COVINGTON

COVID-19 and the Financial Regulation of English Football

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Sports

In the coming weeks many of England's football clubs are likely to vote on whether to suspend or remove the regulatory framework that football authorities in England and Europe have developed over the past decade to prevent the financial mismanagement of clubs and protect the sporting integrity of competition. The regulations function primarily by requiring that clubs aim to break even, with excessive financial losses punishable by points deductions and competition bans. However, the postponement of professional football caused by the outbreak of COVID-19 has inflicted serious financial damage on English clubs and football authorities and clubs are grappling with how to adapt these regulations in the context of the crisis.

Financial Fair Play Rules

There are three different sets of financial regulations that may apply to English clubs depending on the level at which they compete, which are known generally as Financial Fair Play ("FFP") rules. The English Premier League ("EPL") and the English Football League ("EFL") both impose such rules on their respective clubs, while English clubs that compete in European competitions must also adhere to UEFA's rules.

The Premier League Rules

- EPL rules prohibit clubs from making an aggregate loss in excess of £105 million over three consecutive seasons, or an aggregate loss in excess of a sum of £105 million reduced by £22 million for each of the preceding two seasons for which a club was competing in the EFL. Expenditure by EPL clubs on women's football, youth football or community development projects is excluded from the calculation of this aggregate profit/loss figure.
- Clubs that do make aggregate losses in excess of the relevant limit will be guilty of a breach of the rules and the EPL has the power to impose a severe penalty, including a points deduction.
- The EPL made one significant amendment to its rules for the 2019/20 season by removing the "Short Term Cost Control" mechanism, which prohibited clubs with an annual wage bill above a certain threshold (exceeded by all but a handful of newly promoted clubs in recent seasons) from increasing their wage bill by more than £7 million from one season to the next, unless it could be proved that the increase was funded from new income sources other than broadcast revenue. This rule change allowed EPL clubs to invest a greater portion of broadcast revenues in increasing the wage bill than would have been possible in previous seasons and may have resulted in

some EPL clubs being in a more precarious financial position following the outbreak of COVID-19 than they would have been at this time last season.

The EFL Rules

- EFL rules also assess losses over three seasons. The Championship's "Profit and Sustainability" rules prohibit clubs from making losses in excess of £13 million per season, meaning clubs must not make an aggregate loss in excess of £39 million over three consecutive seasons. Clubs relegated from the EPL are permitted to make losses of up to £35 million per season for any of the previous two seasons the club spent in the EPL.
- In Leagues One and Two financial regulations restrict the percentage of a club's turnover that can be spent on player wages to 60 and 55 per cent respectively, rather than imposing limits on overall losses. Clubs relegated to League One may spend 75 per cent of turnover on wages.
- Violation of EFL rules may result in a transfer bans and/or a points deduction and clubs that overspend and achieve promotion to the EPL will be fined.

The UEFA Rules

- UEFA's financial regulations consist of two elements: FFP rules and club licensing rules.
- UEFA FFP rules prohibit clubs from making an aggregate loss in excess of €30 million over three seasons. The application and enforcement of these rules is the responsibility of the UEFA Club Financial Control Body ("CFCB"), which has the ability to impose a wide range of penalties for non-compliance, including bans from European competitions, with final decisions of the CFCB appealed to the Court of Arbitration for Sport (CAS) in Lausanne.
- UEFA's club licensing regime is administered by governing bodies in each UEFA national association, such as the FA in England. Clubs must comply with a broad package of standards relating to club infrastructure and administration, as well as short term financial sustainability. Each applicant must provide information in relation to its financial position by the end of March in order to obtain a licence for the following season, including: disclosure of annual accounts, a statement of the total wage bill, details of any outstanding fees payable by the club and projected cash flows for the following season.

The Impact of COVID-19 on the Financial Regulation of the 2019/20 Season

In the immediate aftermath of football's postponement football authorities have prioritised discussions over how best to provide short term financial assistance to clubs and more pressing issues concerning the resolution of the current season, extensions to player contracts and reorganisation of transfer windows. However, the catastrophic financial impact that COVID-19 has had on clubs at all levels is becoming increasingly clear, with reports suggesting that a number of EFL clubs face possible bankruptcy in the coming weeks. The EPL and the EFL will be aware of the need to work together to try to mitigate the impact of the crisis and any such discussions will involve consideration of how FFP rules might be relaxed or redesigned to ease the pressure on clubs. However, questions relating to the financial regulation of English football are always controversial and complex, not least because any changes to the rules will be subject to a vote by the clubs and therefore require a certain level of agreement to be reached.

