

AGW/jk/9922

18th May 2009

Rt Hon A Burnham MP
Secretary of State
DCMS
2-4 Cockspur Street
London SW1Y 5DH

Dear Secretary of State

Following discussions with my colleagues on The Football League Board, I am now in a position to respond to your letter dated 16th October 2008.

As you are aware, The Football League has been at the forefront of improving the governance and financial regulation of our national game in recent years. We were the first football body to introduce a fit and proper persons test for club directors; to publish fees paid to football agents and to ban dual representation; to introduce wage controls in our lower divisions; to create sporting sanctions for clubs entering administration; and to appoint independent directors to its Board. More recently we have 'drawn a line in the sand' by introducing a Home Grown Players policy and are actively seeking greater opportunities for domestic players with a new Youth Loan proposal specifically aimed at Under 21 year olds.

Nevertheless, we recognise that there is still work to be done and so we welcome the opportunity presented by your letter to further contribute to this debate. I will try to deal with the questions you raise individually although inevitably there is some crossover where issues become inter-dependent.

1. *You ask how we can ensure that financial regulation is more joined up in order to achieve greater consistency.*

Whilst we appreciate that to the outside world football is a simple game which ought to have common rules, the reality is quite different. Professional football today is a highly sophisticated business which has had to respond to a particularly fast changing commercial landscape. The Football League operates at a different level from our colleagues in the Premier League, for example. Indeed, it was the advent of subscription television which directly led to the formation of the Premier League in the first place.

Our own initiatives, therefore, have been geared to our own circumstances and, although several of these have been copied across the game, we have to recognise that our own member clubs need to be convinced of the appropriateness of each measure. Let me give you an example. As I have already mentioned, mandatory cost controls have been in place at League 2 level for some years (voluntary at League 1 level). This was possible because the owners of League 2 clubs took a conscious decision to try to limit players' wages as a percentage of club turnover. More

recently, I personally have tried to convince the rest of the League of the merits of some form of cost control. Earlier this season, I spent a significant amount of time and effort exploring various options with club owners and major shareholders. Unfortunately, however, this was to no avail. Whilst the majority of clubs in Leagues 1 and 2 were probably in favour, Championship clubs remained highly sceptical. The main reason for this was the market place in which they have to compete. Players' wages are greatly influenced by the 'ripple-effect' of the wages paid in the Premier League as well as the parachute payments paid to relegated clubs (currently £11.2 million p.a. for two years). Any attempt to restrict wages by means of a formula proved impossible.

Although we currently have a 'solidarity' arrangement in place with the Premier League – for which we are very grateful – this is subject to re-examination each time broadcasting deals are renewed. Bearing in mind that players' wages are frequently linked to broadcasting income, it seems to us that it ought to be possible to introduce a mechanical process for determining at least part of future solidarity payments. For example, this element could be dependent upon the aggregate Premier League wage bill for players applicable at any given time with the solidarity payment including a percentage of that overall figure. This method would have the advantage of being self-adjusting according to the costs associated with players in the top flight and also seek to counteract the ripple-effect of these costs on the wider domestic football market.

2. *You ask about the scrutiny of club ownership and make reference to the level of debt in the game.*

Whilst we appreciate your concerns in this area, we take the view that Government itself needs to take a lead here. We have had firsthand experience of club ownership lying with off-shore investment vehicles which have proved impenetrable when it comes to transparency. Indeed, I have had discussions and correspondence with your Cabinet colleagues on this subject. In summary, we would welcome greater transparency in this respect but the current legal position prevents that. With regard to the level of debt, leveraged acquisitions are not something we have had to face in The Football League bearing in mind the measure of profitability – or rather lack of it! Nevertheless, I will return to the question of debt in (3) below.

3. *You question whether the rules on insolvency should be re-examined and you make the case for an early warning system.*

As you know, we in The Football League probably have more experience in this area than anyone else in the game. Whilst this is not something about which we are particularly proud, it represents a further reflection of the existing financial pressure which currently prevails at our level. In some respects our emphasis hitherto has been to seek to promote better financial management by raising the bar in terms of deterrence – hence our introduction of sporting sanctions. Regulatory sanctions can, however, only take two forms – monetary penalties or points deductions. We have taken the view that fines are inappropriate in these circumstances whilst points penalties have the added advantage of redressing the competitive balance in favour of those clubs who manage their affairs more prudently.

We acknowledge, however, that prevention is better than cure. To this end, we will propose at our Annual Meeting next month an initiative which seeks to provide clubs with an incentive to keep up to date with payments to HMRC for PAYE and NI contributions. If approved, clubs who fall behind (with either current debt or time to pay agreements on historic debt) will be embargoed from signing further players. In other words, if a club cannot meet costs associated with existing players they would not be allowed to make further commitments on playing personnel. Furthermore, we will be seeking authorisation from clubs to get details of their indebtedness directly from the Revenue and I have agreed this arrangement in advance with Dave Hartnett at HMRC. We believe that this initiative will not only help to control clubs' indebtedness it will also provide an early warning system with regard to clubs who find themselves in difficulty. We are very optimistic that this initiative will find favour with our clubs. It is also another example which demonstrates that the approach across football will not always be consistent. Nevertheless, we are hopeful that this initiative will be another major step forward for The Football League.

