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# Football League Financial Fair Play: Domestic League Regulation

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## Executive Summary

Football League Financial Fair Play kicks off in time for the 2012-13 Championship season. There are no sanctions for breaching the regulations in the 12/13 and 13/14 seasons. Come the 14/15

season, a club that is in breach of the regulations will face sanctions. It can be fined (if the club is in the Premier League at the time of the decision) or be subject to a transfer ban (if the club remains in the Championship at the time of the decision). A calculation table of fines has been published to enable clubs to understand the potential size of the penalty. Clubs who comply with the regulations will receive a share of any fines imposed on non-compliant clubs.

## Background and Introduction

It was reported in the summer of 2011 that the Football League (FL) was to adopt its own set of Financial Fair Play (FFP) regulations. This follows on from UEFA's FFP regulations which will come into force for the 2013-14 season. An intention to introduce the regulations was agreed during the FL's annual summer 2011 AGM. This was followed up in December 2011 with the following press release:

*"Owners and executives of Championship clubs re-affirmed their commitment to the principles of Financial Fair Play as a means for encouraging financial sustainability at club level. After further discussions about the practical implementation of Financial Fair Play, clubs agreed that the proposals should be finalised and taken forward to the next meeting of Championship clubs at Derby in February for final ratification. If approved, the new rules would take effect from the start of the 2012/13 season."*

The aim of this article is to set out the main provisions of the FL's FFP regulations, highlight some important areas of debate and provide comment on the more novel aspects of the regulations.

Prior to the regulations coming into force, there were a number of points for the drafters of the regulations to consider.

It appeared that only the 24 Championship clubs were consulted on the FFP regulations because they were the clubs initially affected. Many pointed to the fact that as a quarter of the composition of the Championship changes each season, consultation should have been wider than just the 24 Championship clubs. Some non-Championship clubs may have believed it was unsatisfactory that non-Championship (FL and relegated Premier League (PL) clubs) lacked a voice in relation to regulations given they would be significantly affected by them in the future. It also raised a more fundamental question about whether other footballing bodies such as the PL and FA should have been consulted in more depth about regulations that may affect a wider group of clubs.

One of the biggest hurdles for the FL to resolve was the relegation/promotion conundrum (i.e. PL clubs relegated the Championship and the clubs promoted to the Championship). As will be set out below, accounts will be required for FL compliance. It would have been a very brave regulator to sanction clubs for breaching the FFP regulations for accounting periods when a current Championship club was outside of the FL Championship. To their credit the FL have come up with innovative solutions that will be set out below.

There also appeared concern that there would be major transitional issues if the regulations, as promised, were to be introduced in time for 2012/13 season. This was mainly because clubs participating in UEFA competition and having to adhere to the UEFA FFP regulations had a much longer period to acclimatise financially. The FL

solution to this concern is assessed in some detail below too.

Finally, the announcement of the introduction of the FFP regulations came at a time of potential change in the English game. The Select Committee Report into Football Governance, and the Government response recommending a Domestic Club Licensing system, was in contrast to a joint PL, FA and FL response which advocated smaller scale reform. Whilst the final outcome of the Report is currently some time away, the FL has taken the lead in pushing ahead for domestic regulatory reform. In the wider reform context, many believed the initial Report and its recommendations would provide a platform for a more connected approach to regulation in contrast to the separate UEFA, PL and FL rules. 7

## The Vote

On 25 April 2012, the FL announced that: 8

*"Following two years of detailed discussions, The Football League and its clubs have agreed a Financial Fair Play framework that will operate in all three of its divisions from the beginning of the 2012/13 season. It aims to reduce the levels of losses being incurred at some clubs and, over time, establish a league of financially self-sustaining professional football clubs..."*

*In the Championship, clubs have agreed to introduce a breakeven approach based on the UEFA Financial Fair Play Regulations. Financial Fair Play in the Championship will see the introduction of a breakeven model based on UEFA Financial Fair Play Regulations. It will require clubs to stay within pre-defined limits on losses and shareholder equity investment that will reduce significantly over the next five seasons.<sup>1</sup>*

The three clubs that reportedly voted against the implementation of the regulations were Leicester, Reading and Southampton. As mentioned at the outset, such a vote brings into focus those who actually voted for the implementation of the regulations and those who will be ultimately affected by them. Some clubs in the PL and in the leagues below the Championship have had limited input into the drafting and implementation of the FL FFPs. Some clubs, and perhaps the PL, may have legitimate concerns about the level of consultation that they were afforded. 9

