

## Parachute payments: will pendulum arbitration swing it?

The Football Governance Bill currently passing through Parliament will create an Independent Football Regulator (IFR) that will be tasked with protecting and promoting the sustainability of English football. Under the [current version of the Bill](#) (which is yet to be ratified) the IFR will have backstop powers to intervene in the distribution of certain revenues. This includes parachute payments (though, interestingly, earlier versions of the Bill explicitly excluded these), which have been a highly contentious issue and the cause of a long-running dispute between the Premier League (PL) and the English Football League (EFL).

### What are parachute payments?

Premier League clubs earn [substantial amounts](#) of money from broadcasting rights, with total domestic and international income for the 2023/24 season exceeding £2.6bn. Despite the lucrative domestic and international broadcast deals recently secured by the EFL,<sup>1</sup> the PL revenues substantially exceed those available to Championship clubs (not to mention lower division teams). Relegation from the PL can therefore deal a serious financial blow to a club – and promotion can look like the road to riches.

To cushion this blow, clubs recently relegated to the Championship receive so-called '**parachute payments**' from the PL, based on the PL's broadcasting revenues. Under these

arrangements, a club relegated from the PL to the Championship may receive payments that amount to around half of the broadcasting revenues received by the PL club with the lowest share of broadcasting revenues in the first year after relegation, and about the same amount over the following two years if it is not promoted back into the PL.<sup>2</sup>

Although teams in the EFL not receiving parachute payments from the PL also receive a share of PL broadcasting revenues through so-called '**solidarity payments**', these are an order of magnitude smaller than parachute payments.<sup>3</sup>

The EFL also operates a parachute payment system whereby clubs relegated from the Championship or lower divisions within the EFL would also receive (smaller) supporting payments funded by EFL revenues.

### Why are parachute payments needed (or not)?

Proponents of parachute payments argue that guaranteed revenue streams enable teams to be more competitive when promoted to the top tier, investing more freely in their squad with the knowledge that revenues are protected should they be relegated. This should allow them to compete more effectively after having been promoted to the top tier. At the same time however, parachute payments arguably reduce

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<sup>1</sup> In 2024 the EFL agreed a [domestic broadcast rights deal](#) with Sky Sports worth £935 million over a 5-year period (starting with the 2024/25 season). Also in 2024, the EFL secured an [international broadcast deal](#) worth almost £148 million over four years.

<sup>2</sup> Under the current arrangements, first introduced for the 2015/16 season, a club relegated to the championship receives 55% of the Equal Share in the first year after relegation, 45% in the second year and 20% in the third year (conditional on the club having been in the PL for more than one season before being relegated). If a club is promoted back into the PL, parachute payments are stopped, and the club receives its share of the broadcasting revenues based on its status as a Premier League team.

<sup>3</sup> The amount received by each club is calculated as a percentage of the third-year parachute payment (20% of the Equal Share), with that percentage decreasing for clubs further down the football pyramid, currently 30% for clubs in the Championship, 4.5% for League One and 3.5% for League Two. Based on current broadcasting revenue the third-year parachute payment would be approximately £17m, meaning solidarity payments in the region of £5m for Championship clubs, £800k for League One clubs and £600k for League Two clubs.

incentives for clubs bumping along the bottom of the PL to avoid relegation.

The EFL strongly opposes the current arrangement. In a [letter](#) to the Department for Digital, Culture, Media and Sport, the EFL highlighted that *“the impact of these [parachute] payments on the competitive balance of the Championship, and on the sustainability of all other clubs, is a major concern for the EFL”*. The argument is that the large difference between parachute payments and solidarity payments gives an unfair advantage to recently relegated clubs, distorting competition in the Championship. Arguably, it may also create incentives for Championship clubs not receiving these payments to overstretch financially to compete, risking their long-term sustainability. To support its arguments, the EFL points to research conducted by Sheffield Hallam University<sup>4</sup> which suggests that parachute payments improve a team’s chances of being promoted to the PL.

These opposing views have led to a long running, and as yet unresolved, dispute over how PL revenues should be distributed within the pyramid. The EFL is [pushing for reform](#) that abolishes parachute payments in favour of a system with a more merit-based distribution of revenues within the EFL and PL that reduces the “cliff-edge” in revenues between clubs at the top of the Championship and the bottom of the PL.

