



THE INDEPENDENT **FOOTBALL** COMMISSION

**REPORT** *on*  
SELF REGULATION

*may 2004*

REPORT *on* SELF REGULATION

*effective self-regulation ensures consumer confidence is maintained*

(Advertising Standards Authority Annual Report 2003)

*it is vital to the future well-being of racing that a foundation of confidence and trust is created, leading to an unfettered flow of information*

(The Jockey Club Annual Review 2001-02)

*fast-changing environments may be hindered by static state regulations. Regulations that cannot keep pace with developments will be ineffective*

(Alternatives to State Regulation, Better Regulation Task Force, July 2000)

*if a self-regulatory model is to command wide acceptance and respect, it needs to be seen to have a real measure of independence from the sector being regulated*

(The Future of Self-Regulation in the UK Communications Industry: comments by the Chair of Internet Watch Foundation at a seminar of Westminster Media Forum, June 2003)

## LIST OF ABBREVIATIONS

ACPO	Association of Chief Police Officers
APFPG	All Party Parliamentary Football Group
AR	Annual Report
ARB	Architects Registration Board
ASA	Advertising Standards Authority
CAP	Committee of Advertising Practice
CFA	County Football Association
COP	Code of Practice
CRE	Council for Racial Equality
DCA	Department for Constitutional Affairs
DCMS	Department of Culture Media and Sport
EC	European Commission
FA	Football Association
FAC	Financial Advisory Committee
FAPL	FA Premier League
FAU	Financial Advisory Unit
FC	Football Club
FIFA	Fédération Internationale de Football Association
FITC	Football in the Community
FL	Football League
FLA	Football Licensing Authority
FPPT	Fit and Proper Person Test
FSA	Financial Services Authority
FSF	Football Supporters Federation
FTF	Football Task Force
GMC	General Medical Council
IFC	Independent Football Commission
ISP	Independent Scrutiny Panel
NADS	National Association of Disabled Supporters
NCC	National Consumer Council
OFCOM	Office of Communications
OFT	Office of Fair Trading
PFA	Professional Footballers Association
PCC	Press Complaints Commission
RIU	Regulatory Impact Unit
ToR	Terms of Reference
UEFA	Union of European Football Associations

## CONTENTS

List of abbreviations	2
Contents	3
Chairman's Foreword	5
Executive Summary	6
I Introduction	7
II The Self-Regulatory Framework in Football	8
III Impact of Independent Scrutiny, January 2002 – May 2004	11
IV The IFC Experience	17
V The Regulatory Process	20
VI Options	27
VII Conclusion	31
Annexes	
A: IFC Terms of Reference	34
B: Members of the Independent Football Commission	35
C: Organisations consulted by the IFC, January 2002 – May 2004	36
D: Organisations consulted on self-regulation of the football business	39
E: Principles of good regulatory practice	40



## **CHAIRMAN'S FOREWORD**

This IFC Report is about the future of regulation of football. The issue it addresses is of current, critical importance to the game. Of the many problems football faces, probably the greatest is the fact that public trust is being lost, that is to say the public is losing confidence in football's ability to regulate itself. The need to re-establish this confidence is voiced at the top of the FA, the FA Premier League and the Football League; it is a bone that the media regularly worries; it is a source of anger and anguish to the game's dedicated supporters. It cannot be ignored. This report suggests what can be done.

In establishing the Independent Football Commission in 2002 to provide scrutiny of their performance, the game's governing bodies took a step to introduce a degree of independence to the regulatory function. I have been proud to be the first Chairman of the IFC and I am proud of what the Commission has achieved in monitoring performance and making recommendations for improvement. The pilot project draws to an end this year. A decision will be taken in the early summer about its future. In compiling this report, we place that decision in the crucial context of questions about the regulatory model football uses, and its effectiveness.

In the light of some 30 months of existence we are able to reflect on our experience as a Commission in the following pages. The Report reviews the activities of the IFC since its formation, discusses the response to the IFC from the authorities and other stakeholders, identifies a number of regulatory issues, explores models of regulation from outside the world of football and suggests a number of options which may be considered, within a range from abolition of the IFC at one end to full statutory regulation at the other.

This special, single issue report has been produced quickly, while progressing the normal IFC annual work programme. The options suggested are not intended to be fully worked-through models and, no doubt, other options may be considered. In the event that one of the options is adopted, I would look forward to working with the Football Association, the Premier League and the Football League in developing the model to fruition.

It has been our aim to produce a relatively short report within a time frame which will enable the IFC's thoughts to be incorporated into the discussions, which will lead to a collective decision on the way forward. I am grateful to the football authorities and to other active football people who shared with us their views about the IFC and the issues which its work has raised.



**PROFESSOR DEREK FRASER**  
**CHAIRMAN**

## EXECUTIVE SUMMARY

The **Introduction** to this report gives the background to the Independent Football Commission (IFC), explaining that its remit is to scrutinise the performance of football's three governing bodies, within closely defined Terms of Reference (page 7). Section II summarises **The Self-regulatory Framework in Football**, analysing perceived flaws in the existing model whereby the Football Association, with the Football League and the Premier League, seek to fill both a regulatory and representative function (pages 8-10). In the third section, the **Impact of Independent Scrutiny** to date is examined, looking specifically at the IFC's relations with the governing bodies; the governing bodies' experience of independent scrutiny; stakeholder views; media reactions; complaints handling; and change and improvements effected (pages 11- 16). This section concludes that the impact of the IFC is as yet too early to judge (page15).

Section IV considers **The IFC Experience**: what has enabled the IFC to function well, and what have been the constraints on its work (pages 17-19). It illustrates the active network within which the IFC now operates and comments on resourcing, noting that the IFC budget is inadequate for current purposes and limits the effectiveness and thoroughness of its operations (page18). This section also looks at the IFC's remit and powers, highlighting the limits on both, underlining that it can only aim to achieve change through influence, and concluding that while resources are limited, then so are the IFC's influence and effectiveness (page 19). The section then briefly examines the IFC's access to information, noting that its rights to information are undefined and are therefore not easily exercised; and concludes with some illustration of measures taken to assert the IFC's independence.

Sections V and VI are the heart of the report. In **The Regulatory Process**, the experimental use of the IFC within football is compared with regulatory processes in other industries (pages 20-26). The section begins by putting football in context in terms of its size and turnover and giving reasons why football, a relatively small industry, is perceived to be "different" and in need of regulation (page 21). It then looks at different forms of regulation, illustrated by examples taken from the Law Society, the General Medical Council, the Jockey Club, the Advertising Standards Authority, the Press Complaints Commission. It concludes that regulation in football needs to fill a specific role, if it is to be seen to be addressing its problems, and if it is to take advantage of the opportunity provided by the introduction of the IFC; and suggests that this role should be geared to public interest issues and a public information function, in tandem with unqualified backing from the industry, and unequivocal support from government (page 25).

Section VI offers six **Options** for the future regulation of the football business (pages 27-30). Option 1 is to discontinue the IFC; option 2 is to do nothing i.e. maintain the current IFC model. Neither is considered appropriate or constructive. Option 3 considers an IFC with an enlarged remit and greater funding, suggesting that this would render it more effective provided it had wider and less specific Terms of Reference; secure funding; an increased budget; guaranteed access to information; explicit government backing; and empowerment through recognition of its role in the regulations of the governing bodies. This option offers a credible alternative to statutory regulation and would enable the IFC to undertake serious work. But its downside is that the IFC would still be powerless and liable to be ignored. The option might simply delay more appropriate reform (page 27). Option 4 looks at a radically revised role and structure for the IFC, giving it a new funding base through a levy on the industry and a stronger focus on its independence and authority. The option examines how this might work through the introduction of a Code of Practice devised by the football business itself, which the new IFC would administer by adjudicating complaints against breach of the Code. It would also continue to conduct independent investigations (page 28). The strength of the option is that a genuine independent regulatory function would be introduced, with the power and capacity directly to address publicly-voiced concerns. There is a risk, however, that football may not be ready to adapt to this model, although it is demonstrably effective elsewhere. Option 5 calls for immediate action to split the regulatory and representative roles of the Football Association; option 6 offers statutory regulation. Both these are discounted (page 29). Finally, in reviewing the options, this section reflects on public interest issues that need to be addressed; the requirements of proportionality, practicality and the costs of implementation; and current, damaging problems that need urgent resolution (pages 29-30). The conclusion is that option 4 should be the next step, taken over the next eighteen months.

The **Conclusion** to the report offers a vision for football and expresses confidence that the business has the ability and will to regulate itself and that self-regulation is the right decision for the future (page 31).

## I INTRODUCTION

The Independent Football Commission (IFC) was established by the governing bodies of football in England – the Football Association (FA), the FA Premier League (FAPL) and the Football League (FL) – with the agreement of government. Its creation was in direct response to a recommendation of the Football Task Force (FTF), which was convened by the government in 1997 to investigate and suggest reforms to a range of issues in football that were of widespread public concern. The FTF produced four reports between 1998 and 1999, in the last of which it recommended that there should be an Independent Scrutiny Panel (ISP) to monitor the performance of the governing bodies. The principle that there should be an ISP of some kind was agreed by the football authorities in a submission to the Department of Culture Media and Sport (DCMS) in March 2000. However, there was considerable and extended debate whether the new body should exist as part of football’s self-regulatory structure, or whether it should have statutory powers. Whilst many elements within the FTF broadly favoured statutory regulation, agreement was finally reached between the football authorities and the DCMS to opt for an extension to football’s existing self-regulation, initially for a period of three years. Terms of Reference (ToR) were drawn up by the football authorities. These are reproduced in full in Annexe A of this report (page 34). A Chairman, Professor Derek Fraser, was appointed through public advertisement and under Nolan principles in August 2001. The Chairman’s letter of appointment was signed by the Secretary of State for Culture Media and Sport. The Chairman appointed six Commissioners, again by public advertisement and under Nolan principles. Subsequent appointments were similarly made. Those who have served on the IFC in the period since its inception are listed in Annexe B of this report (page 35). The new body, entitled the Independent Football Commission, met for the first time in January 2002. The IFC is funded jointly by the three governing bodies.

The IFC’s ToR define the limits within which the commission is asked to operate. Essentially, the football authorities looked to the IFC to address what they termed “customer issues”, meaning measures that the football business takes to improve its relationship with its paying customers and stakeholders. In particular, the governing bodies looked to the IFC to comment on the effectiveness of Customer Charters, which the FTF had recommended should be introduced by all clubs and which the FAPL and FL had made obligatory in 2001. The three governing bodies also introduced Customer Charters of their own. The Charters were intended to make specific commitments to customer care in key areas such as ticketing, supporter consultation, community activity, staff conduct, and customer service. The ToR additionally asked the IFC to examine the work of the FA’s Financial Advisory Unit (FAU), established to monitor clubs’ financial performance and promote best practice; and to act as the final point of appeal in the complaints hierarchy, within the limits of charter-related issues. Whilst these requirements are specific, the second and third paragraphs of the ToR widen the IFC’s remit in asking it to review the governing bodies’ rules and regulations relating to financial and business matters and the Code of Best Practice, and to monitor implementation of the FTF Reports. The ToR finally require the IFC to publish its findings in a publicly available Annual Report.

The IFC published its first Annual Report in January 2003. It largely followed the IFC role defined by the governing bodies, reporting on complaints procedures, charters, ticketing, the FAU, and some preliminary work on wider issues: merchandising, racism, the financial crises at club level, matters of governance and compliance, and the overall effectiveness of the governing bodies. These latter issues reflected the developing role of the IFC, which increasingly felt that to concentrate on FTF issues current in 1997 was to ignore not only the changing circumstances within the football business but also to abdicate responsibility for recommending relevant, constructive change, as per paragraph 2 of the ToR. The second IFC Annual Report, published in February 2004, was the result of extensive, thorough and wide-ranging research into major headline issues, including clubs in financial difficulties; good governance; racism; match rescheduling. A full list of organisations consulted by the IFC since January 2002 is given in Annexe C (page 36). The two reports contained a total of 59 recommendations. The governing bodies accepted and implemented, wholly or in part, 16 of the 22 recommendations in the first Annual Report. At a meeting with the IFC in early May to give their formal response to the more challenging recommendations in the second Annual Report, the governing bodies indicated that they substantially agreed with the majority of them, although they were not yet ready to share details, or their implementation plans.

The IFC’s initial term of office expires at the end of 2004. The football authorities and the DCMS have indicated that they expect to make a decision about its future by 1 July 2004. This report is the IFC’s contribution to the discussion that will inform that decision.

