adherence to the code will not alone tackle the complex challenges facing football governance at the moment, either in within individual clubs or across the game as a whole. As noted, the character, judgement, motivations and long-term commitment of owners and majority investors will continue to exercise considerable – in some cases, complete – influence over clubs’ activities. So too will the current endemic culture problems within the game, unless these are addressed. As such, the code should be seen as part of an overall regulatory approach, which includes the IREF and the application of the licensing system. As with all of the

code's provisions, detailed commentary might clarify how compliance can be demonstrated and the practical impacts that this will have as regards probity and integrity.

Specific comments:

- Provision 4.1 – We are not convinced that the presence of a supporter director need be a requirement for the audit committee. Audit committee members should be appointed on the basis of their expertise and experience in finance, audit, risk or other appropriate skills. While these may happen to be held by a club's supporter, there is no reason in our view for a place on the audit committee to be reserved for a supporter director as of right.
- Provision 4.2 (Band 2) – we would recommend that a club in the revenue bracket of £2m to £10.2m should have an audit committee and we recommend that the wording 'if an audit committee is established' should be amended accordingly.

**On a scale of 1 to 5, how well does the code address issues of long-term sustainability.**

**3**

The code provides guiding tenets for the long-term sustainability of clubs, and it also includes provisions that spell out what long-term sustainability should look like. Again, however, there is uncertainty as to the efficacy of these requirements where a club's direction and activities are determined by an owner rather than by a board.

The exclusion of the remuneration of playing staff from the code's requirements for the nomination/remuneration committee seems likely to undermine the efficacy of the code in these areas. Endemic overspending on salaries across the game, but most dangerously at Championship level, is not a result of executive pay or back office wages; it is the consequence of clubs chasing sporting success by unsustainable outlay on player salaries (accompanied by large transfer budgets). We are not convinced that a separate board responsibility for playing staff remuneration policies addresses this problem.

We would further suggest that the factors identified in Provision 5.9 with regard to executive and club staff (seemingly excluding playing staff) should be extended to include player remuneration, notably a) clarity, d) predictability, e) proportionality, f) affordability and g) alignment to culture.

**On a scale of 1 to 5, how well does the code address issues of fan engagement.**

**3**

The code addresses issues of fan engagement in a comprehensive and relevant way, and it provides a clear framework for clubs to follow and improve their fan engagement. However, as noted, while we agree with the idea of engaging fans by use of a direct forum, we would advise against calling it the "fan 'shadow' board".

Though fans are an extremely important stakeholder group for clubs, they are not the only one and clubs need to undertake stakeholder engagement in a comprehensive meaningful and robust way and boards must be mindful to have regard to a range of potential stakeholder groups as part of their consideration of decisions under directors' duties set out in law.

For clubs with a global reach, understanding the composition of their fanbase will be key. In the current arguments about the preservation of clubs as community assets and the role that supporters play in this, it must be remembered that traditional, place-based supporters are no longer the only fan group and that geographically dispersed fans may have a different relationship with the club and its activities.

**On a scale of 1 to 5, how well does the code address issues of club accountability.**

**3**

As noted, the code includes a number of sensible provisions relating to accountability. Owner accountability, however, is less clearly tackled.

We note that the comply or explain model, adopted in the corporate sector for example, is suggested (Provision 1.18). There would seem to be an argument in favour of – and indeed plans for – compliance with the code forming part of the requirements of a licensing system and overseen by the IREF and as such mandatory. This should be adopted. The implementation of a mandatory code in the funded sports sector, with compliance a condition of award agreements, has dramatically impacted compliance rates and progressed the governance of the sector at a rate unlikely to have been witnessed had a self-assessed, comply or explain model been adopted.

**On a scale of 1 to 5, how well does the code address issues of club transparency and communication.**

**4**

The code contains provisions which are likely to enhance clubs' performance in communication with their key stakeholders. We are in favour of a regular, robust and complete approach to reporting, including on organisational performance and governance matters, as well as undertaking a consistent two-way dialogue with stakeholders.

#### **Additional general comments**

- Has the drafting of this code gone through a sufficiently thorough and robust process?
- Would it be more effective for football to adopt a code more akin to the Code for Sports Governance? This already has currency in the sports sector, seven years of implementation, and has been adapted for football-specific application by the Football Association for County FA network.