

Section 2: Supporter Share Ownership Structures

This section outlines:

- i. The connection between corporate law, share ownership and investment.
- ii. Why Supporters Direct (and other agencies) regard community benefit societies as a good legal form for supporter ownership of football clubs.
- iii. Some of the drawbacks of using the CIC form for supporter ownership.
- iv. A brief review of other legal forms currently used by football clubs, and how these relate to supporter ownership.

2.1 Corporate law

In order to fully appreciate the options for structuring supporter share ownership in football clubs it is first necessary to understand a little about corporate law. Corporate law is important because it determines who owns and controls an enterprise, and how this ownership and control is exercised.

Corporate law provides a legal identity to an enterprise. This identity is distinct from the identity of its members and owners. It limits the liability of members to what they have invested in the enterprise in the form of share capital. Share capital is fully at risk. Shareholders are the last in the line of creditors, and if the enterprise fails, shareholders could lose some or all of the money they have invested in share capital.

There are two main bodies of corporate law in the UK; company law and industrial and provident society (IPS) law. Both provide an enterprise with limited liability status, and both make arrangements for members, as shareholders, to exercise control over the enterprise. However, company law and IPS law are very different in how shareholders control an enterprise. Company law embodies the principle of one-share-one-vote, whereas IPS law embodies the principle of one-member-one-vote.

Most football clubs are structured as companies. Indeed, the Football League and the Premier League requires clubs to be structured as companies, because of differences in the way in which insolvency is handled in a company, compared with a society.

Community ownership is not a legally defined term, but there are two legal forms, which provide a starting point for community ownership: community benefit societies (CBSs) based on IPS law and community interest companies (CICs) based on company law. These forms are explored in greater detail below.

2.2 Community Benefit Societies (CBSs)

There are two reasons why IPS law is suited to community ownership. It provides a legal basis for the democratic rights, responsibilities and rules of association for members. It also provides for a unique form of share capital called 'withdrawable shares'. Crucially, all members have only one vote, regardless of how much they have invested; and although interest on shares can be paid, this is limited to what is deemed 'sufficient only to attract and retain the investment'.

Under IPS legislation there are two main forms of society - a co-operative society, and a community benefit society. The main difference between these two types of society is that co-operative societies exist for the benefit of their members and must subscribe to internationally recognised principles of co-operation, whereas CBSs have wider community benefits as core objectives of the society. CBSs may choose to subscribe to international principles of co-operation and become full members of the federal body Co-operatives UK, to underline their co-operative credentials.

The CBS form of society is better suited to community ownership of football clubs than a co-operative society because it aims to serve the interests of the whole community, and not just the members of the co-operative. All supporters' trusts and many supporter-owned clubs are formed as a CBS with obligations to benefit the wider community as well as the club and supporters. As such a CBS is the corporate form under IPS legislation that is most relevant here.

The defining features of a CBS are that it:

- Has objects that its purpose is to benefit its community.
- Is based on one member one vote.
- Has a membership that is open to anyone to join.
- Is registered with and regulated by the Financial Conduct Authority mutual register.
- It is non-profit distributing.
- It allows for a 'statutory asset lock' which means a club's assets cannot be sold for private (members') gain.

2.3 Community Interest Companies (CICs)

Community Interest Company regulations were introduced in 2005 and provided an alternative under company law so that a company could be formed that serves the interests of communities, rather than financial interests of shareholders, and also restricts the private financial benefits of membership.

Fundamentally, a CIC is a regulated form of company, and is fully subject to company law. A CIC can be formed as a company limited by shares (CLS), a public limited company (Plc), or a company limited by guarantee (CLG)⁴. However, they have features to safeguard the interests of the community they were set up to benefit:

- A CIC has to have articles and carry out activities which fulfil a community purpose, thus meeting the so-called 'community interest test'.
- A CIC also has a statutory lock on its assets written into its articles of association to prevent residual profits from being distributed to its members or shareholders.
- The company must include 'Community Interest Company' or 'CIC' in its name.
- There are limits on dividends to shareholders, currently 20%, provided that its community objectives have been met.

CICs that are structured as a CLS or Plc can issue shares but work to the principle of one-share-one-vote, thus allowing an individual, entity or small group of people to have overall control. In common with all companies, shares in CICs are normally transferable, although they also have the power to issue redeemable shares.