## II THE SELF-REGULATORY FRAMEWORK IN FOOTBALL

The first part of this section attempts to summarise the regulatory framework. It is not intended to capture the complete and complex range of activities and responsibilities of the three governing bodies.

### The existing model

Until 1990, English football had always provided its own regulatory function. Reaction to the Hillsborough tragedy prompted government to intervene in safety matters in football, and statutory powers to operate a licensing scheme for football grounds were invested in a new body, the Football Licensing Authority (FLA).

Otherwise, the FA, working with the FAPL and the FL, operates as the game's overarching regulatory body. It provides the laws of the game for English football and the control of football competition. The laws, and the rules of the association, are contained in the FA Handbook, which is reissued every season. Each new issue incorporates any rule changes since the previous season. Membership of the FA is obligatory for all professional football clubs. A condition of membership is adherence to the rules of the association and the laws of the game. The FA also provides the framework and mechanisms for disciplinary action, sanctions and appeals. The FAPL and FL additionally have regulations governing their own leagues, published annually in the FAPL and FL Handbooks. Those clubs qualifying to play in the leagues of the FAPL and FL must have membership of their respective league. Thus the three governing bodies are membership associations. All three are companies limited by shares, which are issued to members. Any changes to the rules of any one of the three governing bodies has to be agreed by the members at the relevant Annual General Meeting. Each company has its own Articles of Association, Memorandum of Association, and rules, published in their respective handbooks. The Memorandums of Association of the FAPL and the FL define their regulatory roles<sup>1</sup>. The rules of the FAPL and the FL require their clubs to comply with and be bound by their own league rules and those of the FA. The FA's rules explicitly require all clubs and affiliated bodies to "play and/or administer football in conformity with" its rules<sup>2</sup>; the FA's Memorandum of Association defines the FA's role in overseeing compliance with the laws of the game and the rules and regulations of the FA, and enforcing decisions reached between disputing clubs or persons<sup>3</sup>.

The FA is governed by a Council. The FL and the FAPL each nominate 5 people to represent them on the FA Council. In total, the composition of the FA Council breaks down as under:

Chairman	1
Vice Chairmen	2
Life Vice Presidents	13
Vice Presidents	7
Divisional Representatives (from the football leagues)	10
Association Representatives (including County FAs (CFAs), the armed forces, women's football, Oxford and Cambridge universities, English schools and independent schools)	51
FAPL	5
FL	5
<b>TOTAL</b>	<b>94</b>

fig. 1. source: *The FA Handbook, Season 2003-2004*

The Board of the FA is limited to 14 members, including the FA Chairman, appointed by the Council. They include four nominees from the FAPL and two from the FL. The Board exercises the company's powers.

Additionally, the FA has a representative function for football in England, e.g. it represents the corporate interests of English football to the international bodies of the sport - FIFA (Fédération Internationale de Football

<sup>1</sup> "To promote, provide for, regulate and manage all or any details or arrangements or other things as may be considered necessary or desirable for, or ancillary to, the comfort, conduct, convenience or benefit of football players and the public, or of any other persons concerned or engaged in or associated with the Premier League" (*The FA Premier League Handbook Season 2003-2004*). "To regulate the activities of Member Clubs and their respective officers, employees, registered players and agents ... To regulate the settling of all disputes between Member Clubs." (*FL Handbook Season 2003-2004*).

<sup>2</sup> *The FA Handbook Season 2003-2004*, pp 31-34

<sup>3</sup> *ibid.* paragraphs 3(11) and 3(14)

Association) and UEFA (Union of European Football Associations); it represents the English game in fora of national associations of football and other sports; it promotes football in its totality, and so on.

Finally, the FA organises a competition, the FA Cup, and is responsible for the national team and its participation in international competition. In this capacity, the FA is involved in merchandising, media rights, sponsorship deals and other commercial activity.

The FA has some 42,000 affiliated clubs, making it one of the three biggest Football Associations in the world<sup>4</sup>.

### **Perceived flaws in the existing model**

The formation of the FA Premier League in 1992 provoked some questions about the capacity of the FA to maintain the complete independence necessary to successful regulation. This was initially triggered by the FA's giving its name to the new league, but in the 12 years since the FAPL breakaway, the questioning has extended to wider concerns, expressed in the media, in research findings, in surveys and in football publications. The following paragraph summarises some of the current and recurrent expressions of disquiet. The IFC does not necessarily agree with all these points but, while recognising that the FA has taken steps to address some of them, the IFC continues to hear and see these concerns regularly expressed.

- **The FA is not wholly independent.** It is associated with the FAPL through nomenclature, and there are potential conflicts of interest in the FAPL's influence within the FA, not least through the strength of its representation on the executive;
- tensions between national team and many club interests, and the commercial interests of the FA, raise **questions of objectivity**;
- the FA **lacks transparency** in many of its operations, such as its decision-making processes in cases of disciplinary hearings and appeals; the appointment of committees, panels, tribunals; the mechanisms behind the proposal and ratification of rule changes;
- the FA is **slow to react** to ills in the game and **slow to take appropriate remedial action**;
- the FA is **not representative of the game's stakeholders**. In particular there are many who feel that players and supporters should be represented on the Council and that some of the traditional sources of appointment to the Council should be recognised as anachronistic, and overhauled;
- perceptions that **the business of football is poorly led and conducted**, as manifested in its financial troubles, its poor public image, and criticism from the game's primary revenue source – the supporters – suggest that the FA is failing to protect and serve the best interests of the game;
- the **growing gap between the top and bottom of the professional game** (and below that grassroots football) in both financial and sporting terms is threatening competition and national sustainability;
- the FA has **no clear lines of accountability**;
- the current system provides only very **limited recourse for those dissatisfied with adjudications made by the governing bodies**;
- there are **no behavioural standards**, such as might be expected from an authoritative Code of Practice, to which those engaged in the business of governing the game at all levels might be required to subscribe.

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<sup>4</sup> According to statistics provided from countries qualifying for the 2002 World Cup.

The call for openness, fairness, accountability lay at the heart of the FTF recommendation that scrutiny of the game should be provided by an independent regulator, to “provide the open accountability that should be expected of the national game”<sup>5</sup>, and at the heart of the football authorities’ acceptance of independent scrutiny because “the transparency and accountability that (it) will bring will lead to an increased public confidence in the way the game is run”<sup>6</sup>.

All this provides a starting point for identifying the public interest issues that call for oversight of football’s self-regulation and for establishing what problems are to be solved and what is expected of football’s regulatory processes. This report addresses these in section VI on page 27.

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<sup>5</sup> FTF report on Commercial Issues (2), December 1999

<sup>6</sup> *Government Task Force Commercial Report and Football Foundation: A presentation on Two Key Football Issues*, made by the governing bodies to the DCMS, 16 March 2000

### III IMPACT OF INDEPENDENT SCRUTINY, JANUARY 2002-MAY 2004

The success of the IFC in helping restore public confidence and addressing stakeholder concerns is difficult to assess for two principal reasons:

- the IFC has been in existence for just over 2 years and only fully operational for less than that, as its first three months were preoccupied with functional necessities: establishing an office, recruiting staff, acquiring equipment and resource materials, building contacts etc.;
- constraints on the IFC's remit and resources have meant that it has been able to address few of the major concerns summarised in the previous section.

For the purposes of this report, the Commission has undertaken a self-assessment exercise, however, and consulted a range of stakeholders for their view of the success of the IFC to date. Additionally it has taken into account media reporting of its activities. We therefore offer an assessment of impact under the following headings:

- relations with the governing bodies and their response to the IFC's reports
- the governing bodies' experience of independent scrutiny
- views of stakeholders
- media reactions
- complaints handling
- change and improvements effected.

#### **Relations with the governing bodies and their response to the IFC's reports**

The initial relationship between the IFC and the three governing bodies was an uneasy one. The IFC was uncertain how flexibly to interpret its remit; the football authorities referred the Commission regularly to its ToR with clear determination that they should be narrowly and strictly interpreted. The IFC was perhaps clumsy in examining the extension of its ToR at an early stage of its existence and thus provoking alarm and some degree of hostility on the part of the football authorities. This manifested itself in, for example, a reluctance to share information, and to allow the IFC access to materials it asked to see, and resulted in frustration on the part of the Commission. The IFC made clear its wish to address a wide agenda, based on public and stakeholder concerns and current, topical issues. The football authorities preferred the IFC to focus on Customer Charters and the customer issues specified in the ToR. While the IFC was willing to undertake this role, charters were clearly not at the heart of either the problem or the solution to football's troubles; it soon discovered that matters such as merchandising were of low importance to stakeholders; and it recognised that its own credibility and the success of the independent scrutiny experiment would be damaged if the IFC did not set its own agenda and follow it. In this context, the IFC established working methods and operational principles by which it determined to work. These were rehearsed in its first Annual Report<sup>7</sup>, centred on the principle that **IFC reporting would be based on evidence and experience**. The IFC believes it could have better communicated its methodologies to the governing bodies. At the same time it was sometimes dismayed by persistent disputes between the IFC and the governing bodies over what was and what was not within its remit.

Nonetheless, and as expressed in the IFC's reports, **some degree of tension between a regulatory body and those whose work it is scrutinising is usual and healthy**. The governing bodies received the first Annual Report with, the IFC felt, some relief that it was so little contentious, and some respect for the conscientiousness and care that had gone into it. Working relations between the IFC and the governing bodies settled into an easier pattern of operation in 2003. The Commission set out the scope of its proposed lines of enquiry early in the year and experienced greater co-operation as the year progressed. This was especially welcome and appreciated in view of the controversial nature of the issues the IFC chose to address. The 2003 Annual Report was a more far-reaching and hard-hitting document than the 2002 Report. It addressed three major issues: the financial crisis at club level; governance in the game; racism. Additionally it reported more briefly on a quartet of customer issues and extensively reviewed the charter process. The 2003 Report attracted considerably more media attention than its predecessor, largely because the issues addressed were found to be more central to current public concerns about the game.

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<sup>7</sup> IFC Annual Report 2002, pp 16-17

The record of implementation of the two Annual Reports is summarised on page 14. It should be noted that at the time of writing, the IFC was expecting to receive the governing bodies' formal response to the 2003 Annual Report. The Commission was disappointed that, in fact, in the three month period between the issue of the Report and the meeting with the governing bodies to discuss the recommendations, only the FAPL was able to provide a written response and an indication of action it was taking. The FL said that it expected to accept most of the recommendations, however. The IFC was also told of plans that the authorities have drawn up to take some action forward, but they did not, at the time, feel able to share these with the IFC.

### **The governing bodies' experience of independent scrutiny**

In the course of compiling this report, the IFC met separately with the Chief Executives and senior officials of each of the governing bodies. It also discussed their views with them collectively.

The conclusions of the three bodies had a number of points in common:

- they now see the IFC as part of football's infrastructure and expect it to continue;
- they are generally satisfied with the IFC's contribution;
- it should have an indefinite term, subject to a period of notice, that would allow the IFC to maintain a rolling programme;
- some belief that the IFC's agenda should be the product of consultation with the governing bodies and reflect a shared agenda;
- it is reasonable for the IFC to have greater financial security;
- the decision about the IFC's future is for football to take, with, perhaps, formal ratification by the DCMS.

All three saw the IFC as a body that has made positive contributions to change in important areas, and all three are active in planning to adopt many of the IFC's recommendations. The main differences in opinion were about relations with the IFC and its *modus operandi*.

Two of the governing bodies stand at opposite ends of the spectrum in reflecting on working relations with the IFC. One felt that mutual trust was improving but could be further improved, and that the IFC is still sometimes perceived as unnecessarily assertive. The other welcomed the warm working relationship, the trust and confidence that has been established, and the help the IFC has provided in pushing change agendas forward. The third governing body stood somewhere between these two views, with nonetheless a clearly-expressed confidence in the IFC and its importance in building, or re-building public confidence. There is evidently tension between the recognised importance of the IFC as an independent body, and some degree of uneasiness about how willing the IFC is to sit within the existing framework of governance and regulation, and how appropriate its doing so is to the purposes of undertaking objective scrutiny.

At the meeting between the three governing bodies and the IFC in May to discuss the 2003 Annual Report, the governing bodies collectively indicated that **they wish to continue to work with the IFC and that they expect to fund it. They said that they value its contribution to discussion about how to improve the running of the football business.** They made it clear that, as the creators and funders of the IFC, they expect to decide its future role and to appoint, under Nolan principles, its Chairman.

