



THE CHANGING LANDSCAPE OF SPORTS REGULATIONS: AN EXAMINATION OF THE IMPACT OF REGULATORY CHANGES ON FOOTBALL GOVERNANCE AND TRANSFER POLICIES IN POST- BREXIT UK

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Abstract

Sports governance studies tend to focus on sports management, and such studies are widely seen to overlook the key role of regulation and law in sports governance. Jonson and Thorpe (2019, p.35) note that “what is evident from the sport management literature is the absence of consideration of the role of the law makers – the courts and the parliaments – in determining sport governance practices”. As such, this makes sports law an under-researched area within sports governance (Forster, 2006).

This study’s aim was to examine the key role of law and regulation within sports governance; the impact of changes in supranational agreements like the Treaty on the Functioning of the European Union (TFEU) and Brexit; and varying governance practices involved in the football transfer system within the UK and the EU. Using Brexit as a pivotal point, this study evaluates the governance networks in professional football, with particular attention to governing bodies and the player transfer system across the UK and the EU.

A qualitative case study approach has been adopted for this study, as it is an appropriate method for a descriptive and exploratory study, placing focus on the analysis of the context and a nexus of interrelations (Yin, 2018). This study utilises both primary sources and secondary literature. These include semi-structured interviews, academic literature, publicly available official documents of governing entities, and news reports.

The study is structured into three parts. The first one is an exploratory case study that reviews key governance structures and major regulatory changes that have shaped the governance of the international player transfer system pre-Brexit, assessing the role of the EU in the governance of professional football. The second part explores contemporary changes to governance of the UK

player transfer system post-Brexit and considers the impact of regulatory changes due to Brexit on the player transfer market in the UK. The last part explores the recent Fan-Led review and its implications to the future of professional football governance in the UK.

The study will extend the theoretical application of Multiple Streams Theory to the governance of the professional football player transfer system on both the supranational level and at national level within the UK. It also utilises a theoretical triangulation of organisational pathology and legitimacy theory proposed by Anastiadis and Spence (2020) to investigate governing bodies within football on a multi-tier level, assess regulatory changes to the player transfer system due to Brexit, and assess the future of football governance proposed in the Fan-Led Review.

The study found that the main involvement of the EU in the governance of the player transfer system is the work with the football governing bodies in the policy stream in the developing a self-governing transnational player transfer system that is compatible with EU laws and principles. The study also found that a key aim of the regulatory changes in the transfer system due to Brexit, is to incentivise the utilisation of more homegrown players. This is because the post Brexit Governing Body Endorsement (GBE) regulations have substantially reduced talent pool of players available to transfer into the UK. The findings of the study will enhance the understanding of the new GBE system within the football transfer system in the UK and facilitate football clubs and recruitment professionals in strategizing future player transfers in light of Brexit. Lastly, this study's evaluation of the Fan-Led Review and governance practices within professional football highlights an unsustainable framework of governance practices in the UK, particularly down the football pyramid in the EFL leagues.

Chapter 1: Overview

1.1. Background

According to the Council of Europe (Art. 2.1., 2022), sport is defined as “all forms of physical activity which, through casual or organised participation, are aimed at maintaining or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels”. For centuries, sport has been an integral part of society. Between the 8th century BC to at least 400 CE, the ancient Olympic Games in Greece was a Panhellenic spectacle of activities that promoted civic unity and sometimes led to the heroization of its participants (Kyle 2014, p.6). Further down the line in Rome, the ancient Olympic Games underwent a period of modernisation and politicisation involving events such as chariot racing and gladiatorial battles and providing mass entertainment in spectacular arenas (Kyle 2014, p.6). The ancient Olympic Games provide an insight into the interconnectedness of politics and sports in society (albeit this not always being positive), an example being highlighted in the endemic corruption that led to the fall of the Roman Empire, where it was written that Emperor Nero would participate in the Olympic Games as a charioteer and was suspiciously always crowned the victor (Cloete, 2005). This existence of a one-man rule and lack of a governance structure for the games meant such malfeasance in sports could go unchecked.

Today, the sports industry is continuously going through numerous phases of commercialisation and professionalisation (Foster, 2019; Chadwick & Beech, 2013). This is clearly illustrated by the global audience which the sports industry garners, for example, an estimated 3.6 billion people viewed the 2012 London Olympics (BBC, 2012), and around 3.2 billion people watched the 2014 FIFA World Cup final on their televisions (FIFA, 2015a). Further growth in this area is highlighted by FIFA’s record breaking viewing figures of 3.5 billion viewers who tuned in to watch the 2018 FIFA World Cup final (Reuters, 2018).

This professionalization and commercialisation necessitate a governance framework operating within sports in order to ensure there are necessary checks and balances in place. Sports governance can be defined as “the exercise of power and authority in sport organisations, including policymaking, to determine organisational mission, membership, eligibility, and regulatory power, within the organisation’s appropriate local, national, or international scope” (O’Boyle & Bradbury, 2013, p.8). On one hand, it has been argued that the continuous commercialisation of the sports industry allows it to be considered in the same sphere as any other commercial entity, with it having a distinct way of marketing and management and having financial (tangible and intangible) assets (Moore and Levermore, 2012).

Alternatively, it is contended that the legal and socio-economic domain in which the sports industry operates demonstrates key organisational and behavioural differences to a normal commercial entity (Henry & Lee 2004; Miche & Oughton, 2005; Garcia & Welford, 2015). A manifestation of this is highlighted in the development of a separate legal entity operating as the Court of Arbitration for Sports (CAS), and the constantly debated concept of *lex sportiva*: an ‘autonomous transnational legal order’ in sports with legislative, judicial and sanctioning powers which is separate from national courts and legislature (Foster, 2019). The development of its own legal order highlights a *sui generis* nature that necessitates structures that are separate from other organisational entities.