4. *You question whether the principle of football creditors should be revisited.*

I think that we need to be quite frank on this subject and say that The Football League as a whole is not inclined to move away from this particular policy. For one thing football operates in a closed market. Moreover, Richard Caborn when he was Minister for Sport said the Government acknowledged the reasoning behind this principle. Nevertheless, HMRC have opposed it since their own preference was removed in 2003. However our initiative referred to in (3) above should assist in this respect.

I believe that you should also be aware that tinkering with football creditors would have far-reaching consequences. The 'rescue culture' advocated by current insolvency legislation is not likely to be maintained within football if debts within the game could be left behind. This would mean that clubs entering administration are likely to face expulsion by their peers rather than be given another opportunity to overcome their difficulties. Furthermore, our long-standing Collective Bargaining Agreement with the PFA might be jeopardised if Administrators were allowed simply to cull playing staff unilaterally. The whole registration and transfer system, which is currently a 'two-way street', could subsequently be unsustainable if employers had a legitimate one-sided means of terminating the contracts of players who were no longer wanted. For these reasons in particular this aspect of football's insolvency policy should be left alone.

5. *You ask whether the fit and proper persons test needs to be strengthened and applied on a consistent basis.*

As I mentioned earlier, the original fit and proper persons test was the initiative of The Football League. Undoubtedly, however, our initial version was always going to need refining and updating from time to time, and we continue to seek to improve this particular legislation. In this regard part of our limitation is restricted resources. However, we would be happy to work with both The Football Association and the Premier League to see how these rules can be strengthened appropriately, including how they might be applied prospectively.

6. *You question how competitive balance might be improved within the professional game.*

Arguably, this is perhaps the biggest threat facing the modern game. I know that the Premier League have justifiable concerns about the impact of European club competition on their own competitiveness at a domestic level. Likewise I have already alluded to the ramifications of the Premier League's own commercial success on our clubs. These ramifications have only added to the losses being incurred by Football League clubs, particularly at Championship level, and the situation is now becoming acute. We, therefore have two further suggestions as to how this important aspect could be addressed, both of which might require Government help.

Firstly, provided the competition rules governing fair trade can be adequately dealt with then The Football League would not be averse to joining its television properties with those of the Premier League in return for an agreed share of the total proceeds. This would certainly ensure no appreciable deterioration in the present financial disparity between us which is always a risk going forward. Whilst combining properties might initially create some concerns, a subsequent 'bundling' of these rights into a number of packages for the marketplace (similar to the Premier League's current practice) ought to satisfy the competition regulators. Nevertheless, it would be helpful to have the Government's perspective on such a concept.

Secondly – and once again Government assistance might be required to achieve this objective – it would help Football League clubs if the transfer market could be reopened on a domestic level. The introduction of Transfer Windows by FIFA following discussions with the European Commission caused a collapse in the domestic transfer market which, in turn, frustrated the traditional method of re-distributing wealth within the game. FIFA's initial objective was to provide contract stability across international borders in an attempt to prevent a minority of football markets from monopolising top talent. Whilst it is entirely questionable whether this has worked, FIFA remain implacably opposed to relaxing the current regime for fear that players will seek unilaterally to terminate their contracts early in order to exploit opportunities elsewhere. It is with this background in mind that individual countries have been prevented from operating the principle of subsidiarity on a domestic level.

It is clear, therefore, that it would require political intervention in order for there to be any change in this position. It is an irrefutable fact, however, that the denial of an ongoing source of transfer income has helped polarise football finances in this country even further. A return to an 'open' registration system where domestic transfers can be concluded throughout the season would help redress this position. We believe that this could be justified on the basis that, whilst the movement of players across international borders may require global regulations which are consistent, domestic transfers can be controlled by local Collective Bargaining Agreements. After all, our domestic CBA ensures that all our own football bodies (the PFA, the FA, the PL and the FL) are all part of a single community in this respect. Once again, we would be interested in the Government's view on this important aspect as well.

7. You ask if everything possible is being done to bolster the national team and you raise the issue of quotas for home grown players

As you know, this is another area which The Football League has pioneered and from next season every club will be required to include at least four home grown players in its squad for every match. Whilst this is a relatively modest number, it was important to establish the principle in order to ensure that the present position did not deteriorate further. It will be for the clubs themselves to decide whether this number ought to be increased further in due course. In tandem with our home grown initiative, we also intend introducing greater flexibility for Football League clubs to loan younger players next season in order to provide more opportunities for players aged between 17 and 21 to make the leap from development football to competitive open-age football at first team level. However, in return for these initiatives our clubs are seeking greater security of registration for home produced players. We would commend these initiatives to the other football bodies.

As I said in my introduction, we welcome the opportunity to contribute to this debate and express the views of the League's Board of Directors. If Government feels that further discussion on these or other areas are necessary then, of course, we would be willing to participate.

Kind regards

Yours sincerely



Lord Mawhinney