## The Basics

Along with the UEFA FFP regulations, the FL regulations are designed to ensure a club in the longer term, more or less, has to break even. An important point to make clear is that the FL FFP regulations only apply to clubs participating in the FL Championship. Clubs in the FL Leagues 1 and 2 have to adhere to separate regulations called the Salary Cap Management Protocol (SCMP) which ties cost to a percentage of turnover<sup>2</sup>. 10

The overall aim for the FL is to ensure for its Championship clubs balance their books, do not spend more than they earn so that ultimately they become self-sustainable. In the context of the Championship clubs, this is to be achieved through: 11

some losses being acceptable in the first years of implementation;

sanctions (fines and a transfer ban) being brought in from the 2014/15 season; and

clubs being incentivised to comply with the rules by receiving a share of the non-compliant club's fines.

The new rules require clubs by December 1 of each season to provide annual accounts to the FL, setting out details relating to the previous playing season. The FL will use the financial information received to determine whether a club has complied with the regulations. As will be shown in the next section, it is possible for a club to make a loss and still pass the FL FFP regulations. 12

There are also certain cost exclusions which can be removed from a club's cost base. This is in relation to *"specific areas of club infrastructure or losses in certain extraordinary circumstances."* Such categories of cost exclusion include investment in youth development, sale and depreciation of fixed assets (e.g. a club's stadium or training ground), investment in a club's community scheme, promotion related bonus payments, career ending injury costs, bad debts from other clubs and losses sustained from a defaulting major sponsor. 13

Failure to stay within the defined limits (leading to a negative Fair Play Result) will lead to the imposition of sanctions. The sanctions will vary depending on whether the club is promoted to the PL, remained in the 14

Championship or was relegated to League 1. All these scenarios set out below.

Clubs promoted to the PL will have to pay a 'Fair Play Tax' on the excess by which they failed to fulfil the Fair Play requirement ranging from 1% on the first £100,000 to 100% on anything over £10m. See below for a comprehensive fining table. 15

Any proceeds will be distributed equally amongst those clubs that complied with the FFP regulations for the season in question. Clubs that remain in the Championship, who breach the FL FFP regulations will have a transfer embargo imposed. Clubs who are relegated out of the Championship will not be entitled to any Fair Play Tax payout but will not be sanctioned. 16

The FL will establish a Financial Fair Play Panel, to hear challenges brought by clubs in relation to the initial Fair Play Result. 17

## Transitional Period

The FFP regulations actually begin in time for the 2012-13 season. The clubs must provide accounts for their 2011-12 season by 1 December 2012. Although the regulations will be in force for the 2012-13 season, there will be no sanctions for the first two reporting periods. Therefore sanctions will only apply when a club submits its 2013-14 accounts in time for the 2014-15 season. The FL explained that "*there will be no sanctions implemented during the first two seasons (2012/13 and 2013/14) in order to give clubs a sensible period of transition.*"<sup>3</sup> 18

## Spirit of the Rules

It appears the FL has drafted general anti-evasion provisions to ensure clubs comply with the spirit of the regulations. Interestingly, there is a specific provision in the regulations which aims to ensure that clubs: 19

*"at all times and in all matters within the scope of these Rules, behave with the utmost good faith both towards The League and the other Championship Clubs" and do not "take unfair advantage which is intended to seek to or does take any unfair advantage in relation to the assessment of fulfilment (or non-fulfilment) of the Fair Play Requirement."*<sup>4</sup>

Similarly, Part III of the UEFA Club Licensing Section (Article 53) states "*The UEFA Club Financial Control Body at all times bears in mind the overall objectives of these regulations, in particular to defeat any attempt to circumvent these objectives.*" 20

It should mean that the FL, in response to a club advocating a literal interpretation of the FL FFP regulations, would point to this provision to reject a club's potential circumvention of the regulations. 21

## Reporting Periods

Set out below is a table which illustrates the amount of acceptable loss permitted by a Championship club. The loss is dependant on whether the club has an owner who is willing or unwilling to inject equity into the club to cover any losses. If an owner is willing to invest equity to cover such losses, the maximum loss permitted is set out in the 'total Acceptable Deviation Column'. The total column is the sum of which the 'Reporting Period Equity Contributions' column and the 'Reporting Period Acceptable Deviation' column. If an owner is not willing to invest additional equity into the club, it will only be able to make the losses as set out in the "Reporting Period Acceptable Deviation" column. 22