Through the theoretical lens of Multiple Streams Framework, Organisational Pathology and Legitimacy Theory, the study assesses the structures operating in football governance (international and domestic), and its interactions of policy entrepreneurs with a wide range of stakeholders, and analyses how such governing bodies address a perceived pathology as they strive to be legitimised in

the society in which they operate. In order to understand the unique framework of the governance of sports, this study investigates the policy framework of governance in professional football, particularly regarding the player transfer system, on three different levels; firstly, on a macro level, assessing the Eurocentric transnational framework of the governance of the football player transfer system and understanding the role the EU has played in its development. Secondly, on a meso level, assessing the impact of Brexit on the football player transfer system in England. Lastly, assessing the future of football governance in the UK following a review of the Fan-Led Review. This study uses Brexit as a pivotal point in governance to as the opening of a policy window and to determine what impact Brexit has had on governance in the professional football industry. A set of research objectives and question were developed to guide the exploratory study and adequately gain insights into the phenomenon being investigated.

1.2. Research objectives and questions

The purpose of this study is to gain an insight into developments in governance in professional sports, specifically professional football in the UK and the EU, through the examination of various football governance mechanisms and its legal framework. The research aims to examine governance networks in professional football, with particular attention to governing bodies and the player transfer system to be able to draw effective insights. Using Brexit as a pivotal point, the study will assess what changes in professional football governance have occurred and forecast what changes in governance are to be expected in the future. The research investigates the variety of approaches that have been taken to adapting and setting up governance mechanisms within the football transfer system in the past and will assess how these governance mechanisms have been altered following Brexit.

The research objectives of the study are as follows:

- 1. To examine and understand the variety of stakeholders and their respective roles within the governance of professional football within the context of the EU.**
- 2. To understand the evolution of the international player transfer system operating in professional football within the context of the EU.**
- 3. To identify recent changes in the governance of the football transfer system in the UK since leaving the EU.**
- 4. To understand and assess the future of football governance within professional football in the UK.**

To meet the research objectives above, the following research questions will be explored within the study:

- 1. How does the multi-level governance network within professional football operate?**

- 2. How have the governance policies on the transfer system developed by (and in conjunction with) the EU and the UK National Government impacted professional football and its stakeholders?**
- 3. How has the UK's withdrawal from the EU impacted the governance policies in the transfer system of professional football?**
- 4. How will the Fan-Led Review impact governance structures and policies within professional football in the UK?**

To assess the research objectives and answer the posed research questions, the study is structured into the next three chapters. Chapter 2 is a review of transnational governance of the football transfer system. It analyses the key transnational football governance structures and their historical interactions with the EU governing entities in the development of the international player transfer system. Chapter 3 examines the player transfer system on a national (UK) level to examine the recent impact of Brexit on player mobility. It also analyses recent regulatory changes on the national level that have been implemented because of Brexit and how these changes affect some of the facets of the player transfer system. Lastly, Chapter 4 explores the future of professional football governance in the UK by assessing the Fan-Led Review.

For each of the chapters, a sub-set of research questions have been developed to deliver on the overall research objectives of this study.

With regards to Chapter 2, the sub- set of research questions are as follows:

- 1. Who are the key entities involved in the governance of the player transfer system in professional football, from an EU context?**

- 2. What role did EU governance hold within the player transfer system in professional football pre-Brexit?**
- 3. What were the key changes or developments in professional football governance policies and structures pre-Brexit?**

With regards to Chapter 3, the sub- set of research questions are as follows:

- 1. How is the player transfer system in professional football in the UK governed?**
- 2. How did the UK's membership in the EU affect the football player transfer system in the UK pre-Brexit?**
- 3. What impact has the UK's withdrawal from the EU had on the player transfer system in the UK, and UK policies in professional football?**

With regards to Chapter 4, the sub- set of research questions are as follows:

- 1. What were the events that led up to the commissioning of the Fan-Led Review?**
- 2. What areas of governance does the Fan-Led Review seek to address in professional football in the UK?**
- 3. What are the key proposals suggested by the Fan-Led Review to address issues in governance of UK professional football?**

To effectively answer the proposed research questions, a conceptual analytical framework of Multiple Streams Theory is utilised in all three chapters, extending the use of the framework in the football governance field. Furthermore, the study also adopts a theoretical triangulation. This is a combination of Multiple Streams Framework as the foundation of the study, and the seminal work of Barnett and Finnemore's (1999) organisational pathology and Suchman's legitimacy theory (1995). Anastasiadis and Spence (2020) use the combination of the legitimacy theory and the organisational pathology to examine the International Olympic Committee (IOC) and the International Football Federation (FIFA) and suggest that this combination "can be used to explain and predict challenges faced by [Sports Governing bodies], as well as pointing to the difficulties they face in repairing legitimacy" (Anastasiadis & Spence, 2019, p.36).

Therefore, this study provides a novel theoretical approach to researching the changing governance policy structures in football governance through its triangulation of the theories mentioned above. While examining the development of regulations and policies on the football player transfer system, this theoretical framework is applied to the policy setting process of governing bodies and its interactions. It also facilitates an understanding of the workings of networks of governance in professional football. It is intended that this will further the works on theorising in this subject area that is relatively young and growing (Stake, 2005; Sparkes and Smith, 2014).

1.3. Literature Review

Governance has constantly been a subject of debate with respect to the failings of organisations. Some key examples in recent years are seen in the Grenfell Tower fire, scandals from charities such as Oxfam, and the unstable Greek economic crises (Connolly & Pyper, 2020). The Cadbury report (1992) was one of the earliest attempts to codify best practice in corporate governance and as such, it has been used as an exemplar by countries all over the world to create their codes of corporate governance. According to Nordberg (2020, p.1), though its codification is often seen “as a masterstroke of regulatory genius”, it is limited as a voluntary agreement with minimal punitive mechanisms for non-compliance.

