

**Lower League Football, COVID-19 and Beyond:
The Bridge to a Sustainable Future**

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Executive Summary



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Sport, and football in particular, has been dramatically impacted upon as a result of COVID-19 and government measures to prevent its spread.

The 2019/20 domestic football season was suspended for months, and in some cases curtailed completely. Fans are still not permitted to go to football stadia to support their clubs, and, even if we see a much-hoped-for relaxation of restrictions, a resumption to anything like previous capacity seems a long way off. The impact has been devastating, not just socially for fans, but the financial hit for a large number of lower league clubs, without match day related revenues, is forcing stakeholders to seriously consider their financial futures.

Our sports restructuring team have seen this impact at first hand, and have identified a series of measures which we believe could significantly assist English football to protect itself whilst the present uncertainties continue, and create a 'bridge' to a sustainable future. Our ambition has been to develop a legally and commercially viable framework, and process, in order to facilitate the collective protective, restructuring and funding measures now urgently required to prevent many much-loved clubs from tipping into insolvent administration or liquidation.

We are delighted to announce the launch of our new paper - "The Bridge to a Sustainable Future for Football League Clubs". This paper analyses the current state of play in English football, and contains a summary of options with regard to a transitional protection framework during the 2020/21 season for English Football League (EFL) clubs.

We have unilaterally developed this framework in order to contribute to this vital debate for English football, and we have not been asked by any specific client to produce or publish this paper. The content of this paper is not to be regarded or relied upon as legal advice.



Background

Following the most recent UK Government announcements with regard to COVID-19 counter measures and restrictions, the prospects for a return of spectators to sports events in the UK are now extremely uncertain. Lower league clubs in English football, already in many cases in a financially vulnerable state, are now at imminent risk of insolvency and potential collapse.

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In many ways, football clubs are like any other business. They have employees, they sell a product/service, they lease or own premises, and they trade with suppliers.

However, unlike most businesses, football clubs are often considered to be “community assets” (and indeed, their stadia can be designated as such by local authorities), and whilst they may not be owned by the people who reside in the club’s town or city, they provide an invaluable focal point for large sections of the community, who rely on their club’s continued existence.

The economic and social impact of clubs going out of business is far greater than just the evident consequences for players, staff, suppliers, management and owners. As the Prime Minister acknowledged in a recent statement to the House of Commons, sports clubs ‘are the life and soul of our communities’.

The recent report, “Measuring the Impact of EFL Clubs in the Community” showed that the community programmes of EFL clubs contribute substantially to local sports, physical activity, health and wellbeing programmes, education and employability initiatives, and community engagement. Many lower league clubs are over a century old, and have played an irreplaceable role in the heritage of football, the national game.

As a result of the COVID-19 crisis and ensuing economic downturn, football clubs now face a unique set of challenges unprecedented in their histories, and in many cases their continued existence is under genuine threat. Squad wage bills, barely manageable in the good times, have become wholly unsustainable since the UK-wide lockdown, and the crisis has exposed other frailties in many clubs, notwithstanding the introduction of new salary caps.

The crisis is placing immense pressure on clubs, their owners, staff and boards. Whilst most clubs have just been able to weather the storm since 23 March 2020 through a combination of furloughing, HMRC ‘time to pay’, the restructuring of arrangements with lenders and creditors, the provision of additional capital by club owners and other early response measures, these were short term measures, and/or were agreed at a point when it was anticipated that some significant return to crowds was going to be possible during 2020. This is now very unlikely and indeed Government statements have indicated that we may be waiting until at least April 2021 before fans are permitted to return.

For many clubs, several key revenue streams are dependent on fan attendance, including match day ticketing, season ticketing, hospitality, catering and merchandising. Furthermore, advertising and sponsorship revenues are adversely affected by a substantial reduction in crowds, and media rights income is also likely to be reduced.

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The Risks for Directors

The ongoing uncertainties as to the timing and quantum of revenues will mean that Club boards will not be able to forecast their status as a going concern with any certainty.

Where a club’s solvency is in question, its board of directors owe duties to the clubs’ creditors, and if these duties are breached and the club fails, then directors can be held culpable for the decisions they made in the lead up to that failure. Clubs may also be at risk of breaching league profitability and sustainability rules. Clubs may choose to enter into debt funding arrangements, which provide short term solutions but may create longer term problems for the sustainability of a clubs finances.

Football’s Response

Football’s governing bodies and leagues, including the EFL, are actively considering how current structures and regulations can be evolved, both to weather the immediate storm and to put lower league football on a more sustainable platform for the future.

Any such new platform will need to be both financially stable and deliverable. This will almost certainly entail a wider and longer term reform process, potentially including updating the overall regulatory framework for English football, changes to competition structures and new financing arrangements.

Protection and Restructuring

We have considered what use football clubs should now consider making of the UK’s restructuring legislative framework, including the new measures introduced through the Corporate Insolvency & Governance Act (CIGA) which came into force in June 2020.

We believe that creative, collective deployment of these legal procedures, coupled with wholesale stakeholder engagement and a re-framing of EFL rules, could provide substantive protection for clubs, their staff, directors and creditors, whilst providing the platform from which to achieve short term funding and, in parallel, build towards a new model and a sustainable future for the clubs in the EFL.