Season	Reporting Period	Date of Accounts Submission	Reporting Period Equity Contributions	Reporting Period Acceptable Deviation	Total Acceptable Deviation	FL Sanction Available?
2012/13	2011/12	Dec.'12	£8m	£4m	£12m	No

2013/14	2012/13	Dec.'13	£6m	£4m	£10m	No
2014/15	2013/14	Dec.'14	£5m	£3m	£8m	Yes
2015/16	2014/15	Dec.'15	£3m	£3m	£6m	Yes
2016/17	2015/16	Dec.'16	£3m	£2m	£5m	Yes
2017/18	2016/17	Dec.'17+	£3m or lower	£2m or lower	>£5m	Yes

Example 1: For the 14/15 season (as shaded above in the table), a club's Fair Play Result (for the purposes of this example before calculating any acceptable deviation) is minus £6m. A club for the 13/14 reporting period can make a £3m loss and not fall foul of the regulations. However, as the club has made a £6m loss, an owner would have to inject £3m of equity into the club. If the owner does not, the club, all other things being equal, will be in breach of the FFP regulations. Note that an owner, in that season, can only inject up to £5m into the club. Any more and the club would be in breach of the regulations because it made losses over the combined £8m total acceptable deviation limit.

## Sanctions

Should a club have a negative Fair Play Result, sanctions will be imposed. Bear in mind that there will be no sanctions for clubs even if they do breach the regulations for the first two seasons (12/13 and 13/14). From the 2014/15 season onwards, sanctions will be imposed. These will consist of either a fine or a transfer embargo. Such sanctions will largely depend on where the club is competing i.e. the Championship, the PL or League 1. See below for an examination of the different permutations. 23

<b>Clubs Promoted to the PL</b>	<b>Clubs Relegated From the PL</b>
Clubs promoted to the PL must provide FFP information for their promotion season by December 1 (i.e. for the season they were in the FL Championship). If a PL club has breached the regulations, they will be fined according to the sanctions table set out below.	Clubs relegated from the PL will not be subject to sanctions in their first season in the Championship as long as they have complied with all relevant PL regulations. The club would however be fined if it achieved promotion in its first season in the Championship whilst not complying with the FFP regulations.
<b>Clubs that Remain in the Championship</b>	<b>Clubs Relegated From the Championship</b>
Clubs that fail to comply with the FFP regulations will be subject to a transfer embargo. The first embargo can be enforced by the FL from the	Clubs relegated from the Championship will not receive any Fair Play Tax pay out but will be required to comply

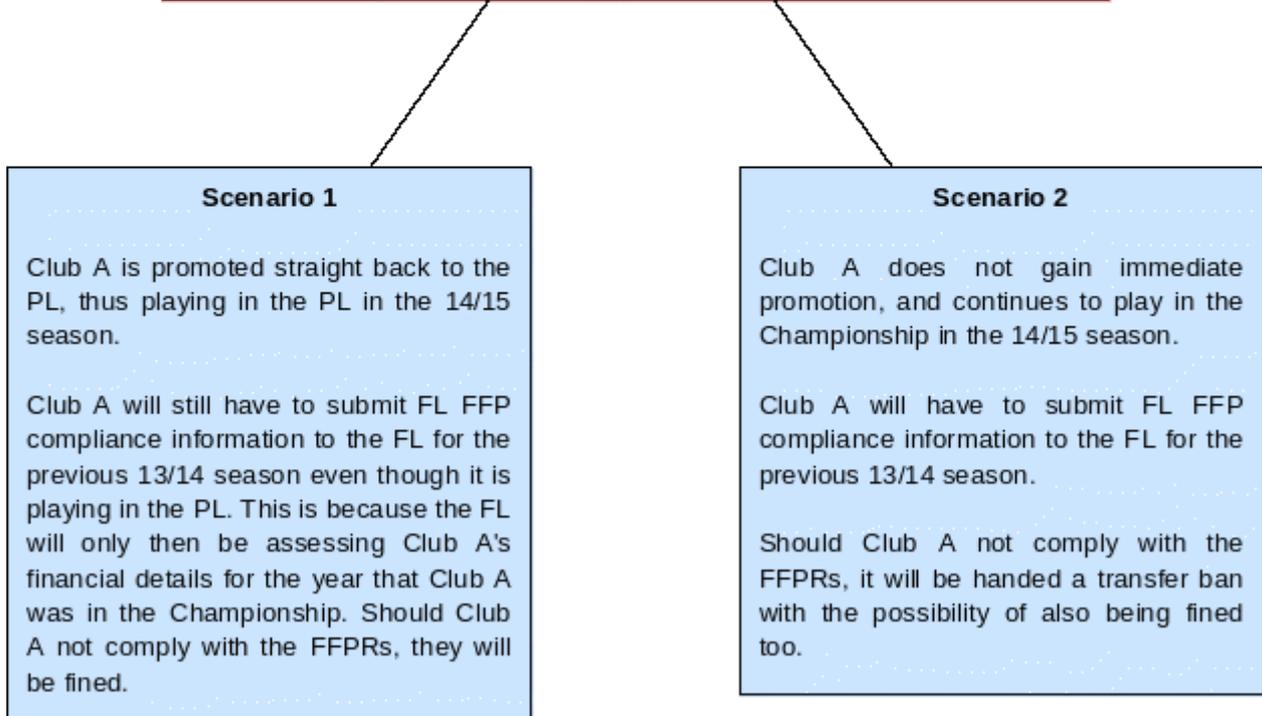
beginning of January 2015.	with the SCMP.
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Club A is relegated from the PL in the 12/13 season. Club A thus plays in the FL Championship in the 13/14 season.