This section of the thesis examines the definition of sports governance and identifies some of the key theories that have been utilised in the research governance in sports, examining traditional corporate governance theories and sports governance research categorisations. Through the examination of these theories and categories, I was able to assess what theoretical framework would effectively meet this study’s research objectives and answer the research questions posed. The literature review also explores the institutional and legal context of sports, exploring the transnational and autonomous nature of the Court of Arbitration for Sports (CAS), and the concept of *lex sportiva* as a separate body of law (Foster, 2019; De Oliveira 2017; Blackshaw, 2017. Lastly, the literature review also considers governance structures in sports and the operations of sport governing bodies, as well as expanding the seminal work of Henry and Lee (2004) on the theoretical categorisation of sports governance in organisational governance, systemic governance, and political governance.

1.3.1. Definition of Sports Governance.

There is yet to be an established singular definition of sports governance and O'Boyle and Bradbury (2013) remark that it is manifestation of a multi-faceted issue of governance that numerous organisations face. One definition had expressed sport governance to be “the exercise of power and authority in sport organisations, including policymaking, to determine organisational mission, membership, eligibility, and regulatory power, within the organisation's appropriate local, national, or international scope” (O'Boyle & Bradbury, 2013, p.8). This is the definition that this study takes forward as its definition of sports governance in assessing the governance of the football transfer system, with particular attention paid to regulatory power. However, it has also been defined as “the structure and process used by an organisation to develop its strategic goals and direction, monitor its performance against these goals and ensure that its board acts in the best interests of the members' (Hoye & Cuskelly, 2007, p.9).

According to De Dycker (2019), the concept of sports governance has gathered momentum over the past decade, due to scandals of corruption and mismanagement within national and international sports organisations. She believes the concept can be understood from either a *macro* (i.e. “the relationship between the State and the Sports Movement”) or from a *micro* perspective (i.e. the internal management of sports organisations) (De Dycker, 2019)¹. Alternatively, Hong and Huang (2013) believe that understanding governance in sports is categorised in two perspectives. The first being a ‘corporate’ perspective; understanding the governance of the profit-orientated companies whose primary focus is adhering to the needs of their shareholders, while maximising shareholder value. The second perspective is the governance of non-profit companies (“voluntary organisations”)

¹ Following the distinction laid out by De Dycker (2019), ‘Sports Movement’ is referring to the organisational structure of a sport, the authorities in charge of the sport, and how the sport is governed.

whose objectives are to ‘provide a community service, promote a charitable cause, raise funds or facilitate the involvement of individuals in a variety of activities’ (Hong & Huang, 2013, p.125).

There is also the well-conceived notion that sports is governed as a transnational order on an international level (Foster,2019; Serby, 2016, Jonson & Thorpe, 2019). However, Koehane (2006, in Pielke,2013, p.256) notes that as no ‘global government’ exists; global governance in practice requires strategic interactions among entities that are not arranged in formal hierarchies.” However, there is an argument to categorise the United Nations as a global government, but their authority is undermined by their lack of law-making powers which are limited to making declarations and entering treaties (Jonson & Thorpe, 2019). These treaties and declarations are only considered to be law when they are enacted by a national government, through the due legal process of that nation (Jonson & Thorpe, 2019).

One such treaty which is very much apposite to sports is the Treaty of Lisbon. However, unlike the United Nations treaties and policies, there is a more of a legally mandatory onus of enacting the treaty into national law by virtue of being a Member State of the EU. Another key regulation that governs sports on an international level and which has been adopted by nations, as well as international and national sports governing bodies, is the World Anti-Doping Code (WADC). As such, Jonson and Thorpe (2019, p.37) come to the conclusion that the governance of sports is conducted through “agreement among national governments or by NSOs [National Sports Organisations] and umbrella bodies.” In a similar manner, the interactions between the EU government and the football governing organisations are explored in this study, to gain a deeper understanding on their interactions involving the governance of the football transfer system.

1.3.2. Role of the Board

The role of the board within sports governance is to act in the best interest of the sports organisation and its stakeholders and having such responsibility means that the board should be subject to regular scrutiny to maintain best practice (O'Boyle & Bradbury, 2013). There has been a professionalisation within sports over the years and it is because of this professionalisation that the role of the board has advanced (Shilbury & Ferkins, 2019). Mcleod (2019, p.250) posits that "professionalisation has caused sport board roles to transition from a function that involves operational responsibilities and resembles community organisation governance, to a function that is predominantly nonexecutive and mirrors the corporate model of board roles." The board is a fundamental feature of the governance system within sports organisations and the knowledge and sector acumen of the board members is an integral factor in advancing the effectiveness of the board and its organisational success (O'Boyle & Bradbury, 2013).

According to Walters, Tacon, and Trenberth (2011, p.14), the boards of sports organisations "consider their most important roles to be financial, strategic, and legal". O'Boyle and Bradbury (2013) posit that a core competency of the board is an ability to be an effective decision-maker, and as such, play the essential role of delivering the sustainability and success of the sports organisation. Mace (1971, p.178) also notes that it is the role of the directors on the board to "serve as a source of advice and counsel, serve as some sort of discipline, and act in crisis situations", particularly in a situation where the current CEO's position becomes untenable. Shilbury (2001), using agency theory in the study, identifies the roles of a board within non-profit sports governing bodies held by volunteer directors and paid executive directors, namely raising funds, setting financial policy, advocacy and community relations, hiring decisions of senior staff, long-range planning, program development and delivery, representing constituents, setting policy, and budget allocation. Furthermore, Shilbury (2001) highlights that although these roles tend to be traditionally carried out

by the executive directors, they are now gradually being undertaken by a variety of board members, further emphasizing the continuous overall professionalisation of the sport.

1.3.3. Definition of a Sport Governing Body.

In paragraph 5 of the 'Fundamental Principles of Olympism', the Olympic Charter (2020; p. 11) confers a power of autonomy onto sport's governing bodies, giving them rights of "freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied." These governing bodies zealously defend their autonomy and expect to be allowed to govern their respective sports without any interventions from the courts as they are treated as having 'special status' by national governments (Blackshaw, 2017; Anastasiadis & Spence 2019; Geeraert et. al., 2014). With respects to applying disciplinary regulations and 'rules of the game', the courts do allow the governing bodies to exact their autonomous power (Blackshaw, 2017). However, the bodies are still subject to the general rule of law that is applied and interpreted by the courts. (Blackshaw, 2017).