### **Views of stakeholders**

The IFC has been in regular dialogue with stakeholders since its inception (see Annexe C) and has sought informal feedback on its performance and success. Additionally, for the purpose of this report, the IFC held two meetings specifically to obtain stakeholder ideas and views. Over the 27-month period of the IFC, the general view has consistently been that, in difficult circumstances, the IFC has performed creditably and evidently with an intention to achieve constructive change. The Commission has succeeded in raising its profile, primarily with the issue of the second (2003) Annual Report. It is recognised that several of the IFC's recommendations have been endorsed by wider stakeholders, particularly calls for the governing bodies more closely to represent the modern football

community in all its social and ethnic diversity, and demands for better financial regulation and control. Around the time of the 2003 Annual Report, for example, the Council for Racial Equality (CRE) was simultaneously taking independent action on racial equality in football; and an investigation into football's finances by the All Party Parliamentary Football Group on Football (APFPG) reported shortly after the IFC's Annual Report was published in February 2004. The cumulative effect was to underline the IFC's findings and relevance and to heighten the impact of the Report. By February 2004 the IFC was beginning to be recognised as a force within football, perhaps evinced by the strong and defensive reactions of the governing bodies to IFC reporting on racism in football.

However, in the wider context of how the football business is run, a common perception appears to be that the governing bodies see the IFC as an irritating irrelevance and an intruder into an area in which it has no business to be. The IFC has no powers and thus has no authority to exert: a common epithet is "toothless". Particularly to supporters' groups, the IFC is seen to be lacking in power and authority, and consequently in profile. Thus it has no direct means of protecting stakeholders' interests. To them, this much diminishes the value and impact of the IFC and bolsters the feeling amongst supporters' groups that statutory regulation is the only answer. Also, a consistent perception is that government, having promoted the establishment of the IFC, is ambivalent about its "regulatory" function. The DCMS has given the IFC little explicit support or recognition, though it has shown interest in its endeavours. Relations between the DCMS and the IFC have never been other than good-natured. However, the DCMS has, on occasion, expressed surprise that the IFC has adjudicated only a small number of complaints. This suggested to the IFC that the DCMS has a different perception of the scrutiny role the IFC has undertaken. Whilst a more powerful role in complaints procedures is a frequent regulatory function, the IFC to date has been neither resourced nor required to fill it.

The overall position is cogently summarised in the following remark by one of those whom the IFC consulted on the impact of the IFC: "the government wants football not to be a problem; football doesn't care about the IFC; and the fans don't know it exists".

## Media reactions

Again, opinion has shifted over the two years of the IFC's existence. Almost universally, the IFC was greeted with initial cynicism. Its lack of powers were derided and its stated intentions were greeted with scepticism. "Soccer watchdog has no bite" and "The cavalry arrives to little fanfare" were typical of headlines in press reports of the IFC's launch in March 2002. However, by February 2004, reporting of the IFC's 2003 Report included direct reference to the acknowledgment by the FAPL's CEO that "football must be open with the public"<sup>8</sup>; and extended reporting of the report's findings on finance, governance and racism generally agreed that the IFC was hitting the right nails on the head. The very fact that the press is increasingly alert to the IFC's enquiries and recommendations, is prepared to report them and to examine the football authorities' response contributes to growing influence and impact, even though reservations about the IFC's powerlessness remain.

## Complaints handling

Thirteen complaints have been formally referred to the IFC. It has issued adjudications on eight of these. Those it has not adjudicated have either been resolved during the IFC stage of the complaint with the Commission's assistance, or reached a stalemate. Only one adjudication has been challenged by the league and club involved; at May 2004, further evidence was being taken. The IFC is not empowered to enforce acceptance and action on its findings; it can only, as in its other activities, make recommendations. That its recommendations are accepted and acted upon is positive. However, with perhaps one or two exceptions, the IFC believes that the thirteen complaints referred to it needed no intervention from the IFC – which has become a convenient lay-by for troublesome minor difficulties. That essentially it has assisted the resolution of complaints that should have been settled at club level puts the impact of its complaints role in perspective, whilst not diminishing the IFC's usefulness. The definition of complaints that the football authorities will permit the IFC to hear is narrow, and complaints continue to move very slowly through the complaints hierarchy. Both these factors militate against the IFC's achieving greater impact in this area, by being involved in more complaints and having the authority to enforce timescales and corrective action.

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<sup>8</sup> *Evening Standard*, 11 February 2004

**Record of Implementation** (figures for 2003 are for FAPL only)

<b>COMPLAINTS PROCEDURES</b>	
Recommendations in 2002 AR:	5
Recommendations in 2003 AR:	0
Accepted:	4
Partly or in principle accepted:	1
Overall rate of acceptance	100%
<b>CUSTOMER CHARTERS</b>	
Recommendations in 2002 AR:	4
Recommendations in 2003 AR:	5
Accepted:	2 (2002)
	4 (2003)
Partly or in principle accepted:	1 (2002)
	1 (2003)
Rate of acceptance:	NK
<b>TICKETING: away supporters</b>	
Recommendations in 2002 AR:	4
Recommendations in 2003 AR:	0
Accepted:	1
Partly or in principle accepted:	0
Rate of acceptance	25%
<b>TICKETING: match rescheduling</b>	
Recommendations in 2002 AR:	0
Recommendations in 2003 AR:	3
Accepted:	0
Partly or in principle accepted:	1
Rate of acceptance	NK
<b>FINANCE</b>	
Recommendations in 2002 AR:	5 *
Recommendations in 2003 AR:	8
Accepted:	2(2002)
	2 (2003)
Partly or in principle accepted:	3 (2002)
	3 (2003)
Rate of acceptance:	NK
* plus one that proved not applicable as the recommended practice was already in place	

fig. 2

<b>GOVERNANCE</b>	
Recommendations in 2002 AR:	0
Recommendations in 2003 AR:	4
Accepted:	1
Partly or in principle accepted:	2
Rate of acceptance:	NK
<b>MERCHANDISING</b>	
Recommendations in 2002 AR:	1
Recommendations in 2003 AR:	0
Accepted:	0
Partly or in principle accepted:	0
Rate of acceptance	0%
<b>COMMUNITY WORK</b>	
Recommendations in 2002 AR:	1
Recommendations in 2003 AR:	3
Accepted:	1 (2002)
	2 (2003)
Partly or in principle accepted:	1 (2003)
Rate of acceptance:	NK
<b>NEIGHBOURHOOD RELATIONS</b>	
Recommendations in 2002 AR:	0
Recommendations in 2003 AR:	3
Accepted:	1
Partly or in principle accepted:	2
Rate of acceptance	NK
<b>RACISM</b>	
Recommendations in 2002 AR:	1
Recommendations in 2003 AR:	7
Accepted:	0 (2002)
	4 (2003)
Partly or in principle accepted:	0 (2002)
	2 (2003)
Rate of acceptance:	NK
<b>FACILITIES FOR DISABLED SUPPORTERS</b>	
Recommendations in 2002 AR:	0
Recommendations in 2003 AR:	4
Accepted :	0
Partly or in principle accepted:	2
Rate of acceptance	NK

Notably, however, the IFC has succeeded in streamlining the complaints procedures to some extent, by getting the FA's agreement to bow out of the process of club complaints. It is also succeeding in raising awareness of the right to complain. Football's customers have low expectations; they do not dwell on their customer rights. Football supporters are slow to change allegiance, and sometimes incapable of doing so. This trapped loyalty has resulted in the football business feeling little pressure to protect and care for the supporters who buy its products. Sensitivity to the consumer has been slow to enter football. The charter process has contributed significantly to bringing about a cultural change at clubs in this respect, but the football business remains slow to recognise its obligation to inform its "customers" of their rights. The IFC's existence and role in the complaints hierarchy is contributing to raising awareness, and so helping more appropriately to align football with the norms of the service culture in England today. The IFC monitors and reports on steps taken by clubs to advertise the right to comment and complain<sup>9</sup>. The IFC's complaints brochure, *I'm Still Not Satisfied*, is distributed to, and displayed at, most clubs. Additionally, the IFC provides an alternative sounding board for those wishing to express general dissatisfaction with their experience of the services they have received. The IFC website offers the public the opportunity to raise an issue, i.e. a general concern unrelated to a quest for personal redress. This facility is in increasing use. Some issues give early warning of complaints in the system; some escalate into complaints referred to the IFC; overall the issues raised keep the IFC informed and in touch with current grievances.

### Change and improvements effected

The IFC has no power but its views are becoming more widely known and taken seriously<sup>10</sup>. It has begun to demonstrate effectively that it has influence. This is evident not only in the implementation rate of its recommendations but in behavioural and functional changes it has brought about. The following are some examples.

- The FAU was established by the FA to improve financial practice at club level. It was intended to report to, and be overseen by, a committee of the FA's Council: the Financial Advisory Committee (FAC). At the time the IFC was established, the FAC had been repeatedly listed in the FA Handbook but had never been peopled. The IFC put pressure on the FA to make appointments to this committee and establish proper FAU reporting lines and accountability. The FAC was set up in 2003; the Chair is a former IFC Commissioner who resigned from the IFC in order to take up the post. The FAC produces an annual report, addressed jointly to the Board of the FA and the IFC.
- Fit and proper person testing for the directors of football clubs had previously been considered by the FA but discarded as a means of improving governance on the grounds of impracticality, and in the context of there being no concerted interest across the three governing bodies. The IFC has regularly urged all three football authorities to re-examine fit and proper person testing, not in the expectation of its proving a panacea but as a means of clearly signalling the game's intention to take action to deter inappropriate appointments at board level. Fit and proper person criteria are now being taken forward by the authorities.
- The IFC sub-titled its 2003 Annual Report "a call for unity of purpose" in reference to a recurrent theme in its findings that reform and improvement in critical areas needs action by the three governing bodies acting together with agreed purpose. In the last two years, there is evidence of this happening more frequently over issues such as fit and proper person testing, and action to combat racism.

The impact of the IFC will be best judged against behavioural change by the governing bodies where existing behaviour is perceived, by the general and football-going public, not to be to the long-term benefit of the game's health and reputation. Implementation of IFC recommendations is one indicator, and there are other indicators identified above. But our conclusion is that the IFC's impact is yet too early to judge. *At this point, looking at the IFC as currently constituted, the jury is still out.*

In the process of consulting stakeholders on the success of self-regulation in football, the IFC invited contributions to a SWOT analysis of the two years of the IFC experiment. Their returns are aggregated in the table overleaf.

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<sup>9</sup> See *IFC Annual Report 2002* page 22; *IFC Annual Report 2003*, page 77.

<sup>10</sup> Over 1200 copies of the 2003 Annual Report have been distributed since its launch in February, increasingly on request.

## Summary of SWOT analyses contributed by those consulted by the IFC

Numbers in brackets indicate the number of times the point was made out of 15 returns