Club A submits its accounts to the FL for FFP compliance in December 13. Its accounts are based on the 12/13 season i.e. the period that Club A were in the PL.

The regulations stipulate that no sanction will be imposed on Club A for the accounting period they were in the PL so long as the Club has adhered to all PL regulations.

**Example**



## Fine Calculation

Should a club be in the PL at the time of the FL sanction, the below fining scale will be used.

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Percentage of the Excess	Excess	Calculation (rounded up)
1% of the Excess between	£1 and £100,000	£1,000
20% of the Excess between	£100,001 and £500,000	A maximum of £80,000
40% of the Excess between	£500,001 and £1,000,000	A maximum of £200,000
60% of the Excess between	£1,000,001 and £5,000,000	A maximum of £2.4m
80% of the Excess between	£5,000,001 and £10,000,000	A maximum of £4m

100% of the Excess over	£10,000,000.	No Maximum
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Example 1: if a club's accounts show that it is exactly £5m over acceptable deviation parameters, the fine will be £2,681,000 (i.e. £1,000 + £80,000 + £200,000 + £2.4m).

Example 2: if a club's accounts show that it is exactly £10m over acceptable deviation parameters, the fine will be £6,681,000 (i.e. £1,000 + £80,000 + £200,000 + £2.4m + £4m).

As explained all fine proceeds will be distributed equally amongst FFP compliant clubs. It not however expressly set out whether a fine could be part of a clubs costs or a distribution of a fine for a compliant club could be used as revenues for future Fair Play Result calculations. 25

## Transparency

It is currently unclear how much detail about club compliance will be publically available. In the FL FFP regulations, the FL does have the power to publish Fair Play Panel decisions. However the Fair Play Panel is only convened to consider challenges by a club based on the FL's Fair Play Result calculation (i.e. whether it complies with the FFP regulations). On one hand, the FL is to be commended that it is willing to publish certain decisions. What is less clear is whether they will publish decisions which show clubs complying with the FFP regulations. There may be an argument as to how the regulations are to be interpreted and clubs may question how club X who appears to have widely overspent could comply with the FFP regulations. Will the FL provide materials, if not to the public, to other FL Championship clubs who are puzzled about how a high spending club has managed to comply? At present, there does not appear to be a route for other clubs to challenge the non-sanctioning of a fellow club. 26

Similarly, as there are no sanctions in place for the first two seasons, clubs will nonetheless still have to submit their accounts for FFP regulation compliance. A questions remains as to whether the FL will be publically announcing who has passed and failed the FFP regulations? This will ultimately be answered in January 2013. 27

Finally, there appears to be no express way to appeal against the Fair Play Panel decision in the FFP regulations. The UEFA FFP regulations, as part of Club Licensing Regulations (Article 43), make reference to the Court of Arbitration for Sport (CAS) as the relevant appeal body. The FL FFP regulations provide for no such appeal. The FL Handbook which contains the FL regulations provides for appeals to be referred to a Football Disciplinary Commission (Section 8). It remains to be seen where a non-compliant club which is unhappy with the FL Fair Play Panel pursues any proposed appeal. 28