The evolution of English football since the introduction of the EPL in 1992 has resulted in enormous discrepancies between the income generated by clubs competing at different levels of English football and the business models that they must adopt to survive in their respective divisions. This has created a situation in which it is extremely challenging for football authorities to design a framework for financial regulation that deals fairly with clubs that may be competing in the same division but which operate entirely different business models. One example of the way in which these difficulties have been exacerbated by the current crisis can be seen in relation to the EFL's plan to resume matches behind closed doors at the earliest opportunity. Such a plan will have an entirely different financial impact on clubs in the EPL, where match day revenue accounts for a relatively small percentage of turnover for many clubs, and League Two, where match days are by far the biggest source of revenue for clubs, meaning that clubs will likely lose money if they are made to play games without fans in attendance.

The dilemma presented by the potential relaxation of FFP rules is particularly acute in relation to the Championship, where there is the greatest divergence between the clubs with the biggest and smallest budgets in the same division and where clubs have historically been more likely to spend beyond their means in the hope of gaining promotion. It has been reported initial discussions between Championship clubs over the response to COVID-19 have resulted in significant disagreement regarding financial issues. It appears a majority of clubs are in favour of abandoning the division's FFP rules entirely—arguing that if this does not happen they will effectively be punished for not furloughing staff or making them redundant—while others argue forcefully that any relaxation of the rules would be unfair on those clubs that have managed their budget carefully and remain within the required limits.

In Europe, UEFA announced on 1 April that it would extend the deadline for clubs to submit financial information relating to outstanding payables required under licensing requirements indefinitely. UEFA has also indicated that it considers the COVID-19 outbreak a force majeure event (under the European understanding of the concept rather than the English law concept) for the purposes of FFP and suggested that the consequences of the pandemic will be taken into account when assessing compliance with the rules. UEFA has set up a working group—comprised of representatives of associations, leagues, clubs and players—to consider the impact of COVID-19 and firm proposals relating to adjustments to FFP are expected soon.

The Impact of COVID-19 on Ongoing Financial Fair Play Investigations

While nothing is certain in the current circumstances, football authorities have given no indications that any revision of FFP rules would function retrospectively and it appears that pre-existing FFP investigations and sanctions will stand regardless of any changes to the rules. In the EFL, Championship clubs Derby County and Sheffield Wednesday were both charged by the EFL with FFP violations earlier this year that may result in points deductions. The EFL has made no formal announcement regarding the impact of COVID-19 on these investigations and it is understood they are continuing. Similarly, the EPL's investigation into possible FFP violations by Manchester City continues.

Manchester City's appeal to CAS against the two-year ban from European competitions imposed by UEFA in February has been impacted by the announcement that CAS will not hear appeals in-person before May at the earliest. It is understood that City's appeal may instead be heard by video conference, although the hearing has not yet been listed for May or June and COVID-19 is likely to have impacted on the CAS calendar. Both City and UEFA will want the matter to have been resolved before the start of next season's European competitions, though the current uncertainty over the football schedule that has resulted from COVID-19 may assist in this regard.

The Financial Regulation of English Football in the Future

The nature of football's financial regulations, and the fact that assessments are based on a three-year cycle, mean that any changes made in response to COVID-19 will have a lasting impact. Beyond any short-term relaxation of the rules, football authorities will need to consider whether they remove the 2019/20 season entirely from future FFP calculations, and whether—as seems likely—longer term allowances need to be made for the financial implications of COVID-19.

Football authorities will also be mindful of the possible exploitation of any relaxation of FFP rules by wealthy clubs well positioned to take advantage of reduced regulation by investing heavily, and the possibility that clubs in more precarious financial circumstances who need to sell players may be exploited. Any relaxation of the rules will have to weigh the need to allow an urgent injection of cash into football and to tolerate clubs carrying significant short-term losses, against the risks of encouraging the behaviour and practices that FFP was designed to prevent.

Finally, while there may be a short-term need to relax FFP rules to help football clubs survive, in the longer term football authorities may consider whether the existing financial regulation framework is fit for purpose, given how quickly the perilous financial position in which many clubs operate day-to-day has been exposed. While COVID-19 is clearly an exceptional event, questions may begin to be raised over whether regulations that ultimately allow clubs to make considerable losses year on year are sufficient to protect the long-term sustainability of football. It remains possible that the present situation may lead to a far-reaching restructuring of the financial organisation and regulation of English football once the immediate crisis has subsided.

The football authorities, just like the regulators in many business sectors, are faced with an unprecedented need to adapt their regulatory framework in response to the global crisis of COVID-19. It is uncertain what changes will follow in the weeks, months, and years to come, but it is clear that all stakeholders with an interest in the financial regulation of English football will need to consider the impact of the changes that lie ahead and how best to protect their interests and make their voices heard as this process evolves.

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