### Enter the IFR

This is precisely the type of dispute the newly introduced IFR is expected to help resolve by exercising its backstop powers. The Bill sets out the process for settling disputes between “competition organisers” over the distribution of “relevant revenue”, including that raised from broadcast rights. Its focus is thus clearly on hierarchies of competitions (such as the relationship between the PL, the Championship

and lower divisions), rather than disputes between clubs within a competition.<sup>5</sup>

Under certain conditions, a competition organiser may apply to the IFR for arbitration regarding the distribution of relevant revenues. If the IFR agrees that arbitration is appropriate, the competition organisers must first enter into mediation. If no agreement is reached within 28 days of appointing a mediator, the process moves to its final stage that uses a so-called **‘pendulum arbitration’** process.

In this process, competition organisers are invited to submit a final proposal on how to resolve the dispute, along with any supporting evidence. A panel of experts assembled by the IFR (known as the **‘deciding committee’**) will review the proposals and may accept the one that is best suited to advance the IFR’s objectives without placing an undue burden on the commercial interests of either organisation or resulting in a club receiving a lower amount of relegation revenue (i.e. parachute payments) within a specified period<sup>6</sup> than it would receive if none of the final proposals were accepted.

The committee may decide to accept neither of the two final proposals, but it will not be able to create its own compromise solution; if it accepts a proposal then the pendulum will swing fully one way or the other. The role of the deciding committee is purely adjudicatory, rather than regulatory.

### The idea behind pendulum arbitration ...

This dispute resolution process has several potential benefits.

The threat of a final proposal stage encourages the parties to adopt sensible positions and come to a settlement during the mediation phase; not doing so risks losing out entirely in favour of the other party’s proposed solution.

<sup>4</sup> R Wilson, G Ramchandani & D Plumley, 2018, *Parachute payments in English football: Softening the landing or distorting the balance?*

<sup>5</sup> It is unclear to us whether the split of revenue within the EFL across the Championship and lower divisions could be considered as a potential dispute between “competition organisers” (in that the EFL is the organiser for all divisions involved in the distribution of EFL revenues).

<sup>6</sup> One year beginning on the final day of the first football season for which relevant revenues would be distributed in accordance with the final proposal.

If negotiations fail, and the final proposal stage is reached, pendulum arbitration means there are incentives for the parties to put in measured proposals that have a chance of being selected. Extreme, self-serving proposals are unlikely to be aligned with the arbitrator's objectives and therefore attempts to gain too much of an advantage are likely to backfire if the other side puts forward a (more) reasonable proposal.

A well-functioning pendulum arbitration process should encourage parties to converge on a compromise solution that is reasonably acceptable to the arbitrator – and therefore to both parties.

This form of arbitration has a long-standing history in the sporting world, having been used by Major League Baseball in the US since the 1970s to resolve salary disputes between professional baseball players and their clubs.

### ... and its limitations

Pendulum arbitration relies on the parties anticipating the preferences of the arbitrator so they can shape proposals more likely to be chosen. It works well if the parties trust the arbitrator's neutrality and competence and the principles according to which the arbitrator will assess the proposals are clearly defined. Ideally, the parties should be able to assess with a high degree of accuracy how well their proposal would score against the criteria the arbitrator will apply, which tends to be the case where issues are well-defined and quantifiable.

However, this is where the idea comes unstuck in this specific case.

The Bill, as it stands, only sets out high-level objectives. The IFR's task of protecting and promoting the sustainability of English football is underpinned by three operational objectives:

1. The **club financial soundness objective** - to protect and promote financial sustainability of individual clubs.
2. The **systemic financial resilience objective** - to protect and promote the financial resilience of English football (across the leagues).
3. The **heritage objective** - to safeguard the heritage of English football.

It is far from clear how sustainability and financial resilience principles might apply when determining the distribution of broadcasting revenue between the PL and EFL.

Both sides may be convinced that their views reflect the IFR's sustainability objectives. The PL has argued that the current parachute payments promote sustainability by protecting clubs from the sudden large reduction in revenue caused by relegation; the EFL's position is that parachute payments undermine the financial sustainability of teams lower down the league who may overstretch financially to compete with clubs receiving the large payments. Even though the competing final proposals may need to explain in detail how they would promote the financial sustainability of relegated clubs, both sides may provide convincing narratives.