## Premier League Issues

There is clear overlap between the PL and the FL FFP regulations. Promotion to the PL and relegation from the PL means that each year six clubs will be affected by the regulations. Specifically, PL clubs will have to submit Fair Play Information for the previous season they were in the Championship, and potentially face fines if they have failed to comply with the FL FFP regulations. This may require the PL to draft new regulations to cater for such a situation where a PL club is sanctioned by the FL. 29

In addition, a PL club relegated into the Championship would have to quickly adapt to life under the new regulations. If, for example, the club is relegated and starts life as a Championship club in the 14/15 season, as explained above, it does not have to comply with the regulations based on its previous year's accounts as a PL club. However, the club will have accounts for the season it stays in the Championship (i.e. the 14/15 season). If the club is promoted back to the PL or stays in the Championship, it will have to submit those accounts in the following 15/16 season to the FL. If it does not comply with the FFP regulations, irrespective of whether the club is in the PL or Championship, the club will be sanctioned. The point is that it will be difficult for a PL club to reduce its cost base and maintain its revenue streams following relegation. As such, pretty drastic measures would have to be taken to ensure the club can comply with the regulations. It means relegated PL clubs, after the first two years of sanction free enforcement, will have to get their finances in order immediately or face a transfer ban or a fine in the subsequent season. 30

Finally, some clubs may make a strategic decision to spend their way out of the Championship knowing that if they get promoted, the ultimate downside will be a fine. The major risk is spending without getting promotion. Such a scenario would leave the club facing the significant threat of a transfer ban. 31

## FFPR Comparison

The table below gives a number of examples that illustrate some of the main differences between the UEFA and 32

FL FFP regulations. For a more detailed explanation of the UEFA FFP regulations click here for a recent article I wrote <http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume9/number1/geey/>

Topics	FL Regulations	UEFA Regulations
<b>Monitoring Periods</b>	Only the previous years accounts.	At least two, but usually three years worth of accounts.
<b>Acceptable Losses (with benefactor help)</b>	Initially, £12m down to £5m in subsequent years.	Initially, an average of €15m per season, down to €10m in subsequent years.
<b>Acceptable Losses (without benefactor help)</b>	Initially, £4m down to £2m in subsequent years.	Stays constant at €5m for at least the next six years.
<b>Sanctions</b>	Only two sanctions. Fine calculation and transfer embargo expressly set out.	A whole raft of sanctions including a warming, fine, point deduction, reduction in squad size and expulsion. No published set fine calculation.
<b>Luxury Tax</b>	Redistribution of fines from non-compliant clubs to incentivise compliant clubs.	No redistribution mechanism in place.
<b>Cost Exclusion of Certain Player Contracts</b>	No such exclusions bar career ending injury costs.	Annex XI which allows for player wages for contracts entered into before June 2010 to be excluded.

## Conclusion

The FL rules are now in place. The Championship clubs will be submitting their FFP accounts information in December. The results, if made public, will make very interesting viewing. Although no club can be sanctioned for the first two years, the FL may still make a point of stating which clubs passed, and which ones failed the FFP test. It will then be for clubs to ensure in the coming years they are not sanctioned either a transfer ban, or large fine due to non-compliance. There will no doubt be clubs that contest a non-FFP regulation compliance result. The workings of the appellate body (the FL Fair Play Panel) will, as a result, come into sharp focus. Fans and clubs alike will wait to see whether the regulations and the potential sanctions will deter spending and usher in a more prudent era of football club self-sustainability.

For a recent podcast I did with Beyond the Pitch on FL FFP, click here. <http://www.beyondthepitch.net/podcasts/edition/index.cfm/beyond-the-pitch/2012/05/12/daniel-geey/>

1 <http://www.football-league.co.uk/page/FLExplainedDetail/0,,10794~2748246,00.html>

2 "Whilst in League 1 and League 2, clubs will implement the Salary Cost Management Protocol (SCMP) that has been in use in the latter division since 2004/05. The SCMP broadly limits spending on total player wages to a proportion of each club's turnover. League 1 clubs are currently operating a 'pilot' of the SCMP with clubs complying with a 75% threshold but with no sanctions being applicable this season. This threshold will reduce to 65% in 2012/13 and 60% in 2013/14 with sanctions (transfer embargoes) being applicable in both seasons". Source: <http://www.football-league.co.uk/page/FLExplainedDetail/0,,10794~2748246,00.html>

3 <http://www.football-league.co.uk/page/FLExplainedDetail/0,,10794~2748246,00.html>

4 Rule 3.8