<p><b>STRENGTHS</b></p> <ul style="list-style-type: none"> <li>▪ Its existence (4) and links with the football community</li> <li>▪ Its independence (5)</li> <li>▪ Professional knowledge and skills of members and staff; intellectual calibre (3)</li> <li>▪ Range of experience on the Commission</li> <li>▪ Established with government support and backing</li> <li>▪ Can raise important and awkward questions and issues that must be addressed (e.g. racism) (3)</li> <li>▪ Access to the football authorities</li> <li>▪ Ability to focus on different aspects of the game and take an overview (2)</li> <li>▪ 2003 Report widely read and many points acknowledged by the governing bodies and others</li> <li>▪ Ability to push the authorities to think about future policy and to come to decisions, rather than procrastinate</li> <li>▪ Has influenced the game in a better regulatory direction</li> <li>▪ Has given those who feel disenfranchised a forum for raising concerns</li> <li>▪ Seems to have the support of fans' groups</li> <li>▪ Improving working relationship with the authorities</li> <li>▪ Positive outcomes on many of the more straightforward areas of recommendations (2)</li> <li>▪ Engagement with those who feel disenfranchised (e.g. supporters, residents)</li> <li>▪ Potential to be a moral force (2)</li> </ul>	<p><b>WEAKNESSES</b></p> <ul style="list-style-type: none"> <li>▪ Restricted terms of reference; not comprehensive enough (2)</li> <li>▪ Not visible to the majority of supporters; not seen as relevant to them (2)</li> <li>▪ Funded by the football authorities – not independent (4)</li> <li>▪ Seen as a compromise</li> <li>▪ Lacks identity and profile (2); failure to win recognition and status inside and outside the game</li> <li>▪ Lacks credibility – its creation was a fudge</li> <li>▪ No effective relationship with clubs</li> <li>▪ No adequate powers / no teeth (11)</li> <li>▪ Lack of resources</li> <li>▪ No more than a moral authority; not perceived as a regulator like OFSTED, OFTEL etc</li> <li>▪ No evident backing from government</li> <li>▪ Failure to influence FAPL</li> <li>▪ Possibly too wide a remit taken on in a short space of time</li> <li>▪ Seen as representative only of the supporters (see Annexe on complaints in the 2003 Annual Report).</li> <li>▪ Not part of the football “freemasonry” and therefore not trusted within the game</li> <li>▪ Tolerated – but viewed by the authorities as either a thorn in the side or a court jester, rather than a constructive voice to improve football (2)</li> <li>▪ Unable to prevent wrong decisions such as sales of grounds, Wimbledon move</li> <li>▪ Effective regulation needs the consent of the regulated – not sure this exists</li> <li>▪ Work overlaps with other bodies such as the CRE – but without power</li> <li>▪ Conflict between not wanting to alienate the authorities and timidity on major issues</li> <li>▪ Authorities ignore IFC recommendations they don't like, especially hard issues</li> <li>▪ Perceived battle with the FA as regulator of the game</li> <li>▪ Often attacked or ignored; rarely praised</li> </ul>
<p><b>OPPORTUNITIES</b></p> <ul style="list-style-type: none"> <li>▪ Scope for positive influence, especially in soft areas</li> <li>▪ Public and political recognition that all is not well with football</li> <li>▪ Can identify and promote good practice and become a force for good</li> <li>▪ Could push the interests of players and supporters</li> <li>▪ To continue discussion of the topics initiated, press home points and generate support for IFC recommendations (2)</li> <li>▪ Build on areas where the authorities will give power away and strengthen through organic growth</li> <li>▪ Negotiation of solutions to defined problems, with the football authorities</li> <li>▪ To be given real powers (“teeth”) and increased funding (3)</li> <li>▪ Recent events (transfer rows, agents, drugs, behavioural and financial excesses of players and owners etc) create a climate for regulation and change (2)</li> <li>▪ Perfect time to seize a new direction for the game, when the FA and the FAPL have never had so much money but do not seem capable of handling it in the game's best interests</li> <li>▪ To engender support as a truly independent regulator without vested interests</li> <li>▪ To promote good governance from an independent perspective</li> <li>▪ Broader terms of reference (3)</li> <li>▪ Complaints procedures could be productive (2)</li> </ul>	<p><b>THREATS</b></p> <ul style="list-style-type: none"> <li>▪ The football authorities would like the IFC not to exist (3)</li> <li>▪ The football authorities refusal to give away autonomy to a third party</li> <li>▪ Resistance and autocracy of clubs (2)</li> <li>▪ Doubts about how much the game's authorities <i>want</i> to be challenged and stimulated</li> <li>▪ Unreliability of government support</li> <li>▪ No long-term funding; no increased funding (3)</li> <li>▪ Risk of being hi-jacked by sectional interests</li> <li>▪ Disenchantment of fans</li> <li>▪ Politics of the industry; private agendas within the industry (2)</li> <li>▪ Being bogged down by petty complaints</li> <li>▪ Questions about the IFC's relevance in the absence of power (toothless talking shop) (3)</li> <li>▪ Government interference</li> <li>▪ Money talks louder than the IFC</li> <li>▪ Apathy and lack of publicity weakens the IFC as there are no champions when its future is questioned</li> <li>▪ Being closed down; new body having to start from scratch (2)</li> <li>▪ Continuation being dependent on the whim of the DCMS</li> <li>▪ The FAC (though supportive of IFC's findings)</li> <li>▪ No change to present remit</li> <li>▪ Capacity of football to pull the plug if IFC gets too uppity (2)</li> <li>▪ Football's preference for self-regulation: the weakness of the football authorities requires regulation, not self-regulation (2)</li> </ul>

fig. 3

## IV THE IFC EXPERIENCE

In this section we examine what has enabled the IFC to function well, and what have been the constraints on its work.

### Working relations

We have already touched on some operational constraints in discussing the commission's relations with the governing bodies and government (see pages 11-13). The other side of this coin has been the governing bodies' acceptance of the concept of independent scrutiny, and its wish that it should continue.

From many parts of the wider football business the IFC has received willing co-operation and has enjoyed and benefited from their help, interest and time. In particular it has forged good relations and identified common interests with the wider football infrastructure, e.g. the Professional Footballers Association (PFA), the Football Foundation, Football in the Community (FITC), the FLA and Kick It Out. It has generally been welcomed at football clubs, and has derived much of its understanding of supporters' concerns from informal discussions whilst attending matches. The Commission has held regular meetings with the main supporters groups, including the Football Supporters Federation (FSF), the National Association of Disabled Supporters (NADS), englandfans, and Supporters Direct. All have been generous of their time, and frank and open in exchanges with the IFC. The Commission has developed good working links with interested parties in Whitehall and the public services, such as the Home Office, the Association of Chief Police Officers (ACPO), Football Intelligence Units, the Inland Revenue, the APPFG and individual MPs. It has been able to look at single-issue subjects in the context of sports other than football, through dialogue with organisations such as Sport England and Sporting Equals, and it has compared practice by visiting other sports and/or their governing bodies, such as rugby and horse-racing. Across many of the issues it has examined it has referred to past and on-going research at a range of universities, consulting researchers direct and referring to published materials – and much appreciating the guidance and opinion that has been readily offered. *The IFC now has an active network of contacts and a sound knowledge base.*

### Resources

In attempting to capitalise on these working relations and deliver the job expected of it, the IFC has found itself seriously under-resourced. The six commissioners are unpaid and asked to provide one day a month to the IFC. The Chairman receives an honorarium and is asked to give the IFC a day a week. In all cases the demands on the Commission's time have been much heavier than expected; the IFC has been fortunate that all members of the Commission have met the increasing demands on their time readily and willingly. The competition from the IFC for their time has been an influencing factor on some of those who have reluctantly resigned from the Commission, however. Whilst the intensive effort to build understanding and knowledge in the early days of the IFC has been one reason why the demands have been heavy, the overriding reason is that there are insufficient IFC staff to carry out the full functions of the Commission. The IFC office has just 3½ employees. It briefly had an additional member of staff but was unable to maintain this complement for financial reasons (see below). This small team carries out all the administrative, financial and organisational aspects of the IFC, including a major programme of meetings, the staging of occasional events, and office functions. Additionally it conducts the IFC's research programme, writes and produces its publications, and manages and investigates complaints and issues raised with the Commission. *The IFC staffing resource is severely stretched.*

There is a direct relationship between the constraints described above and the way the IFC is funded. An initial budget for the IFC was agreed between the Chairman and the football authorities in 2001. This budget was for the period January-December 2002 and was paid in full and in advance. All three governing bodies contributed to the budget; there was no other funding source. At that point, the budget was a best guess for the operating needs of a company yet to be established. It could not relate to the work to be done. At the end of 2002, the IFC's expectation was that the budget would be renegotiated in line with the workplan for the coming year or, preferably, two years. The governing bodies rejected a renegotiation, however, and maintained the original budget in each of the following years, uplifted by inflation. Whilst the budget continued to be paid in full, *the annual request for funding is awkward, in practice and in terms of the directness of the funding relationship.* In both 2003 and 2004 the budget was paid late.

The IFC has frequently been accused of lacking true independence because it is funded by the game’s governing bodies. The IFC has rejected this criticism; it is not unusual for a regulatory body or quasi-regulatory body to be funded by the industry it is scrutinising. And the football authorities have never used funding as a lever to influence or control what the IFC does. Nevertheless, **the IFC budget is inadequate for its current purpose and severely limits the effectiveness and thoroughness of its operations.** Of the current budget, about half goes on staffing costs. The balance covers office costs but its doing so is dependent on factors such as the IFC finding extremely low-cost accommodation (its rent budget is £1,000 p.a.) and finding free accommodation in which to hold its Board meetings and other meetings around the country. In the current year, for example, it effectively has no budget for any activity or fieldwork, other than travel to meetings.

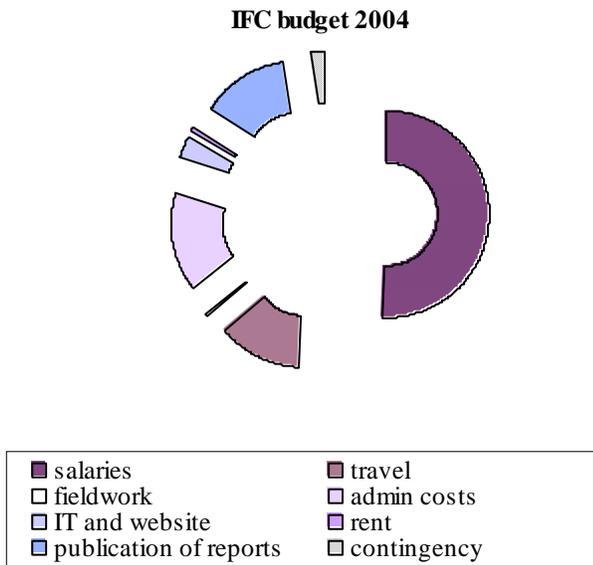


fig. 4

**Approx. budgets of some independent regulators**

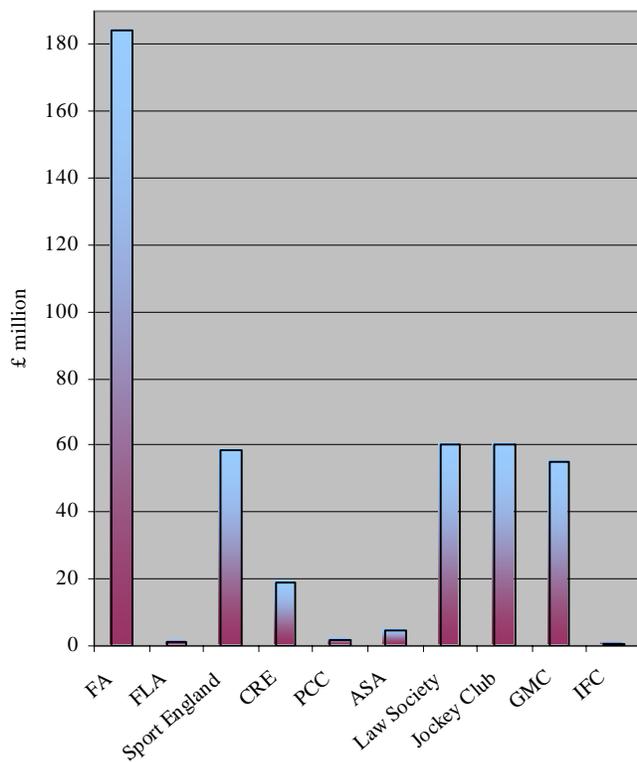


fig. 5 source: information provided to the IFC; *Independent Regulators* (published by the Better Regulation Task Force, October 2003)

### Remit and powers

Power for the regulatory/scrutiny function derives from its resources. The simplest way for the IFC to live comfortably within its means is to do little. It has rejected this strategy, on the grounds that, with so short a time to examine and prove the worth of independent scrutiny of the football business, the IFC must cover considerable ground and demonstrate its potential. In doing so, some conflict with the football authorities has been almost inevitable (see page 11), given that their agreement to the IFC – for which they had to gain the agreement of their members – was based on a very specific remit and an assumption that interpretation of that remit, through the ToR, could be closely controlled. **Because the IFC has no statutory powers and because the powers ceded to it by the governing bodies are limited to opportunity to make recommendations, then it can only aim to achieve change through influence.** To be influential, it has to speak with authority, and it has to draw on the assistance of third parties – such as the media, lobby groups, organisations with common interests and the general public – to support its findings. This means that IFC Reports have to be professionally and widely presented; it means that it

has constantly to network; it means that it needs to gather evidence widely and sometimes test it; it means it should be publicly promoting its role in complaints handling, for example. All this demands resources; **while resources are limited, then so is the IFC's influence and effectiveness.**

## **Access**

Differences between the governing bodies and the IFC in interpreting the latter's role have surfaced in restrictions placed on the IFC's access to information. **The expectations of the Commission, and any rights to information that the governing bodies might expect to give, are nowhere defined.** This has led to constraints on the IFC's ability thoroughly to research its agenda, and on occasions has limited its understanding which then, unsurprisingly, has led to criticisms by the governing bodies. The IFC has sympathised with some instances where officers of the FA, the FAPL and the FL have voiced concerns about making confidential financial information available; it generally has reached compromise arrangements which have given it access to anonymised documentation. Other restrictions have been less understandable: the need to inform the football authorities in advance of all visits to football clubs, for example.

## **Independence**

The IFC believes that its total independence is a *sine qua non* of its credibility and effectiveness. It has taken firm measures to assure its independence. Thus, for example, appointments to the IFC have been by competition. Appointments are conditional on the appointee having no executive role or vested interest in any part of the football business.