We have focused on the possible use of Company Voluntary Arrangements (“CVAs”) under the Insolvency Act 1986 (or possibly schemes of arrangement or restructuring plans under the Companies Act 2006) in order to restructure clubs’ affairs without the need, in most cases, for that club to enter administration. CIGA has introduced mechanisms enabling companies experiencing financial distress to file for a comprehensive moratorium that will prevent hostile creditor action whilst the board formulates plans to restructure and rescue the business, without the need to enter administration first.

CIGA also introduced a new form of Companies Act Scheme of Arrangement known as a restructuring plan, enabling the court to approve a restructuring plan against the wishes of certain dissenting classes of creditors in certain circumstances.

Taken together, the new moratorium, coupled with a CVA or scheme of arrangement represent an opportunity for clubs to restructure their affairs, without the need to collapse into administration.

The Way Forward – a Collective Transitional Framework

This paper is necessarily high level and essentially assumes that all EFL clubs across the three divisions are facing identical issues and constraints. This is clearly a gross underestimate of the complexities and challenges that individual clubs are facing, but if the EFL wishes to take the initiative in this area, it will need to extrapolate the issues and constraints faced by all EFL clubs.

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Whilst acknowledging that they are not identical for all, there is clearly a set of common principles that the EFL could apply across the three divisions, whilst building sufficient flexibility into the framework to enable clubs to re-structure in their own way. Against this backdrop, as part of any proposed changes to Football League rules, the EFL could incentivise clubs, and their creditors, to actively engage in restructuring through a variety of coordinated measures forming part of the framework.

A set of principles, supported by the League, could be applied to all of the proposals as follows:

- **Cash incentives** (from both the EFL and the Premier League) for those clubs that take appropriate measures to restructure.
- **Waivers of point reductions and other penalties** for clubs that pursue prudent restructuring plans, with blanket acceptance by the EFL that the restructuring was prompted by COVID-19 and therefore a force majeure event for the purposes of Regulation 12 of the EFL Regulations.
- **Possible suspension, variation or disapplication (whether temporary or permanently) of the application of the football creditor rule** should it be necessary for clubs to compromise the claims of football creditors (or any of them) as part of their restructuring. The football creditor rule has always divided key stakeholders, including HMRC and its application in the current climate will have to be considered carefully.
- **HMRC’s support for the process to be procured in advance**, based on a set of pre-agreed terms as to how a club’s existing liabilities to HMRC will be managed/compromised or restructured, as well as how they will be managed going forward.
- **A template CVA or scheme proposal** that clubs could consider adopting or tailoring.
- **Restructured (and other financially viable) teams to be eligible to participate in the EFL**, under its new rules and regulations.
- **Relief and/or waivers for owners and directors who are involved in clubs requiring restructuring due to COVID-19**, in order that their involvement in the restructuring is not a “Disqualifying Condition” for the purposes of Appendix 3 of the EFL Regulations.
- **Use of CIGA moratorium procedures**, where appropriate, for example for clubs that require immediate respite from hostile creditor action.

A Collective Problem requires a Collective Solution

This solution envisages a collective effort on the part of the EFL, clubs and major stakeholders (including players, landlords, HMRC and other creditors) to achieve a re-balancing of the Football League, which will necessarily result in short term pain for many, but with a view to creating a sustainable, and profitable, landscape for the future.

Whilst collectively bargained arrangements are common in football, a CVA or scheme of a particular club would be unique to that club, and a requisite majority of that club's creditors would have to vote in favour of it, for it to become binding. That is why the clubs and their creditors will likely need to be incentivised by any CVA, in order to ensure that they will be better off under a CVA, than in the event of the club's administration or liquidation. The application of the football creditor rule in its current form here could potentially operate as a challenge to any such consensual restructuring process and this would have to be explored further from all standpoints.

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In addition to the many challenges clubs are currently facing with respect to issues such as the logistics of match organisation in compliance with COVID-19 protocols and regulations, clubs will need to consider what measures will be required in order to make future trade viable, and the steps required to achieve buy-in from their creditors to any CVA or scheme proposal. This will include a consideration of issues surrounding venue usage, sponsorship and media deals, ticketing and hospitality and, of course, the sensitive issue of players' contracts and wages (including the position with respect to staff participating in the Job Support Scheme).

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Importantly, the proposed CVA or scheme restructuring options should not be seen as a mandatory requirement for all clubs but as a gateway solution. A club's entry into a CVA, or indeed any other formal insolvency process, will be entirely dependent on that club's unique financial situation, and the EFL will not wish to disenfranchise clubs that are financially stable and do not need to restructure their liabilities through a formal insolvency process. In that regard, the goal will be to ensure that a club's eligibility to participate in, and benefit from, a reformed EFL is determined with reference to its financial standing, as measured against an agreed set of criteria, thus creating a level playing field for clubs.

Re-imagining the clubs' commercial model

Alongside the measures outlined above, football clubs will inevitably need to reorganise their commercial operations in order to mitigate losses, reduce costs and generate replacement revenue streams through creative leveraging and exploitation of their individual and collective assets, and innovations in fan engagement.

Conclusion – Developing an investable platform

There has been much discussion concerning Premier League, Government, private debt and/or private equity funding, whether through loans, grants, equity, convertible equity or otherwise, for lower league football.

Properly constructed and implemented, we believe that the measures we have recommended in this paper will provide a more robust, protected and secure structure into which any such funding might be achieved upon sustainable terms..

Contact

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