2.4 Comparing community ownership structures

i) Advantages of a CBS Structure

Supporters Direct in England recommends the CBS structure for community ownership because it provides:

- A robust, democratic structure for community ownership and investment.
- All of the advantages of incorporation, such as limited liability status.
- The ability to issue withdrawable shares.
- One-member-one-vote regardless of how many shares are held.

- A non-profit distributing structure.

Withdrawable shares are a critical element because they allow supporters to invest in supporters' trusts and/or clubs in the knowledge that they can in the longer term probably have opportunities to cash-in their shares, subject to conditions set out in the rules of the society. This is an important advantage over transferable shares issued by companies, including CICs, where it can be extremely difficult to find a buyer for a relatively small number of shares.

However, withdrawable share capital is subject to the following conditions:

- Withdrawable shareholdings are limited to £20,000 per member.
- Interest can be paid on share capital, but only at a rate that is sufficient to attract and retain the investment.
- Members can withdraw their share capital from the society, but subject to terms and conditions laid down by the CBS (e.g. notice period, total amount of capital to be withdrawn in any one financial year).
- They cannot increase in value (but in some instances can go down).

Four major advantages of withdrawable shares in football are that:

- Their non-speculative form (they cannot be traded or increase in value) means it helps prevent football clubs being used for speculative purposes by individuals or companies.
- The limit on interest payable on shares to a 'rate sufficient to retain the investment', helps prevent large amounts of a club's surplus being paid out to private individuals or corporations.
- A statutory asset lock further reinforces the non-speculative nature of withdrawable share capital because even if the society was sold for above its net asset value, the residual value could not be distributed amongst members.
- The share offer must be primarily for community benefit, ensured by how the club is subsequently managed.

Another major advantage of a CBS is that it is exempt from financial regulation when promoting the sale of withdrawable shares to the general public, which means that it is cheaper and more straightforward for community groups to raise equity capital. CICs are not exempt from this financial regulation.

ii) Advantages of a CIC Structure

CICs are a better model for football clubs than normal company forms because they prioritise community benefit over financial return. The limit on the payment of dividends, set at 20%, and only payable once community benefit objects are met, would help to prevent clubs being used for speculative purposes and helps retain reinvestment. However it should be noted that the ceiling is still very high for a football club, although the members could choose to lower this ceiling.

- A CIC is flexible in that it can be formed in one of three ways – CLS, CLG or Plc.
- A CIC also has the advantage that it meets the Football League's requirement that it can enter into a Company Voluntary Arrangement (CVA), which a CBS cannot do.
- Although CICs work to the principle of one-share-one vote, it is also possible for them to issue a category of share that provides certain rights on a one-member-one-vote basis.

2.5 Barriers to community ownership

i) Barriers for a CBS

For a CBS there are a number of barriers:

- Withdrawable shares are limited to £20,000 at present – although legislation has been passed to increase this limit, it has not yet been implemented.
- Football League and the Premier League rules do not allow clubs to be a CBS. Instead the club must be structured as a company in order to satisfy the Football League requirements. The reason for this is that a CBS cannot currently enter into a Company Voluntary Arrangement (CVA), which allows the company to continue to trade under the direction of an administrator, whilst simultaneously protecting the interests of major creditors (including within football) from further losses.
- This restriction on CBSs places a premium on them being run sustainably to live within their means – something football authorities are also seeking to encourage via points deductions as punishment for entering a CVA.
- Although there is a Government review of insolvency arrangements for societies, the removal of the restriction on CBSs by the leagues would both overcome the barrier and allow a form of football club that has to operate sustainably.

Key Recommendations:

To address these barriers, Supporters Direct would like to see:

- An increase to the amount of withdrawable shares possible in a CBS
- The Football League and the Premier League allowing clubs to be formed as a CBS.

ii) Barriers for CICs

There are some drawbacks with each form of CIC as a structure for democratic supporter ownership in football.