The Commission informs the football authorities of areas it intends to investigate and the scope of its proposed work, but it does not seek their permission. The Annual Reports are made publicly available; the governing bodies do not see, edit or influence the text prior to publication. Twice-yearly formal meetings between the IFC and the Chief Executives of the governing bodies provide opportunity for the IFC to share its emerging findings with them, however, as part of the process of co-operative working and testing the viability and accuracy of IFC conclusions. The Reports are not just for the governing bodies and government, but are put directly into the public domain.

The Commission consults regularly with interest groups, particularly supporters groups, but none is represented on the Commission to avoid any public perception that the IFC is itself a lobby group or representative of a particular set of interests. These measures have resulted in criticism of the IFC. The Commission nonetheless believes they are right and appropriate, and that **the total independence of the scrutiny body must be exemplary and itself able to withstand public scrutiny.**

## **Term of office**

The IFC has had insufficient time to prove itself or its effectiveness. Uncertainty about its future has been unsettling and will continue to be so until the decision on its future is made on or around 1 July 2004. IFC staff may be lost from the middle of the year, with consequent waste of the experience, skills and knowledge they have accumulated. Should any gaps arise on the Commission during 2004, they will be difficult to fill for the short period of office that can be assured. In these circumstances and in the absence of any formal mechanisms for reviewing and extending the IFC's term, it is inevitable that its efficacy will be constrained during the final period of its initial term.

## V THE REGULATORY PROCESS

In this section we compare the experimental use of the IFC within football's systems of regulation, with regulatory processes in other industries. In this exercise, the IFC gratefully acknowledges the help of the Regulatory Impact Unit (RIU) in the Cabinet Office, the Advertising Standards Authority (ASA), the Architects Registration Board (ARB), the General Medical Council (GMC), the Jockey Club The Law Society, the Press Complaints Commission (PCC), and the Centre for the Study of Regulated Industries at Bath University.

### Status of the IFC

The IFC is often referred to as a "regulatory body". The FA itself applies this term to the IFC, despite making a careful distinction between itself as football's regulatory body and the IFC as a scrutiny body (as described by the FTF) at the beginning of the IFC's term. Supporters groups, in particular, and other stakeholders look at it in the context of a regulatory function. The IFC has also been loosely termed a "watchdog" for the football industry. Clearly, however, the IFC's current status is not that of a regulator, but of a scrutiny body that also performs an audit function. Figure 6 illustrates the difference.

<b>Regulatory function</b>	<b>Audit/scrutiny function</b>
Setting standards	Monitoring and investigating
Monitoring	Evaluation
Empowered to enforce compliance	Influencing
Exacting redress	

fig. 6

The IFC experiment has not, in fact, changed the way in which football is regulated. Football's regulatory powers remain as they were, and where they were in 2001. That this would be the case fed the FTF's unease and debate about what status the new body should have, and has fed nagging unease subsequently, and the regular calls for regulation, better regulation, firmer regulation – or all three. In recent times, the notion of regulation has gained increasing public prominence: OFWAT, OFSTED etc are familiar acronyms, and the profile of regulators such as the ASA and PCC is high. The purpose of regulation is beginning to fit a pattern, coming in where there is a justifiable, publicly recognised need to shape behaviours in a way more acceptable to the consumer.<sup>11</sup> It is against this background that questions about the regulation of the football industry should be considered.

### Regulation of the football industry

The football industry is not big. Manchester United, the biggest sporting club in the world, according to a recent Deloitte and Touche survey, is tiny in stock market terms, barely a blip for the FSA. To put it in perspective, the aggregate turnover of all clubs in the FAPL and FL in 2002 was around £1.6 billion<sup>12</sup>. Convenience sales (i.e. sandwiches, soft drinks etc) from just one petrol retailer, BP, in 2002 was around £2.8 billion – not far off double the total turnover of English football. There is no great clamour for BP's sandwich sales to be regulated. And yet the fuss about how football is regulated is constant. Calls even for its statutory regulation persist. It might be argued that sandwich sales are regulated in that they are covered by health and safety regulation, consumer protection, the OFT etc. But football might claim that it too is externally regulated, and regulated again. Besides the football authorities' system of self-regulation, clubs are subject to company law; those listed on the stock exchange come under the FSA's jurisdiction, the FLA regulates stadium safety; national health and safety legislation and the OFT cover standards in merchandising and hospitality and food sales; the EC has intervened in the manner in which television rights are sold. And on the sporting side of the business, there are not only the rules of the three governing bodies and the codes of conduct issued by the FA, but international regulations and standards from UEFA and FIFA.

<sup>11</sup> It is interesting, in the context of football, to note that in the National Consumer Council publication *Models of Self-Regulation* (published November 2000), one of the justifications for regulatory intervention is "Inadequate competition – where suppliers, individually or collectively, dominate the market or make arrangements which reduce competition and consumer choice".

<sup>12</sup> Figure given in the Deloitte and Touche *Annual Review of Football Finance*, July 2003.

So what makes English football different? Why is its regulation unique amongst sports for the level of attention and controversy it attracts? Why can't it be left to market forces? Why does it bob relentlessly on to government agendas? Why do calls on the FA and the government to regulate the industry "properly" feel, to those making them, legitimate, appropriate, reasonable – and urgent? Why is football, a global sport, needy of overt regulation in England and not elsewhere?

Here are some of the reasons, derived from the IFC's observation of the industry, and arguments put to it by organisations and individuals concerned with the business of football in England.

- **Current regulation does not seem to be protecting the best interests of the game** (see page 9). Existing deterrent mechanisms are not sufficient to halt excesses in the behaviour of players, supporters and the board members of some clubs. Rules that exist to protect the game from cases of misconduct – such as FA Rule E1 which requires that the game shall not be brought into disrepute – are inconsistently invoked. The application of Rule E1 to matters of governance has not been evident, for example.
- **Normal market forces do not operate in football.** The basis of trade is restricted. Football clubs have no alternative but to compete with each other and no one else outside the individual competition in which they are at any time involved. Moreover they cannot apply the normal competitive instincts. The trade is dependent on keeping the competition alive, not seeing it off.
- **The relationship between football and its customers is unique.** The culture of loyalty is powerful and may pass from one generation to the next. Most football supporters do not recognise any liberty to take their custom elsewhere if the product or the way they are treated is not to their liking.
- **There is little statutory regulation in sport outside health and safety issues.** Sport England has a statutory function with regard to the protection of playing fields but each sport otherwise is regulated by its governing body. That football has three both complicates and weakens regulation (by dispersing it, by subjecting it to power struggles, by clouding its independence).
- **Government has a history of intervening in football.** Football-specific legislation was introduced in reaction to the Hillsborough disaster, for example, and governs the design and operation of football stadia. Football-specific legislation to combat hooliganism is far-reaching and remarkably powerful. Arrangements exist whereby supporters of the national team voluntarily agree that the Home Office may make information available about their criminal record, as a condition of becoming a member of englandfans, the national team supporters club. Government cannot switch from this degree of intervention to disinterest.
- **Besides the money spent directly on football, the industry contributes significantly to UK consumer spending.** The travel industry, the fast food industry, sponsors products (mobile phones, soft drinks, computers etc) and satellite television are amongst those that benefit from spin-off football spending. Sky television is more or less dependent on it. British football fans spend nearly £1 billion per season following their team<sup>13</sup>. An englandfans member will spend in the region of £5,000 supporting the national team through qualifying rounds and the final competition for Euro 2004.
- **The passionate popularity of football is much greater in England than anywhere else.** Around half the tickets sold for the European Championships in Portugal in June 2004 have been sold to English addresses, for example. Around 200,000 additional visitors to Portugal from England are expected during the three weeks of the tournament.
- **Football impacts on the lives of many millions.** The aggregate number of people attending live professional football league games in an English season is almost 30 million<sup>14</sup> (compared with 5.5 million who go racing). Many of these are repeat customers. The number represents, nonetheless, a lot of individual purchases of this particular leisure product – and outstrips many other parts of the leisure or sport industry. Beyond those attending live matches is a growing pub audience and a massive television audience (domestic and global), a large part of which buys its football from satellite stations.

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<sup>13</sup> Figure given by a Sky News report, 10 March 2004.

<sup>14</sup> FAPL: 13.5m; Div 1: 8.5m; Div 2: 4m; Div 3: 2.5m. Source: *Sky Sports Football Yearbook 2003-04*. Figures exclude cup competitions.

- **Football punches above its weight.** It benefits from the scale of interest shown in it: it is able to assume status and importance and to generate income of a size unique in sport. However, a consequence is that how it behaves and how it conducts its business attracts attention from the public and the media disproportionate to the size of the industry.
- Because of the last three points, **there are public interest issues surrounding football** that it has in common with bigger industries. These are considered on page 29.

## Forms of regulation

The growth of regulation in England offers many models with which to compare football's system and from which football might learn. Football opts for a form of self-regulation and the IFC believes it is correct to do so. Football is a fast-changing business to which a state regulator would find it difficult to adapt quickly. State regulation is costly to the general public whilst self-regulation usually makes no direct demands on the tax-payer. The public perception of football is that it is a wealthy business and that its recurrent crises are the fault of mismanagement not poverty; calling on the public purse for football's regulation would probably invite criticism. And self-regulation offers a flexibility that the cumbersome machinery of the law might not.

There are many advantages to self-regulation besides cheapness and flexibility. The IFC has looked at some models of self-regulation outside football. Football is different, and no model bolts readily on to its particular conditions. But there are lessons to be learned from the regulation of other industries. In this section we look briefly at six, drawing out best practice and comparisons with football, and considering the reputation of the regulatory body and public perceptions of its effectiveness. We have taken into account recent publications that define good regulation: the *Principles of Good Regulation*, published by the Better Regulatory Task Force; and the section on credible self-regulation taken from the National Consumer Council's *Models of Self-Regulation*. The Task Force five principles and the NCC checklist are reproduced in Annexe E on pages 40-41.

### *The Law Society: questions of efficiency, governance and independence*

The Law Society is a self-regulatory body, in many ways similar to the FA in its structure and complexity. It is both a representative (being the professional body for solicitors) and regulatory body and is governed by a large Council. The Law Society, like the FA, is funded by both the industry and by commercial enterprises of its own. It is responsible for setting the rules of conduct and standards for the profession (as set out in the Society's comprehensive *Guide to the Professional Conduct of Solicitors*) and enforcing compliance; it can wield sanctions for those in breach of the rules; and it handles complaints about the profession. It represents solicitors in a trade sense and is involved in, for example, the profession's public relations and its relations with government. In reflection of its representative role and the requirement that all solicitors must "belong" to the Law Society by obtaining a Practising Certificate from it, its Council, like the FA's, is representative and comprises delegates from the profession. The Law Society's Council comprises 105 people; the FA's 94. The Law Society was set up under an Act of Parliament in 1974 and is now aligned with the Department for Constitutional Affairs (DCA). The DCA's recent examination of the whole area of legal infrastructure and process has extended to the Law Society, which itself recognises that its machinery is cumbersome and outmoded. Rule changes, as in football, have to be approved by the Council, whose size and nature makes change difficult to effect. Proper regulation is difficult without the capacity to respond quickly or swift and effective decision-taking. A major review is currently underway, chaired by David Clementi, which will report later this year. It seems possible that the representative and regulatory functions of the Law Society will be separated so that roles are clarified and the regulatory function rendered independent and more efficient. Intervention by the Legal Services Ombudsman or the introduction of a separate ombudsman service are possibilities; also the reform of the governance structure to include lay representation. **The strengths of the Law Society are its powers and its closeness to the industry. But its present governance structure, poor complaints service<sup>15</sup>, failure to effect representation of the consumer or to ensure independence and objectivity through lay membership of its Council, its complexity and user-unfriendliness, and the absence of clear performance measures are weaknesses that are not conducive to public confidence – and which are recognisable in football too.**

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<sup>15</sup> Until recently complaints processes were averaging 6 months, despite a staff of 250 to administer around 15,000 complaints per annum. Some of the complaints referred to the IFC are in football's complaints system for 6 months or more.