International sports governing bodies (ISGB) are the ultimate global organs of governance in sports with global membership of other organisations that oversee a sport or an event (Forster, 2006; Anastasiadis & Spence 2019). They stand at the top of the chain of command as the supreme body with local and regional bodies below them. A popular example of an ISGB is the International Olympic Committee (IOC) which is a private powerful authority that receives quasi-state-like treatment and adheres to a quasi-unregulated legal system, with its headquarters located in Switzerland (Anastasiadis & Spence, 2019). Their main governance roles and responsibilities include

cooperating and collaborating with its member (particularly the national governing bodies), establishing lasting relationships with regulatory authorities outside sports, foster trust and democratic policies, and generate and equitably allocate resources (Anastasiadis & Spence, 2019). There is a Eurocentric focus of the international governing bodies and this is deduced by the locations of their headquarters; FIFA, for example, has its headquarters in Zurich, Switzerland (Anastasiadis & Spence, 2019; Geeraert et. al, 2014).

Sport governing bodies are heterogeneous in their formations and power, dependent on the sport they are responsible for, albeit most sports having both international bodies and national bodies that regulate them (Blackshaw, 2017). For example, some governing bodies regulate single sports (e.g. football, rugby, tennis), while others are concerned with multiple disciplines (e.g. athletics) (Anastasiadis & Spence, 2019). However, according to Lewis et al. (2016, p.1), a feature which all sports governing bodies have in common is that “they are composite bodies with a membership of others involved in the sport, and they control the organisation of a particular element of the sport or the commercial exploitation of it.” Blackshaw (2017) gives an example of this in FIFA, who have a different company (FIFA Marketing AG) tasked with the commercialisation of events such as the FIFA World Cup. With the high amounts of revenue generated by football, its governing body, are constantly promoting the need for its autonomy. According to Meier and Garcia (2015), when this autonomy is not respected by a nation, FIFA may respond by suspending the country membership to FIFA. As such, it could be argued that this places FIFA as independent from legal authority. However, Meier and Garcia (2015) note that evidence from countries like Spain and Greece tend to highlight that it is not a case of being independent of legal authority, but rather it is unwillingness of nations to curtail the autonomy due to concerns of receiving social and political backlash.

The nature of International Sports Federations as private regulatory bodies allows them to play key roles in the governance nexus set up to address a multitude of issues facing sports. Their operational environment invites high levels of corruption and this is also facilitated by the continuous commercialisation and politicization of sports (Geeraert & Drieskens 2015; Geeraert, 2018). The implementation of high standards of good governance would mean that the International sports federations will be efficient in its fight against corruption issues such as money laundering, fraud, and match-fixing. In his examination of the governance structure in sports federations, Geeraert (2018) devises a benchmarking tool to assess good governance, consisting of a set of 57 principles and 309 indicators, specifically tailored for the responsibilities and risks inherent to being an international federation. He uses the benchmarking tool to assess the governance efficacy of five international federations (Fédération Internationale de Football Association (FIFA), International Association of Athletics Federations (IAAF), the International Swimming Federation (FINA), the International Handball Federation (IHF) and the International Tennis Federation (ITF) with the aim of providing an objective and reliable overview of the implementation of elements of good governance.

The following section examines the interaction of the governing bodies in football and the EU governing bodies in the development of the transfer system over the years. Firstly, it examines the pyramidic structure of the governing bodies within football. The last section goes on to analyse the interaction of the governing bodies in football and the EU governing bodies in the development of the transfer system in men's professional football.

1.3.4. Corporate Governance Theories

Agency Theory

Traditionally, research into corporate governance and accountability has been conducted by applying the agency theory, which views the relationship between management and stakeholders in a corporate structure to be a simple principal-agent relationship. This is a relationship whereby the principal delegates their power and work to the agent to exercise this power on the principal's behalf (Jensen and Meckling, 1976; Aguilera, 2005). The agency theory describes the relationship between directors and shareholders as being merely contractual. The concept of accountability is key to corporate governance because directors act as the agents of shareholders, and so their actions must be checked and regulated to ensure that they are acting in the shareholders' best interests and acting for the success of the company (Keay & Loughrey, 2015). This is based on the premise that people are inherently self-interested rather than altruistic and therefore directors cannot be trusted to act in the best interests of the shareholders when they have competing interests. This is where the issue of the principal-agent conflict lies (Jensen and Meckling, 1976). It is contended that effective corporate governance mechanisms must give enough power and discretion to the board on the one hand, and on the other hand, they must ensure effective accountability of the board to acknowledge that the directors have the shareholders at their mercy. Notably the agency theory, traditionally a popular theoretical framework adopted in the field of corporate governance, has declined in popularity in recent years, due to adverse claims of a linear nature along with the development of other theories that have been explored in this review.

Hill and Jones (1992) propose a more dynamic model to the agency theory which extends the general principle of the principle-agent relationship to a stakeholder-agent relationship whereby all critical stakeholders are considered and distinguished according to the size of their investments (i.e., their 'stake') in the firm. This extension of the agency theory is based on their belief that every stakeholder, regardless of their stake, creates a link of implicit and explicit contracts that are intrinsic

to the firm. Their model depicts managers to be both pivotal stakeholders in the firm, as well as being agents to the various stakeholder groups. This distinctive position in the nexus of the firm is due to the managers' central contractual relationships with the numerous stakeholder groups and it is the duty of the manager to balance the needs and interests of these groups (Senaux, 2008). However, a stakeholder with a substantial investment in a firm will tend to "demand more comprehensive incentive mechanisms and governance structures in order to safeguard their asset-specific investments in the firm" (Hill and Jones, 1992, p.134).