- A CIC CLG cannot issue share capital, and instead must rely on some form of debt instrument (loan stock, debentures, bonds etc) if it were to seek capital from its members. They cannot issue withdrawable, or other, forms of shares. However, a supporters' trust (formed as a CBS with withdrawable shares) could be a member of a CIC CLG and provide capital for it.
- A CIC CLS can issue shares but it cannot offer these shares to the general public, only privately, because Section 755 of the Companies Act 2006 prohibits a CLS from making a public offer of securities, including shares. A CIC CLS wishing to issue shares to the public must first convert into a CIC Plc.
- A CIC Plc would face even more onerous regulation if it were to make a public offer of shares, as any Plc has to have a minimum of £50,000 paid-up share capital, and meet more stringent audit and public reporting standards. Larger share offers may also be subject to financial regulation under various Prospectus Directives and Orders, resulting in high compliance costs. Partly for this reason there are currently no CIC Plcs.
- All CICs are subject to the Financial Services and Markets Act 2000, the Financial Services Act 2012 and all associated regulatory orders regarding financial promotions. These regulations allow for a number of exempted categories of investor such as self-certificated sophisticated investors, high-net-worth individuals, and common interest groups, which may include pre-existing members of a club or supporters' trust.
- For both CIC CLS and CIC Plc forms, the other main disadvantage compared to a CBS is that they are not democratic, meaning that those with larger shareholdings have a greater say, unless their governing documents are amended to address this issue.

This latter barrier could be partially addressed by establishing two classes of share in a CIC, with one class of “investor” share designed with specific rights to meet the needs and interests of individual investors, and the other class of “supporter” share aimed at fans, or held by a supporters’ trust.

2.6 Other ownership structures in football

Apart from those clubs that are already community owned, there are four main types of ownership structure in football. It is important for supporters’ groups to understand these structures, because they provide the starting point for any plan to increase supporter share ownership. The four main types of ownership in football are listed below.

i) Community Amateur Sports Club

Many non-player paying football clubs in the UK are small community organisations, run by volunteers, and are registered with HMRC as Community Amateur Sports Clubs (CASC). The advantages of this status are that they: can be democratic one-member-one-vote structures; qualify for 80% business rate relief; can attract Gift Aid on donations; and they have exemption from various taxes. There are over 550 football clubs registered as CASCs.

The main disincentive to registering as a CASC is the fact that once registered, a club cannot undo the status, even if it is promoted to higher levels of the football pyramid which are incompatible with amateur status (a CASC cannot pay players, even if it promoted to a semi-professional league). A CASC registered club can be legally structured as an unincorporated association, a CLG, or a CBS. It must also practice open membership, admitting anyone who is eligible to membership. Consultation on how the CASC structure can be made more flexible is currently underway. Proposals include a relaxation to the rule preventing CASCs from employing professional players, and arrangements for placing any semi-professional activity into a trading subsidiary organisation.

ii) Company Limited by Guarantee

A Company Limited by Guarantee (CLG) is a type of company which instead of requiring its members to hold share capital has named guarantors who accept a limited liability for the debts of the company (usually a nominal amount such as £1). This form of company is often used to incorporate charities, because they do not provide for any shareholder interest, and by other non-charitable, not-for-profit organisations such as CASCs. The weakness with this form of incorporation is that it makes no provision for equity finance, nor is there any requirement to prioritise public or community interest or benefit. The major drawback with this form is the lack of any scope to raise equity capital for investment in the club.

iii) Private Companies Limited by Shares

A private company limited by shares (CLS) is the most common legal form in professional and semi-professional football. The Football League insists that all clubs it admits must be structured as companies, so that they can be subject to CVA procedures. The CLS form is highly adaptable, provides limited liability status, a clear structure for membership and the ability to raise capital through share issues. However, any issue of shares has major regulatory costs and may require the club to convert to a Plc if the shares are offered to the public (see Section 2.5).

In football most CLSs are owned and controlled by a minuscule number of people, whether supporters or not. However there are a significant number of clubs that have, over the years, made shares available to supporters, although this usually only amounts to a tiny minority stake offered privately, which carries no influence over the majority shareholders. These shares tend to have very limited or no value because the shares are not listed on a stock exchange and there is no other secondary market for them, especially if shareholders receive no dividends, as is often the case.

Even where there may be hundreds, and possibly thousands, of supporter shareholders in a club, unless they collectively own more than 10% of the share capital, are organised or act collectively, their influence over the club will be negligible, and their shares will probably be worthless.

iv) Public Limited Companies

Whilst this form does allow clubs to sell shares to the general public, and for their shares to be listed on a stock exchange, there is currently little appetite for this form of ownership structure in English football. The Plc form briefly became popular in football in the early 1990s, but since then most Plc clubs have reverted to being private limited companies. Among the handful of clubs that are still structured as Plc’s, only Arsenal is listed on a UK stock exchange, with the others held in private hands, or listed on foreign stock exchanges. The Plc form is more heavily regulated than a private CLS and it has to comply with much higher standards of disclosure, making it unattractive to most majority-stake owners. Even though Arsenal FC is listed, there have been no shares traded through the exchange in recent times.