*The General Medical Council: questions of public confidence, openness and public accountability*

The GMC is another self-regulatory body but closely aligned with government and operating a Code of Practice with statutory foundation. It is accountable to the Privy Council, through the Department of Health. Its role falls into four parts: to oversee medical education; to set and maintain standards for the profession through a code of practice (this includes complaints handling); to register all doctors in the UK; to oversee fitness to practice and related disciplinary processes. The GMC has a high public profile and interface but has suffered from a severe loss of public confidence and respect, in the wake of Shipman and other scandals. These have called the “professionally-led” nature of the profession’s regulation into question and, alongside the pressure on the GMC from the Shipman enquiry, are pointing to some interesting conclusions. First, the GMC recognises that it must achieve much greater transparency if it is to survive. In the past it operated mysteriously: it did not announce enquiries, or explain methodologies, or publish outcomes. Public opinion will no longer allow this. A second conclusion is that if the GMC is to meet public needs and restore confidence, it needs to change its enforcement regime and obtain buy-in from the profession. Dictating a code and wielding the stick of enforcement has stopped working. Members of a profession or industry have to feel ownership of the standards set for it, if it is to police itself and demonstrate that high standards will be maintained and complaints acted upon promptly. One alternative to continuing with professionally-led regulation has been voiced: direct regulation by government. Another might be to separate key functions, as with the Law Society, e.g. to split off fitness to practice and disciplinary procedures from the education role. The GMC situation too has echoes in football. Football’s governing bodies continue to lose public confidence and respect for the way they govern the game, while scandals and suspicion in areas such as agents, drugs and asset-stripping fester. Football’s disciplinary work is also cloaked in secrecy, with judgments on high-profile cases often not published and appointment to tribunals obscured in silence. There are similar question marks as to whether football can continue to lead its own regulation: the advantages of professional ownership of the laws and regulations are seriously challenged by the absence of independent and objective input at the strategic level. The GMC in fact has a lay element (40%) on its governing council but there are some doubts as to whether this is enough, and misgivings about possible conflicts of interest in that the British Medical Association, which is the representative arm of the profession, shares several Council members with the GMC. Shades of football again, whose governance is entirely led by (selective bits of) the profession and has members in common. However, while it may seem to have failed in its guardianship, the GMC has a Code of Practice that sets behavioural standards. Football doesn’t, and we discuss its absence below. **A final point in common between the medical profession and the football is that both get, one way or another, sometimes indirectly, public funds. Part of the self-regulation bargain has to include explaining to the public what such beneficiaries are doing, and why.**

*The Jockey Club: questions of focus, transparency and integrity*

The Jockey Club provides two interesting analogies: the separation of roles, and fit and proper person testing. The Jockey Club describes itself as responsible for regulation of the conduct of British racing and for the ownership and management of a group of racecourses and training grounds. In its 2002 Annual Report, this description is followed by a familiar theme about trust and confidence: “Our goal is to generate and sustain public confidence in British racing. Conscious of our responsibilities to racing and the general public, we are actively seeking to modernise our structures and processes so that our functions and the way in which we execute them are more transparent and widely understood”<sup>16</sup>. The Jockey Club’s regulatory role is clear: it sets and enforces the rules; it licenses and registers participants; it sets, enforces and monitors standards; it guards the sport’s integrity on and off the racecourse; it oversees the conduct of racing as it takes place. Like the FA, the FAPL or the FL, it is one of three governing bodies for the sport but racing has the advantage over football in having clear, separate functions for its triumvirate: the Jockey Club regulates, the British Horseracing Board handles the sport’s global financial position, strategic planning and policy; the Levy Board collects external contributions (from betting) and distributes the revenue for the improvement and development of the sport. The FA has a go at all three functions for football. The Jockey Club’s anxiety about public confidence and transparency, quoted above, stemmed, however, from a confusion about its particular roles. In addition to its regulatory role, like the FA the Jockey Club also organises some parts of the sport, from which it derives income. Its ownership of racecourses was the subject of very public concern in 2001, expressed in the context of a media rights deal. Conflicts of interest were raised and an independent review followed, which advised the Jockey Club to focus on regulation and effect clearer internal separation of powers. The intention to delegate regulatory responsibilities to a new, independently

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<sup>16</sup> *The Jockey Club Annual Review 2001-2002*

controlled board was announced “as part of a logical step in the continuing evolution of regulation”<sup>17</sup>. Ownership of the racecourses was retained but holding executive office on both governing bodies was no longer permitted. Many feel the FA’s regulatory integrity would be helped by putting clear water between itself, the FAPL and the FA’s commercial interests. At present the intricacy looks damaging. Football’s exploration of fit and proper person testing is discussed on page 15. One of the difficulties the FA has faced has been finding definition and analogies it might adopt. The Jockey Club introduced its fit and proper person ruling in 1996. The list of criteria for a Jockey Club licence are published and made publicly available, on the principle of total transparency. Examples of what doesn’t meet the criteria are also published. Without a licence, jockeys and trainers cannot take part in the sport. The system is intelligence-led and seems to act effectively as a deterrent. Up to last year, only two licences had been withdrawn and fourteen warnings issued. There have been no legal challenges. Direct applicability to football does not apply, however, as the system is designed to protect the outcome of the race and the criteria apply only to those in a position to influence the outcome. The test does not apply to owners and does not impact on financial risk, insolvency or governance, which is where the sore places are in football. Horse-racing, like football, currently operates in a climate of uncertainty and criticism from the public, the OFT and others: these, it acknowledges, “are to a large extent the direct result of the failure of racing to unite and work together in the best interests of its participants and customers”<sup>18</sup>. *The Jockey Club’s action in governance to address consumer concerns, its capacity to focus on the problems and identify desired results, and its use of meaningful sanctions are significant essentials that football seems to lack. Moreover, its recognition that “our problems lie in transparency and more particularly in accountability”<sup>19</sup> and its preparedness to change regulatory systems that were not serving the sport’s interest are behaviours essential to good regulation.*

*The Press Complaints Commission and the Advertising Standards Authority: useful models of self-regulation*  
These are perhaps the best known of the self-regulatory organisations. A recent MORI poll conducted for the PCC showed 80% recognition. Both bodies are of long-standing. The PCC originated in 1953 as the Press Council, its role evolving into the present PCC in 1991. The ASA was set up in 1962 and modified into its present role in 1988. Both were born and revised out of rising public and parliamentary concern about the industry concerned and its conditions at a particular time. Standards of conduct in the press at the end of the 1980’s were very poor and widely criticised. The Press Council was weak and indeterminate, failing to set or enforce behavioural standards. A group of editors – largely to avoid legislation – issued a five-point code of practice in 1989 but it was never formalised. Crude and unethical press coverage of the Hillsborough disaster marked the point where the public had had enough; the government called for a review of the press which was widely expected to lead to statutory regulation, so bad did things seem. In fact the Calcutt Report<sup>20</sup>, conducted in 1990 by Sir David Calcutt, recommended the replacement of the Press Council by the PCC which would administer a new and powerful Code of Practice: this was a proviso for self-regulation and the new Commission was given 18 months to demonstrate it could work. The latest revision of the Code was made in the 1990’s following serious concern about the role of the press in the death of Diana, Princess of Wales. Creation of the ASA was prompted by the rapid acceleration of television into the home, and TV advertising, which was completely unregulated and reaching massive and growing audiences. The government opted for immediate statutory regulation, which the industry accepted - but for broadcast advertising only, arguing that the speed of the press world couldn’t operate under the burden of complex and slow legislative processes. The government agreed that non-broadcast advertising should be self-regulated, provided it could be shown to be effective. The Committee of Advertising Practice (CAP) was formed, representing 19 trade associations; it produced a COP and set up the ASA as an independent body to investigate any breaches of it. In its first 10 years, the ASA handled very few complaints, was little known and was not meeting its purpose. Again the government stepped in, threatening statutory legislation unless the profile was raised, and the ASA promoted itself and became better known. This jolt worked and the ASA is now regarded as one of the best models of self-regulation. The CAP code is now in its 11th edition and is able to demonstrate that it can respond to changes in the advertising environment (such as the growth of internet advertising, which prompted the last revision). The ASA and PCC take seriously their responsibility to be known and invest much effort in promotion of their role and in public information. The ASA receives around 14,500 complaints a year; the individual average handling time is 27 days (against a target of 25 days). The PCC handled around 3,500 complaints in 2003, with an average handling time of 32 days (against a target of 40 days). Complaints handling,

<sup>17</sup> *The Jockey Club Annual Review 2002-2032*

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> *Report of the Calcutt Committee, June 1990*

i.e. administering the code, is the principal function of both organisations; monitoring, reporting on specific issues, promoting the service and providing an advice service are also undertaken. In both industries, complaints range from those seeking individual redress, to complaints about particular behaviours that generally reflect badly on industry or may be damaging to the public interest.

The PCC and ASA share a number of operational features and structures, which contribute to success. In both cases the COP has been compiled by the industry, giving it a vested interest in its functioning well, but is administered wholly separately by an independent body. Neither the ASA nor the PCC has any powers; their effectiveness comes from the commitment of their industry to the Code<sup>21</sup>; industry ownership of the COP means that seldom, if ever, are adjudications not accepted and acted upon. The ASA and PCC are both directed by a small governing body which pointedly and strategically is a combination of lay members and members of the professions in the industry. In each case, this body decides adjudications and directs monitoring work. Both bodies are funded by a small levy on the market (0.1% in the case of the ASA, for example) while remaining at arm's length from collection and disbursement. The Press Standards Board of Finance and the Advertising Standards Board of Finance handle this and negotiate an annual budget with the PCC and ASA respectively, but play no role in their spending plans or activity. This arrangement enables both organisations to discharge their respective responsibilities to the public in full, including the important public information function. In these industries, the representative function is divorced from the regulatory function so that there is no conflict with the responsibility to represent members' interests. Like other bodies using this model – such as the ARB – both the ASA and the PCC inevitably face criticism from time to time and the Press Council in particular suffers from fluctuating public satisfaction. **But the record for this self-regulatory system in resolving complaints, achieving action to correct and acknowledge faults, and being known, is respectable.**

There are many parallels in these histories with the football business: low public esteem; crises that reflect badly on the game's capacity to self-regulate; poor public awareness of how to express concerns and influence change; lack of transparency; and a mixture of arrogance and unwillingness, in the eyes of many, that means strong remedial action is evaded. Most tellingly, football has no Code of Practice. Though there is reference to one in the IFC's ToR, it has never actually been written; the IFC was told that the Customer Charters are instead of a COP. But they do not serve as a replacement, particularly as they exclude some areas important to stakeholders, do not set specific standards or penalties for failure and are not audited; nor are reports on their results made public. There are Codes of Conduct in the FA Handbook. These were written, apparently unilaterally, by FA officials; the first code is dated 1998<sup>22</sup>. They are unspecific, and largely express generalities and, often, platitudes. For example "Football is committed to fairness" and that a team official should "show due respect to the interests of supporters" are never going to be as effective or the base of clear judgments of breach, as, for example, "Promoters should not describe an individual element of a package as 'free' if the cost of that element is included in the package price"<sup>23</sup>, or "Journalists and photographers must not photograph individuals in private places ... without their consent"<sup>24</sup>.

The introduction of the IFC was a gesture in the direction of addressing some of the ills, but football has not fully exploited the opportunity it presented. **A specific role geared to addressing public interest issues, a high profile, complete independence, adequate funding, a public information function<sup>25</sup>, the unqualified backing of the industry, and the unequivocal support and interest of government have marked the evolution and success of the ASA, for example. These characteristics offer a platform for constructing a regulatory system for football.**

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<sup>21</sup> The press COP, for example, is written into most editors' employment contracts.

<sup>22</sup> However, the IFC notes that in a recent FA book *Running a Club* (by Les Howie, pub. Hodder and Stoughton, 2004), some codes from the Handbook are reproduced with slight variations. For example, the general Code of Conduct in *Running a Club* contains a paragraph on "Propriety" which is headed "Young People" in the Handbook; whereas the "Young People" section in *Running a Club* is not in the Handbook version. The book has a code for Parents/Spectators not found in the Handbook.

<sup>23</sup> *The CAP Code*, para 32.3

<sup>24</sup> Press Complaints Commission *Code of Practice*, para 4(i)

<sup>25</sup> One of the recommendations of the Better Regulation Task Force in its report *Independent Regulators* (October 2003) states that "All regulators should hold at least one open meeting a year that stakeholders can attend, and at which stakeholders are able to ask the Board questions. Open meetings should be widely advertised" (page 23). The IFC has been unable to do this, simply for lack of funds.