Reference to the IFR's high-level objectives does not provide any guidance on how conflicting interpretations about the meaning of sustainability should be resolved. They provide little for the deciding committee to rely on when selecting one proposal for determining the most appropriate split of revenue between the PL and the EFL or the other.

Therefore, the committee's own views will be relevant, leading to potential for contentious disputes. Without further guidance about how conflicting claims on broadcast revenue – all supported by invocation of sustainability and resilience – might be resolved, pendulum arbitration may not have its desired effect of encouraging compromise proposals. Therefore, we fully expect the first invocation of this pendulum arbitration to be far from smooth.

### From arbitration to regulation?

To mitigate the risk of an unsatisfactory outcome, the Football Supporters' Association (FSA) has [suggested amendments](#) to the Bill to allow the IFR to impose its own resolution if it does not receive a satisfactory final proposal. However, this would fundamentally change the role of the IFR from arbitrator into regulator.

If a regulatory solution is required, the result would likely be a much longer process, with the IFR needing to conduct its own detailed analysis of the options and corresponding public

consultation(s) on its proposal. This would be in stark contrast to a pendulum arbitration process, which would be swift and lightweight if it could be made to work.

Perhaps more importantly, it raises a key question over whether the IFR is (or should be) even allowed to impose its own regulatory intervention as part of a dispute resolution process. Ofcom has already had its knuckles rapped by the Supreme Court for imposing a regulatory solution it preferred in a dispute where its role should have been fully adjudicatory (see box).

#### **When NRAs overstep in their role as arbitrator**

In 2014, the UK Supreme Court ruled on Ofcom's handling of a dispute between BT and mobile operators over termination charges for non-geographic numbers (such as 0800 freephone numbers). Despite being an obscure backwater of telecoms, it raised fundamental questions about the role of regulators as adjudicators.

BT exercised its rights to make changes to its interconnection pricing under pre-existing contracts. In this new scheme, BT introduced wholesale prices that varied according to what the originating MNO charged to the customer for calls to these numbers. In doing this, BT aimed to provide an incentive to moderate what were widely seen as excessive retail pricing by MNOs for these calls.

The MNOs complained to Ofcom on the grounds that the new scheme was anticompetitive. Ofcom sided with the MNOs and blocked the changes, but this then was overturned by the CAT on appeal by BT. The MNOs, in turn, appealed the CAT's judgment to the Court of Appeal which reversed the decision, following which BT ultimately appealed to the Supreme Court.

The Supreme Court's unanimous judgment found in favour of BT, concluding that preventing BT from introducing the new charging structure was in itself anticompetitive. In essence, if BT was contractually allowed to change its pricing (which it was), Ofcom could only reject the change if it was inconsistent with the objectives of Article 8 of the [Framework Directive](#), which includes ensuring consumer benefits. The burden of proof was on Ofcom to demonstrate that the new price scheme would lead to adverse consequences for consumers. However, Ofcom had blocked BT's change solely on the basis of an inconclusive economic welfare test (i.e. that there *might* be harm to consumers) which the Supreme court considered insufficient and inconsistent with EU law. In effect, Ofcom had not produced sufficient evidence to warrant the regulatory intervention it had imposed and should have instead stuck purely to arbitrating the dispute between BT and the MNOs.

#### **Uncertain times ahead?**

Broadcast revenues are the life blood of the PL and its dependents lower down the football pyramid. Once the Bill comes into law and the IFR is established, it is almost inevitable that the new provisions will be invoked to resolve the long-running dispute over revenue allocation between the PL and the EFL. Using a pendulum arbitration process for this is attractive in principle as this reduces the discretionary, regulatory role of the IFR.

However, we doubt that the IFR can really keep its hands clean and not get involved in setting out what it considers to be the right approach to sharing revenues. Its founding principles are too lofty to resolve fundamental questions about how broadcast revenue should best be split.

Both the PL and EFL consider that their preferred – and conflicting – proposals for distribution of broadcast revenues promote sustainability and fair sporting competition. Both cannot be right.

Traditional regulatory considerations – achieving efficient outcomes and weighing of winners' and losers' interests – seem unavoidable. In this case, the IFR may find that it is left with the burden of determining what its objectives mean in practice. It may soon find itself with a quasi-regulatory function, rather than just arbitrating.