As it pertains to sports, Szymanski and Smith (1997) argue that a solution to the agency conflict prevalent in sports organisations in the USA and the EU is to incorporate wider share ownership. This solution is also suggested by McMaster (1997) in the context of small football clubs, arguing that ownership dispersion within these football clubs may partially resolve underlying agency problems and will in turn increase the revenues available to attract higher tier athletes. He also argues that accountability and efficiency could be enhanced were sports supporters to have more property rights within their respective clubs. Dimitropolous (2011) also investigates agency conflict in capital structures and corporate governance of football clubs and his findings suggest that the agency conflict is also prevalent in European football clubs, despite it having peculiar characteristics within its structure and operations. He highlights ownership concentration as one of the major determinants of agency conflict in football clubs, imploring the bodies to include issues of board independence and ownership concentration in their agenda and allow the participation of various stakeholders (such as supporters and fans) in monitoring the corporate boards. This participation of various stakeholders will assist in remedying existing agency conflict as it promotes transparency between principal and agent. In an examination of the recent Financial Fair Play regulations introduced by the Union of European Football Associations (UEFA), Schubert (2014) utilises the agency theory in the study, with UEFA as the principal and football clubs as the agent. Though he

posits the use of a “positivist agency theory” which is an approach “to describe and explain real and observable problems within relationships”, he acknowledges the limitations of the theory as being too linear, forcing a pre-determined notion that all actors have the same interest and conduct (Schubert 2014, p.338). Geeraert (2015) also uses the agency theory to investigate the institutional designs of International Sports Federations (ISF), categorising the ISF’s as decision making agents, acting on behalf of the three principals (these being National Sports Federations, national public authorities, and the general public).

The above studies highlight the utility of agency theory within sports governance in exploring concepts within the field. Although this researcher acknowledges its utility, in order to meet the research objectives, its’ use was excluded for this study due to the limited scope in conceptualising the complexity of relationships within the governance networks, a simplistic assumption of the rationality of individuals, and a disregard of certain social considerations impacting decision making. As such, an exploration of stakeholder theory was conducted as it offered a more dynamic model than the one presented by the agency theory.

Stakeholder Theory

The stakeholder theory broadens the agency theory's notion of a corporate structure from a simple principle-agent relationship to one that extends the accountability of managers to a gamut of interconnected stakeholders. Freeman's (2010, p.46) seminal work on the theory defines the stakeholder as "any group or individual who can affect or is affected by the achievement of the organisation's objectives." In an effort to accentuate the need for accountability mechanisms as to the interests of the diverse stakeholders and their intrinsic value to the firm, the theory identifies the stakeholders as a nexus of interconnected relationships. This in turn, creates an intrinsic duty in the managers to serve and be accountable to them all. This notion of an 'enlightened self-interest' has been developed over time and believes that the interest of various stakeholders has an intrinsic significance, regardless of their impact on shareholders' advancements (Donaldson & Preston 1995).

It can prove difficult for managers to effectively reconcile all the needs of the diverse stakeholders in a firm. Responding to this problem, Mitchell, Agle, and Wood (1997) develop a salience model which categorises stakeholders according to a typology of attributes: their 'power' to influence the firm (through coercive, utilitarian, or normative imposition of will); the 'legitimacy' of their relationship within the nexus of the firm; and the 'urgency' of their claim in the firm. The model is dynamic in nature as the three attributes can change over time and are based on a manager's perception, hence allowing variable changes in a stakeholder's saliency. The more attributes a stakeholder garners, the higher their salience in the firm, and the more salient a stakeholder is then the more time priority is given to them by the manager (Mitchell et al. 1997, p.854). These attributes allow identification of key stakeholders, classifying them into seven classes which can be separated into three groups, these being: latent stakeholder (sub-divided into dormant, discretionary, and demanding stakeholder); expectant stakeholder (sub-divided into dominant, dependent, and dangerous); and definitive stakeholder (Friedman et al., 2004).

To consider these further:

- Dormant stakeholder: This stakeholder has the power attribute but a lack of legitimacy and urgency due to having minimal or no interaction in the firm.
- Discretionary stakeholder: This stakeholder only has the legitimate attribute.
- Demanding stakeholder: This stakeholder only has the urgency attribute.
- Dominant stakeholder: This stakeholder has both the power and legitimacy.
- Dangerous stakeholder: This stakeholder has both the power and urgency attributes.
- Dependent stakeholder: This stakeholder has both legitimacy and urgency attributes.
- Definitive stakeholder: This stakeholder has high saliency due to having all three attributes.

A latent stakeholder has only one attribute, but being a dynamic model means that a stronger claim of being a legitimate stakeholder can appear down the line. For example, a manager will be keen to pay attention to a dormant stakeholder because they can become more salient in time if a legitimate claim were to appear (Senaux, 2008). The dominant stakeholder is normally seen as the true stakeholder of the firm and as such, there are formal governance mechanisms to cater to them. Naturally, managers will pay a lot of attention to this group, but it is pertinent that they do not fully neglect other groups of stakeholders. Fully neglecting dormant or discretionary stakeholders who have the possibility of an increase in saliency will present difficulties in the future (Senaux, 2008). Notably however, Tullberg (2013) argues that the legitimacy of the theory is undercut because it utilises an idealistic universalism in its categorisation of stakeholders, and as such, actual stakeholders are given undue special attention in comparison to potential stakeholders such as prospective employees and customers.

Senaux (2008) adopts this stakeholder model in the context of sports, applying it to French professional football clubs and the environment in which they operate. With regards to football spectators and supporters, their 'legitimacy' is evident in that they attend the games, purchase club merchandise, and have an unprecedented loyalty to the club. The element of 'power' is present as the long-term absence of supporters would impact revenue from gate attendance as well as sponsorship opportunities and television rights. Senaux (2008) believes that these supporters have an impressive voicing power in the stadiums which impacts a team's performance. They will also exhibit the 'urgency' characteristic when a team has a run three or four bad games (Garcia & Welford, 2015).