## Regulatory systems and models

<i>Organisation</i>	<i>Regulatory system</i>	<i>Role of the state</i>	<i>Role</i>	<i>Delivery mechanism</i>	<i>Powers</i>	<i>Funding source</i>	<i>Staffing</i>	<i>Activities</i>	<i>Board size</i>	<i>Board composition</i>
<b>Advertising Standards Authority</b>	Self-regulation	None	Regulatory	Code of Practice	None	Levy on the industry	70	Complaints handling Advice Monitoring	12	75% lay; 25% profession
<b>General Medical Council</b>	Self-regulation recognised in statute + co-regulation with the NHS	Accountable to the Privy Council	Regulatory, including registration	Code of practice	Can strike a doctor off the register; limit a doctor's medical practice; put conditions on a doctor's registration; issue warnings	Registration fees	300	Complaints handling Registration Education Fitness to practice and disciplinary processes.	35	40% lay; 60% profession
<b>Jockey Club</b>	Self-regulation	None	Regulatory, including licensing. Organises parts of the sport	Licensing criteria	Can refuse or withdraw a licence (jockeys and trainers)	Income from training grounds	200	Setting and enforcing rules Maintaining standards Licensing and registration FPPT and discipline Conducting racing	14	Lay and profession
<b>Law Society</b>	Self-regulation recognised in statute	Legal Services Ombudsman. Accountable to Dept of Constitutional Affairs	Regulatory and representative	Code of Practice	Sanctions; awarding compensation. Can refer disputed adjudications to the Solicitors Independent Tribunal which can strike solicitors off	Certification fees and commercial enterprises	1200 (250 in the Complaints Dept)	Setting and maintaining standards Complaints handling Compliance Monitoring	105	Profession
<b>Press Complaints Commission</b>	Self-regulation	None	Regulatory	Code of practice	None	Levy on the industry	11	Complaints handling Information provision	17	60% lay; 40% profession
<b>Football Licensing Authority</b>	Statutory	Funds	Regulatory	Inspection	Licensing	DCMS	15	Licensing, Monitoring Advice, information,.	7	Lay
<b>Football Association</b>	Self regulation	None	Regulatory and representative. Also Organises part of the sport	Rules of the Association	Fines, sporting sanctions, ejection from the association	Fees, commercial enterprises	250	Setting and enforcing the rules of the game Complaints handling Education Responsible for the national team and FA Cup.	94	Profession

fig. 7

## VI OPTIONS

The IFC believes that there are 6 options for the regulation of the football business.

### **Option 1: Discontinue the IFC**

This option is possible and relatively painless. For those who believe the IFC is powerless and ineffective it holds some attractions – but only if it is replaced with something else. The disadvantages of this option are two: (i) the investment of some £650,000 by the football authorities in the IFC over the three years of its existence would be wasted; (ii) the effect would be negative on public perceptions that football is genuinely attempting to put its house in order and demonstrate transparency and accountability.

### **Option 2: Do nothing**

Although this option retains the IFC, it is an unsatisfactory one. The IFC's lack of power, inadequate resources, restrictive ToR and limited access to information would simply carry forward, and general dissatisfaction would increase. These circumstances would make it almost impossible for the IFC to increase its credibility and usefulness.

### **Option 3: Extend the IFC's ToR and increase its funding**

This option assumes that funding will continue to come from all three governing bodies via the FA. The role of the IFC would remain as at present, i.e. investigative with a last-resort complaints function. It would undertake a rolling programme, possibly for an indefinite term, in parallel with the FAC and in the orbit of an unchanged FA. This option assumes that Commissioners would remain unpaid, and that the term of office would be limited to two terms of three years. The IFC would continue to issue Annual Reports. To make the IFC more effective in its role would require:

- wider and less specific ToR
- secure, preferably triennial funding
- an increased budget
- guaranteed access to information
- clear government backing
- empowerment through recognition of the IFC in the regulations of the governing bodies.

This latter innovation could, for example, take the form of making all IFC adjudications on complaints binding; requiring members of all three football authorities to acquiesce to reasonable requests for access and information; writing the status and wider role of the IFC into the rules of the three governing bodies.

The upside of this option is that the IFC would stand as a credible and satisfactory alternative to statutory regulation. Avoiding statutory regulation is desired by the DCMS and the governing bodies. An avoidance strategy meets their interests therefore. Public interests would be served as, with more staff and disposable income, the IFC could do proper research work and consolidate the respect and influence achieved by the 2003 Annual Report.

The downside is that the IFC profile is likely to remain low because its authority would still be limited. This would leave stakeholders – particularly supporters – and the media unimpressed and dissatisfied. Whilst the governing bodies might agree to the limited type of empowerment suggested above, it is unlikely they would take changes to their regulations further and make binding, for example, IFC recommendations in its Annual Reports. IFC outputs would probably, therefore, retain the status of recommendations; anything distasteful or difficult could be ignored.

The end result could be either the delay of more radical overhaul for at least another three years (when the requirement may well be larger but possibly no longer the concern of present decision-makers in either government or football); or, finally, the quiet demise of the IFC with a “worthy but weak” epitaph.

#### **Option 4: A radically revised role and structure for the IFC**

This option gives the IFC a new funding base and a stronger focus on its having independence and authority. Like option 3, it stands between football and statutory regulation. However, it proposes a shift in emphasis and suggests that football takes as its self-regulatory model the successful example of the ASA or PCC and addresses public concerns through a powerful and effective complaints mechanism.

In this scenario, the IFC's investigative function would continue broadly as at present, informed by a broader public interface. It would continue to undertake independent enquiries, in much the way that OFCOM, a statutory regulator, has recently published a report on the effectiveness of public service television broadcasting; or as the Electoral Commission publishes reports to review and comment on electoral processes and to disseminate best practice; or the ASA's recent report on the role of the media as a source of information for the young about sex and relationships. With option 4, remedial change and regulation would be consequent on complaints adjudications and a reliance that trouble-spots would surface through complaints. For this to work a number of challenging changes would be needed:

- There would have to be a framework for complaints, in the form of a Code of Practice. This would go much further than the FA's present Codes of Conduct, and would be on the lines of the PCC or ASA COPs, which clearly specify rules and compliance requirements. We suggest that such a Code for football would be for football - across its spectrum - to compile, within a strictly enforced timescale, to be ratified by an independent group. That football would write the Code would deliver "buy-in" and give the Code necessary authority and acceptance.
- Acceptance of the Code, recognition of the IFC and its authority and right to information would need to be written in to the governing bodies' regulations as a condition of membership. Breaches of the Code would be adjudicated by an independent body - a reconstituted IFC - whose findings are acted upon because of the authority of the Code.
- The DCMS would take a stronger line than previously, making it clear that this route is the alternative to more incisive government intervention, and, if necessary, ultimately statutory regulation. To convince the public, football would be given no more than 18 months to move from its present position to the new structure.
- The new IFC would be funded by a tiny levy on football clubs direct, based on a percentage of turnover. This levy would be collected and delivered by a separate Board of Finance, in protection of the IFC's independence. The IFC would thus be adequately funded to raise the complaints profile and the interface with the public, and properly to conduct independent enquiries. A significant rise in complaints handling would be envisaged.
- Some of the FA's complaints role would cede to the IFC. This would initiate some necessary separation of the FA's regulatory and representative functions and would be attractive and reassuring to many stakeholders. It is a key area. The current dual roles of the FA leaves football unsatisfactorily governed and regulated. It needs sorting out and is not a job for the IFC as currently constituted.

In this scenario IFC staffing would be increased, to create a small team of investigators. The role of Commissioners would be to comment on and endorse draft adjudications, and to direct independent reviews and reporting. The IFC Board we see remaining unpaid (except the Chairman) but being expanded to include a mix of lay representatives (who would form the majority) and experience from the football business. A sunset clause and /or review of the new body would be built in to arrangements. Complaints heard by the new body would exclude complaints about the playing side of football which would remain with the governing bodies.

The advantages of this option are a public and obvious strengthening of the self-regulatory function. A significant complaints function is one that the DCMS has envisaged for the IFC and a formal move to a COP system may well be welcome. For the governing bodies, this option offers an acceptable compromise as they cede power in only one discrete area. Finally, the option offers a recognisable model and one that succeeds in other industries with a big public interface (health, advertising, the press). The mechanisms envisaged are standard regulatory mechanisms, likely to be backed and understood by consumers.

The risk is that football's consumer population might not readily use a methodology alien to football, and that time will be needed for the system to bed in before it wins support from the fans and football's wider public.

Government interest and endorsement would underline the serious imperatives driving such radical change as this option initiates. Furthermore, we hope that, in the interests of the longer term, a review of the dual function of the FA will be instituted, on the lines of the Clementi Review of the Law Society, with a target date of, say, 2007 for a reformed FA to emerge.

#### **Option 5: Immediate revolution**

This option calls for immediate action to split the regulatory and representative roles of the FA. It would include some reform of the Premier League, which would drop the prefix "FA", and a reduction of the FAPL's authority and influence at the FA. The Premier League would sit alongside the FL as members of a trade organisation led by the FA.

While this option will have its attractions to some, we believe that evolution is more appropriate, and holds greater promise of success, than revolution.

#### **Option 6: Statutory regulation**

This option reverts to the debate the FTF had in 1999, with an alternative outcome. It would see the DCMS setting up OF-FOOT via an Act of Parliament. Government intervention in the running of football would follow.

This option carries many disadvantages, including the cost to the taxpayer, the unsuitable heaviness of the instrument and the impediment to future flexibility. We believe that statutory regulation is still an unpalatable option for football and not one that is sought by government. We also believe that even if the will were there, the time is not politically right for such dramatic change, not least with the likelihood of a General Election in 2005. The time taken to prepare and pass the necessary legislation would leave football in an unsatisfactory state for perhaps another 4 or 5 years.

In considering these options, it is important to reflect on at least three important considerations:

1. *Public interest issues that need to be addressed and warrant some form of regulation.* Amongst those to the fore in the case of football, given its enormous public following, its significance in the life and culture of the people, and the financial and emotional investment in the game are: detecting or exposing crime or serious misdemeanour<sup>\*26</sup>; preventing the public from being misled<sup>\*</sup>; protecting the public from fraud and/or misleading information; preserving consumer rights and the right to information; protecting civil liberties; protecting public health and safety<sup>\*</sup>. The latter is covered to a large extent by the FLA. The rest are not currently specifically covered by regulation of the industry, and many are areas where there is evident risk.

2. *Proportionality, practicality and costs of implementation.*

The machinery of professional football is already heavy, with three governing bodies, the enormous Council at the FA, three membership associations each with its own rules, two trade-specific regulatory/scrutiny bodies. A system that can easily evolve from the existing structures and help streamline processes in the medium and longer term must be preferable, and one that is appropriate in scale. Any change must be readily workable and acceptable to the industry. It is not a good idea to bring in regulation that will be resisted and thus unenforceable. To obtain moral authority, involving the whole of football in the rules of the regulatory process is vital. And any new system should reflect what works well elsewhere: systems that are useful, user-friendly and efficient. Whether football or something else, such as the state, bears the cost of regulation is an important factor; in either case, there must be a means

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<sup>26</sup> Asterisked phrases are as used in the PCC COP definitions of the public interest issues it seeks to address

of ensuring adequate and fair resourcing to enable the job of regulation to be done well, whilst not imposing burdens on the industry it seeks to serve, or the public investing in it.

3. *Current, damaging problems that need urgent resolution.*

Prime amongst these is the need to restore and then sustain public confidence and specifically the confidence and trust of the supporters. What follows is the need to rediscover high standards in the running of the business, standards that the public can expect football to meet - and to protect. Many of the stakeholders the IFC has consulted have identified the same trio of qualities that are needed if the game is to be better regulated: transparency, accountability and integrity – the last born of independence from vested interests.

Taking all this into account, we **recommend** that option 4 be taken forward, as meeting the largest number of criteria. This will be a brave step forward that will gain, for football, the respect that it and its followers deserve.

## VII CONCLUSION

There is an emerging vision for the future of football.

This vision rests in the knowledge that football is the national game, loved by millions of people in this country. Nowadays, it has to be run as a business. But that business has a duty to achieve and maintain the highest standards on and off the pitch. The vision is of a game run by authorities who love the game with same passion as its supporters. A form of governance that seeks - because it has nothing to hide and everything to gain - strong, independent regulation to protect and make public its high standards. Differences that are settled through conciliation, and reach just and authoritative resolution. Corrective action that is quickly taken when things go wrong. Wider public knowledge and trust. A guardian for the future of the game, its traditions, its social value. A code of behaviour that tells the supporters that they and their clubs matter. A culture that fosters the rights and expectations of ordinary people who enjoy football.

English football must demonstrate, more clearly than it does now, that it has the ability and will to regulate itself, and that it is prepared to shoulder the responsibilities that go with self-regulation. The governing bodies must take the lead, and must lead by example. They can do it. English football authorities have taken many initiatives that put them amongst the best national bodies of any sport. The regulatory change that is needed calls for perhaps the biggest initiative yet. Independent regulation is not a feature of many of football's national governing bodies, and certainly not in the forms described in this report. But English football, as we have shown, is different.