With all three attributes considered, committed supporters will therefore be classed as dominant stakeholders, or often definitive stakeholders, and even sometimes dangerous stakeholders as their claims may not be seen as totally legitimate. However, this is a subjective appraisal by the managers in terms of assessing whether the supporters deserve their attention. Some managers may set context-specific goals, and targets set by the managers may make them unable to recognise certain attributes in some of the stakeholders. Applying stakeholder theory in a different sporting context, Ferkins and Shilbury (2015) utilise the theory to explore the lack of stakeholder engagement within non-profit Australian state sports organisations, while extending the notion of stakeholder salience within sports governance research.

The stakeholder theory is rather dynamic in its conceptualisation and offers a comprehensive lens in assessing a range of stakeholders and their impact in the society they operate in. A key aspect of its comprehensive nature is its assessment of stakeholders' interests in line with regulatory expectations. However, this study excludes this from the theoretical triangulation utilised as there is

an overemphasis on external stakeholders, which in turn leads to a diminished consideration for the interests of the internal stakeholders.

Institutional Theory

Institutional theory has garnered a lot of attention over the years, evolving into a dominant approach to understanding organisations while permeating into numerous social science areas (Greenwood & Meyer, 2008). The theory purports that a firm will adopt the rules, practices, and guidelines of other firms in that sector or industry, on the basis that such practices and rules will have been normalised over time and will have become an organisational policy adopted by most firms in the sector. The theory is an approach to understanding how firms that operate within the same sector invariably begin to simulate the same practices through imitation or by force, mostly due to social pressures rather than economic reasons (DiMaggio & Powell, 2000). The main idea of the theory is that firms adopt and maintain organisational practices to conform to social values, giving a sense of legitimacy to that firm, regardless of the economic efficacy of these practices. For example, a football club could decide to alter its Corporate Social Responsibility (CSR) practices and systems to mirror other clubs within the league, to try and better address the concerns of the community in which it operates (Luoma & Goodstein, 1999), which would show an adaptation to practice which is not directly financially motivated.

Institutional strategies can be understood to be an examination of how organisations compete for legitimacy, articulating practices and characteristics which render an organisation as legitimate or desirable (Washington and Patterson, 2011). The sports industry exhibits the basic tenets of institutional theory and for this reason, Washington and Patterson (2011) advocate for the use of the theory in sports research. They believe that applying institutional theory to research in the

sports industry can be seen as a 'joint venture', where "the sport field can be used to extend institutional theory and institutional theory can direct research in sport to questions that are currently not being answered" (Washington and Patterson, 2011, p.2).

According to Greenwood et al. (2017), institutional theory is based on five key tenets. The first tenet is that an organisation is influenced by the institutional context that it operates in, distinguishing between aspects of an operational environment that influence certain organisational actions. The second key tenet is the institutional pressures imparted on all organisations, particularly those with 'unclear technologies'. The term 'unclear technologies' is used to describe institutional contexts that are more technically focused (Greenwood et al, 2017). For example, sports will fall under such a bracket due to regulations solely pertinent to sporting activities such as doping and match-fixing. The third key tenet is that in an attempt to gain legitimacy, the organisations become isomorphic. This highlights the perception that an organisation operating within its institutional context will often adopt a practice or policy because it helps maintain legitimacy, irrespective of the efficacy of the policy. Following from this, the fourth tenet states that "where the institutional environment is buffered from the core technology, practices to gain legitimacy may be contrary to practices for efficiency, and conformity to the environment may be decoupled" (Washington & Paterson, 2011, p.3). Finally, the fifth tenet is that when a policy is considered to be fundamental for legitimacy and used by a dominant institution, the policy or practice becomes an institution (Washington & Paterson, 2011).

The tenet of isomorphism in institutional theory is the idea that institutions are affected by environmental pressures, for example, a pressure to adopt specific practices or processes (Washington & Patterson, 2011), despite the fact these may not necessarily produce a competitive

advantage for the organisation. Broadly, the process is such that these practices or processes are so widely conformed to that they become institutionalised (Boxenbaum and Johnson, 2008). This process towards institutionalisation has been depicted as a constraining process because it forces various units in a population to resemble one another (Washington & Patterson, 2011). Three pressures have been identified as responsible for causing the isomorphic process to take place. These are coercive, mimetic, and normative pressures (DiMaggio and Powell, 2000). Coercive pressures are those such as sanctions for non-compliance. Mimetic pressures are those that encourage organisations to copy more successful organisations even where these have no real technical merit. Further, mimetic pressures have been related to the principle of legitimacy where institutions might adopt a policy or reform used by more successful organisations to be seen as socially legitimate. Normative pressures tend to occur as a result of organisations drawing from similar resource pools. For example, Slack and Hinings (1994) found that 36 national level sports organisations in Canada were isomorphic as a result of drawing from the same sports consultants which resulted in them all displaying a similar institutional design and structure.

Institutional theorists have further examined how different practises and processes become institutions, with a particular focus on legitimacy and the importance of an organisation adopting a specified process to be seen as legitimate (Washington and Patterson, 2011). This can become such that certain practises become so ingrained they are viewed as the “only natural way of action” (Washington and Patterson, 2011, p.5). Johnson et al. (2006) notes that legitimacy depends on apparent, so not necessarily actual, consensus among actors. In this way, as different organisations homogenise, then they become seen as more socially accepted. To analyse different organisational fields, scholars have identified fundamental belief systems under which organisations operate, known as institutional logics (Seo & Creed, 2002). Different institutional logics would lead to different actions, which although different, may both be legitimate. This is a useful concept in

understanding various organisational field processes. As institutional logic changes, then different forms of organisations are founded. It has been broadly suggested that changing logic, including changes to leadership, is the “seed of institutional change” (Seo and Creed, 2002, p.232).

Some of the tenets of institutional theory have been used for explaining the institutionalisation of sports organisations. Washington and Patterson (2011) recognised that institutional theory is clearly well applicable to the field of sports, but they also highlighted its limitations. For example, they highlighted that there could be more elaboration on the impact of power status and the effect of the history of the institution on organisations and changes to institutional arrangements. As a result, they developed their own set of tenets through a ‘joint venture’ approach combining sports and institutional theory. The first tenet they developed is the acknowledgement that sports organisations are influenced by “wider logics of actions”, be it diversity in society directly translating to diversity in sports, or the need for sports organisations to develop conventions of legitimacy to gain their own legitimacy (Washington and Patterson, 2011, p.10). The second tenet they developed is the notion that the sports industry is a site of “conflict and struggle at both the logic level (contest between amateurism and professionalism) and at the governance level (regarding claims of which governing association is responsible for a certain aspect of a sport, as well as the specific purpose various stakeholders play)” (Washington & Patterson, 2011, p.10). Lastly, they acknowledged that sport is an industry with an increased tendency to distinguish between actions for legitimacy's sake and actions for performance, due to a technical institutional operating environment.

The notion of isomorphism has been applied widely to research pertaining to sports, for example, Lamertz, Carney, and Bastien (2008) used isomorphism to examine the relationship between English Premier League football clubs and website design when exploring the idea that isomorphism leads to

legitimacy such as through social support for these football clubs. The concept of organisational fields has been applied to research in the sports industry since it was developed. Washington (2004) and Washington and Ventresca (2008) researched the organisation of American college sports, to examine the strategies developed by the governing body that became the dominant institution in the field of college athletics and basketball. O'Brien and Slack (2003) examined institutional logics in the English rugby union and how these changed over a period of time. Their approach towards this was to argue that there are various competing institutional logics but the winner will become a dominant institution to the extent that the field will be structured in a way that favours them.

Institutional theory has also been used as a theoretical or paradigmatic lens over the years, gaining popularity in sports governance research (Nite & Edwards, 2021). In examining the 'Own the Podium' (OTP) policy and related documents, Dowling and Smith (2016) advocate the use of institutional theory in sports governance research as they implement it as the framework to assess its contribution and impact in Canadian high-performance sport. They purport that the impact of a policy document (i.e. OTP) can be expounded on using institutional theory as "the by-product of the activities and actions of OTP itself and its supporting stakeholders to embed and institutionalize both the organization specifically and high-performance sport more generally in the Canadian sport landscape"(Dowling & Smith, 2016, p.2). McLeod et al. (2020) use institutional theory as a framework to examine governance convergence in Indian sports, in order to assess the drivers and barriers within the sector. They do so by adopting governance indicators used in the context of Western sports such as transparency and accountability, to assess India's National Sports Federation. The study also extends institutional theory in sports governance research by assessing how isomorphism of governance systems within sports can be influenced by a complex web of barriers and drivers (McLeod et al., 2020).

From the review of the above studies using a theoretical framework of institutional theory, this researcher recognises its utility in understanding institutions within the context of the society in which they operate in whilst explaining how organisations seek legitimacy by conforming to the institutional norms. Although the theory explores policy implications, it was not incorporated into this study as it is a theory that underplays the role of the power dynamics within governance networks. Furthermore, it tends to understate the influence of several historical and cultural influential factors in shaping the governance frameworks of organisations.

1.3.5. Sports Governance Categories

As previously mentioned in this chapter, the *sui generis* nature of the commercialisation of sports necessitates a different approach to governance than that of any other commercial entity. The preceding section of this literature review explores research in sports governance conducted within the context corporate governance, hence categorising it in the same context as any organisational institution. However, the seminal work of Henry and Lee (2004) recognise this *sui generis* nature of sports organisations and thus distinguishes between three different approaches to governance in professional sports: systemic governance, organisational ('good') governance, and political governance.

Systemic Governance

The systemic governance approach deals with the cooperation and competition between organisations in sports and how they interact with the policy systems in place. This involves the interactions of groups such as the media, key sponsors, players' agents, and shareholders. The nexus of groups highlights a complex field of interaction and shows a shift from a governmental direct control of sports. To illustrate this in practice, before the Bosman ruling in respect of million-pound sponsorship deals and media packages, it was possible to draw a hierarchy of control in football with FIFA at the top (having ultimate authority), UEFA and national FA's falling below FIFA in the authority ladder, and players and clubs falling at the bottom of decision-making ladder (Henry and Lee, 2004). Albeit being simplified, the structure shows a linear and clear power structure within the industry. Today, it seems impossible to think of authority and decision making as being linear, with the national or international governing body of a sport as being the sole authority.

Scholars have conducted studies on the governance arrangements between the various actors and the effect these structures have on sports. An example is highlighted by Wagner (2011), in his analysis of the interactions between World Anti-Doping Agency (WADA) and the various international federations, as well as the relationship between FIFA and the International Association of Athletics Federations (IAAF). The old hierarchical model of a top-down system of government in sport has been replaced with a complex nexus of interrelationships between various stakeholder groups, creating alliances and exerting power in numerous contextual environments. This is seen in national governments and the EU being able to regulate the framework for contracts between clubs, players, and media. The alliances formed by satellite broadcasters and clubs giving exclusive access to broadcasting opportunities also highlights this change which Henry and Lee (2004) describe as a shift from government to governance. This conceptual categorisation of governance has been utilised by scholars in the field of sports management when examining the implications of the evolving governance structures in sports (Goodwin and Grix, 2011). Dowling et al. (2018) also note that the concept of systemic governance has been used in investigating the impacts of 'field level' changes in specific sports such as rugby (O'Brien and Slack, 2003), basketball (Washington and Ventresca, 2008) and football (Dorsey, 2015).

Systemic governance is also used in understanding the dynamics and inter-organisational interactions between a variety of sports organisations within governance structures (Dowling et al., 2018). For example, the development of Shilbury et al. (2016)'s collaborative governance theory hinges on the utility of a cohesive working relationship between the government (i.e., public bodies) and private organisations in sports, working together to enhance efficacy of outcomes.