The IFC respects the decisions that were taken in 1999-2000 to introduce independent scrutiny and has welcomed the opportunity to pioneer the experiment. It has delivered the remit it was given. But we strongly believe that that remit is not enough to address the issues in the game that have prompted, and continue to prompt, the calls for regulation.

Our experience, and what we have learned from the regulation of other industries, convinces us that self-regulation is right for the football industry and in adopting it, going beyond scrutiny, the governing bodies of the game will make the right decision for the future.

It isn't complicated. The simple requirement of self regulation is for football to play by the rules.

It's a beautiful game.



# Annexes

**IFC TERMS OF REFERENCE (2001)**

1. To review and report on the promotion by the FA, The FA Premier League and The Football League (“the governing bodies”) of best practice in commercial and financial matters within professional football, particularly with regard to customer service. In particular to review and report on:-
  - the establishment of a Code of Best Practice, customer charters and customer relations units by each of the governing bodies, and by individual clubs;
  - the governing bodies’ establishment of a complaints hierarchy based on the Code of Best Practice, with the Independent Football Commission as the final step in that hierarchy; and
  - the establishment of a Financial Advisory Unit by the Football Association which will review and monitor aspects of clubs’ financial performance and promote best practice.

In this the IFC is to have particular regard for:-

- Ticket prices
- Accessibility to matches
- Merchandise; and
- Supporter and other stakeholder involvement.

2. To review the rules and regulations of the governing bodies relating to financial and business matters within their competitions, and the Code of Best Practice, and to recommend changes where appropriate.
3. To review and report on the adoption and/or promotion (as appropriate) by the governing bodies of the customer service related recommendations in the Football Task Force Reports 1-3.
4. To publish their findings by way of an annual public report.

**MEMBERS OF THE INDEPENDENT FOOTBALL COMMISSION**

**Chairman**

Professor Derek Fraser August 2001 –

**Commissioners**

Alan Watson	December 2001 –
Julian Wild	December 2001 –
John Willis	December 2001 – May 2002
Lord Taylor of Warwick	December 2001 – January 2003
Kate Barker	December 2001 – July 2003
Rt Hon Ann Taylor MP	December 2001 – November 2003
John Simpson	June 2002 –
Garth Crooks	April 2003 –
Clive Betts, MP	November 2003 –
Brian Lomax	November 2003 –

**Staff employed by the IFC at May 2004**

Chris Gamble, Company Secretary  
Claire Broadley, Assistant Secretary  
Alison Bone, Personal Assistant  
Ruth Adamson, Administrative Assistant

**MEETINGS, VISITS AND CONSULTATIONS, January 2002 – May 2004**

4England	Dr Martens League
Advertising Standards Authority	englandfans (London Group)
All Party Parliamentary Group on Football	englandfans (North-West Group)
Architects Registration Board	Euro 2004
Asian Football League	European Football Finance Forum
Barnsley FC	FA Disability Awareness seminars
Barnsley FC Anti-Racism Week	FA Financial Advisory Committee
Baseline Youth Inclusion Project	FA Financial Advisory Unit
BBC 2003 Sports Summit	FA Premier League
Birkbeck College, Football Governance Research Centre, University of London	Farewell to Feethams Exhibition, Darlington Supporters Trust
Blackburn Rovers FC	Federation of Stadium Communities
Blackpool FC	Financial Services Authority
Blackpool FC Stadium Monitoring Group	Football Against Racism in Europe Action Week Launch
Bolton Wanderers FC	Football Association
Bradford Bulls Rugby League Club	Football Foundation
Bradford City FC	Football Intelligence Unit, Cleveland
Bristol City FC	Football Intelligence Unit, Humberside
Bristol Rovers FC	Football in the Community
British Council, Portugal	Football League
British Embassy, Lisbon	Football Licensing Authority
British Urban Regeneration Conference	Football Research Unit, University of Liverpool
Cabinet Office, Regulatory Impact Unit	Football Supporters Federation
Centre for Ethics, Equity and Sport, University of Gloucester	Football Supporters Federation Fans Parliament
Centre for Leisure and Sports Research, Leeds Metropolitan University	Football Task Force
Centre for the Study of Regulated Industries, University of Bath	Football Unites, Racism Divides
Charlton Athletic FC	Football Writers Association
Cleveland Police	Foxes Against Racism
Core Cities Group	General Medical Council
Darlington FC	Gillingham FC
Deloitte and Touche Sport	Greenwich Borough Council
Department for Education and Skills	Hampshire County Football Association
Department of Culture, Media and Sport	H M Customs and Excise
Department of Health	Home Office, Football Disorder Unit
Derby County FC	Home Office, Positive Futures Drug Strategy Directorate
Deutsche Fußball Liga	Hull City AFC
	Imperial College, Management School

Inland Revenue  
 Institute of Youth Sport, Loughborough University  
 Ipswich Town FC  
 Isthmian Football League Ltd.  
 Jockey Club  
 Kick it Out  
 Koninklijke Nederlandse Voetbalbond (KNVB)  
 Kroll Buchler and Phillips  
 Law Society  
 League Managers Association  
 Leeds Business School  
 Leeds United Disabled Organisation  
 Leeds United FC  
 Leicester City FC  
 Leicester Racial Equality and Sports Project  
 Leyton Orient FC  
*Libération*  
 Ligue Professional de Football, Paris  
 London Assembly Football Forum  
 Manchester City FC  
 Manchester Institute for Popular Culture, Manchester  
 Metropolitan University,  
 Manchester United FC  
 Martin Shaw King Trust  
 McCormick's Solicitors  
 Middlesbrough FC  
 Middlesbrough FC Official Supporters Club  
 Ministry of Youth and Sport, Paris  
 MP for Bromsgrove  
 MP for Leigh  
 MP for Liverpool Garston  
 MP for Stoke on Trent North  
 MP for Vauxhall  
 National Association of Disabled Supporters  
 Nationwide Football Conference League  
 Newcastle United FC  
 Newcastle United FC Fans Liaison Committee  
 Norwich City FC  
 Nottingham Forest FC, Football in the Community  
 Programme  
 Notts County FC, Football in the Community  
 Programme  
 Plymouth Argyle FC  
 Poppleton and Appleby  
 Port Vale FC  
 Portuguese Football Federation  
 Premier Management  
 Press Complaints Commission  
 Professional Footballers Association  
 Robson Rhodes  
 Schechter and Co Ltd  
 School of Business and Social Science, University of  
 Surrey  
 School of Sports and Leisure Management, Sheffield  
 Hallam University  
 Scottish Football Association  
 SFX  
 SGS UK Limited  
 Sheffield United FC  
 Sheffield United Business Enterprise Centre  
 Show Racism the Red Card  
 Sir Norman Chester Centre for Football Research,  
 University of Leicester  
 Sky Television  
 Southern League  
 Southampton City Council  
 Southampton FC  
 Southern Football League  
 Sport England  
 Sporting Equals  
 Sports Studies Department, University of Stirling  
 Staffordshire Police (ACPO)  
 Stoke City FC  
 Stoke City FC Fans Forum  
 Sunderland AFC  
 Sunderland AFC Community Programme  
 Supporters Direct  
 Supporters Direct, Scotland  
 UK Disability Sport Conference  
 Unibond League  
 Watford FC, Football in the Community Programme  
 West Ham United FC  
 West Riding County Football Association  
 York City FC

**Organisations represented at the IFC seminar on racism, September 2003**

Asia Europe Football

Asian Football League

Bradford City Council

Derby Gold

Football Foundation

Football Unites, Racism Divides

Foxes Against Racism

Khalsa Football Federation

Kick It Out

London Tigers

Luton United FC

Martin Shaw King Trust

NACRO

Normington Sports Association

Professional Footballers Association

Republica Internationale

Show Racism the Red Card

Sikh Temple

Southampton City Council Social Cohesion Team

SPACE project

Sport England

Sporting Bengal

West Riding CFA

**Journalists from the following English newspapers:**

*Daily Express*

*Daily Mail*

*Daily Mirror*

*Daily Star*

*The Guardian*

*The Independent*

*The People*

*The Sunday Times*

*The Daily Telegraph*

*The Times*

*The Voice*

**ORGANISATIONS CONSULTED ON SELF-REGULATION OF THE FOOTBALL BUSINESS**

Football Foundation  
Football in the Community  
Football Supporters Federation  
Members of Parliament  
National Association of Disabled Supporters  
Professional Footballers Association  
Sir Norman Chester Centre for Football Research, University of Leicester  
Sport England  
Supporters Direct  
Unibond League

Individual meetings were held with senior officials of the FA, the FA Premier League and the Football League

## PRINCIPLES OF GOOD REGULATORY PRACTICE

### I Five principles of good regulation, devised by the Better Regulation Task Force

This is an abridged version of the Policy-Maker’s Checklist printed in *Principles of Good Regulation* published by the Better Regulation Task Force (revised 2003).

- Proportionality** *Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.*
- don’t use a sledgehammer to crack a nut
  - all the options for achieving policy objectives must be considered – not just prescriptive regulation
  - think small first
  - enforcement regimes should be proportionate to the risk posed
  - enforcers should consider an educational rather than a punitive approach
- Accountability** *Regulators must be able to justify decisions, and be subject to public scrutiny.*
- proposals should be published before decisions are taken
  - regulators should clearly explain how and why decisions have been reached
  - regulators should establish clear standards and criteria against which they can be judged
  - there should be well-publicised complaints and appeals procedures
  - regulators should have clear lines of accountability
- Consistency** *(Government) rules and standards must be joined up and implemented fairly.*
- regulators should be consistent with each other
  - new regulations should take account of existing ones
  - regulation should be predictable to give stability and certainty to those being regulated
- Transparency** *Regulators should be open, and keep regulations simple and user-friendly.*
- the need for regulation should be clearly defined and communicated
  - effective consultation must take place
  - regulations should be clear and issued 12 weeks before they take effect
  - those being regulated should be made aware of their obligations with law and best practice clearly distinguished
  - those being regulated should be given time to comply
  - the consequences of non-compliance should be made clear
- Targeting** *Regulation should be focused on the problem, and minimise side effects.*
- where appropriate, regulators should adopt a “goals-based” approach
  - enforcers should focus on those whose activities give rise to the most serious risks
  - regulations should be systematically reviewed

## II Models of self-regulation

*The credible self-regulatory scheme: a checklist* is found in section 6 of *Models of Self-Regulation: an overview of models in business and the professions*, published by the National Consumer Council in November 2000.

1. The scheme must be able to command **public confidence**.
2. There must be strong **external consultation and involvement** with all relevant stakeholders in the design and operation of the scheme.
3. As far as practicable, the operation and control of the scheme should be **separate** from the institutions of the industry.
4. Consumer, public interest and other **independent representatives must be fully represented** (if possible up to 75 per cent or more) on the governing bodies of regulatory schemes.
5. The scheme must be based on **clear and intelligible statements of principle** and measurable standards – usually in a Code – which address **real consumer concerns**. The objectives must be rooted in the reason for intervention.
6. The rules should **identify the intended outcomes**.
7. There must be clear, accessible and **well-publicised complaints procedures** where breach of the code is alleged.
8. There must be adequate, meaningful and commercially significant **sanctions** for non-observance.
9. **Compliance must be monitored** (for example through complaints, research and compliance letters from chief executives).
10. **Performance indicators** must be developed, implemented and published to measure the scheme's effectiveness.
11. There must be a degree of **public accountability**, such as an Annual Report.
12. The scheme must be **well-publicised**, with maximum education and information directed at consumers and traders.
13. The scheme must have **adequate resources** and be funded in such a way that the objectives are not compromised.
14. **Independence** is vital in any redress scheme which includes the resolution of disputes between traders and consumers
15. The scheme must be regularly reviewed and **updated** in the light of changing circumstances and expectation.

*The Football Association ... has failed miserably to protect and act in the best interests of all who support the game. It is now time to separate the regulatory function. The FA, rightly, should be responsible for the rules of the game ... (but) it should hand over the scrutiny of clubs' finances and codes of conduct to an independent regulator*

(Why football needs an independent regulator, Gerry Sutcliffe, MP, in *Football in the Digital Age - Whose Game is it Anyway*, ed. Hamil, Michie, Oughton and Warby, Mainstream Publishing, 2000)

*the job of being a football regulator is likely to be an unenviable one. As with the manager of the England team, every success will be attributed to someone else, every failure will be taken as an indicator of incompetence*

(Winners and Losers: the business strategy of football, Stefan Szymanski and Tim Kuypers, Penguin, 2000)

*The only way out is strong, independent regulation coupled with some enlightened leadership in the sport. But for that, you can whistle in the wind.*

(Will Hutton, writing in *The Observer*, March 2003)



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