Organisational governance

Organisational governance describes the ethical standards which sporting organisations should abide by. The term 'organisational governance' infers that sporting organisations have a wider scope of standards than the traditional concepts of corporate governance (Henry and Lee, 2004, p.31). These standards can either be normative or descriptive and they will vary depending on their political and cultural context. Henry and Lee (2004, p.30) use a Eurocentric account to clearly illustrate the concept of organisational (or good) governance. They believe that the concept of good governance is underpinned by seven key principles:

- **Transparency:** There has to be a clear decision-making process in place, especially with regards to the allocation of resources. Sporting organisations such as football clubs have an inherent duty of care to the public as they enjoy unprecedented customer loyalty from supporters. Thus, such organisations are obliged to act and be seen as acting in a 'fair and consistent' manner and be reasonably accessible to the public. There is also a need to establish transparency in commercial relationships and the disclosure of information pertinent to such relationships, to ensure they are regulated without impropriety.
- **Accountability:** Sporting organisations are held accountable to their investors through mandatory financial reporting procedures. They are also responsible to the other investors such as players, coaches, sponsors, etc. regardless of how material their investments are. In the UK, there have been governmental enquiries (by the Department for Digital, Culture, Media & Sport (DCMS)) which recommended the inclusion of a fan representative on the board of the Football Association, to enhance democracy and accountability within its structure (DCMS, 2014; Garcia & Welford, 2015).
- **Democracy:** This is with regards to representation in the decision-making processes. Access to these processes must be available to the 'organisation's internal constituencies' and this could range from players, supports, managers, and owners. Henry and Lee (2004) believe

that sponsors need to forge a relationship with the fans or the community by encouraging an involvement or consultation in decision making. However, with regards to the fan-club relationship, Cleland (2010) argues that fans' influence on decision making of clubs in higher leagues (topflight football clubs) is questionable due to the large amounts of corporate finance involved in them. However, he does recognise that despite the above statement, clubs at all levels have realised the importance of a two-way dialogue between supporters and themselves. The need for a two-way dialogue has led to developments in new media, increasing internal and external communication, as well as redefined the nature of the 'supporters' community and pressure on clubs to consider fans as key stakeholders.

- **Responsibility:** Promoting the sustainability of the organisation and the sport it is involved in, the administration of resources and the community in which it operates in.
- **Equity:** There have been issues raised with equity in sporting organisations over the years in relation to ethnicity, age, gender, disability, and so on. These organisations need to develop policies that aid inclusion of the underrepresented so as to have equity within them, for example, gender equity within a football organisation in terms of position and progression opportunities within the organisation.
- **Effectiveness:** Setting feasible targets and developing measures that monitor the operations of the organisation.
- **Efficiency:** Achieving the targets set by efficiently using the resources available. An example of an inefficient use of resources is seen in the international rugby board. Before the late 1990's, there was only one full-time administrator, and this allowed players to claim false nationalities and play for countries they had no ties to. This was later remedied but had the potential to tarnish the status of the game as a professional sport and the experience of fans of the national teams (Henry and Lee 2004, p. 31).

In the same manner, Geeraert (2018a) developed a set of indicators that can be used as a benchmarking instrument to assess the standards of sports governing bodies. This instrument was built by reviewing “more than 40 sets of good governance principles and recommendations... [which] included documents issued by national governments, international organisations, and sports organisations that focus on national and international sports federations, the non-profit sector, as well as the corporate and cultural sectors” (Geeraert 2018, p.10). Following numerous reviews, 57 general practice principles and procedures were developed as a starting point of best practice which fit the definition of four sub-dimensions of good governance (Geeraert, 2018).

The four sub-dimensions of good governance, which the indicators will measure, have been deduced from academic literature and are as follows: transparency, democratic processes, internal accountability and control, and societal responsibility. To consider these in more detail, as outlined by Geeraert (2018a):

- **Transparency** is in reference to the reporting mechanism that allows others to monitor the internal workings of the organisation.
- **Democratic process** deals with the nature of elections (free and fair), as well as the level of involvement of actors in decision-making processes that affect them (conflict of interest) within the organisation. It also includes “fair and open internal debates” (Geeraert, 2018a).
- **Internal accountability and control** is in reference to a separation of powers within the governance structure of the organisation. It also refers to the rules and processes in place that ensure compliance of internal rules and practices by officials at the organisation.
- **Societal responsibility** is in reference to positively affecting internal and external stakeholders in the wider society by deliberately implementing organisational impact and potential.

As the four aforementioned sub-dimensions are abstract concepts, there will be a looming concern about construct validity. There must be construct validity to produce reliable results and to ensure that one is measuring the values that they intend to measure (Yin, 2018). Another issue that arises when developing indicators is the inherently imperfect nature and subjectivity of the process involved. According to Kaufmann et al., (2011 p. 242), “any observed empirical measure of governance will only be an imperfect proxy for the broader dimensions of governance that it reflects”. However, it is possible to achieve an acceptable level of validity by being transparent about the selection process and use of the indicators (Geeraert, 2018; McLeod et al., 2020; Verschuuren, 2021).

Political Governance

This aspect of governance relates to strategies of “regulation and inducement” as opposed to that of direct action or control exhibited in organisational governance (Henry and Lee, 2004, p.24). It is the notion that national government and such related public bodies steer and influence the framework of sports even though most of the sector is a mixture of commercial and voluntary resources.

According to Henry and Lee (2004), the reason national government takes responsibility for certain matters in sports is twofold: firstly, to ensure that sports goals are not subverted in the name of commercial abuse; secondly, to ensure governmental goals are actively pushed on the sports field. They can enact these responsibilities through moral pressures, funding leverage, and threatening regulation and sanction implementations. However, not being innately a sporting organisation itself, one could question the legitimacy and efficacy of the role played by these governmental bodies.

In Geeraert and Drieskens’ (2015) examination of the relationship of the EU and sport organisations, namely FIFA and UEFA, Geeraert and Drieskens highlight the relationship as that of a principal and an agent but highlight the limitations of control by the EU, due to the autonomous nature of FIFA and UEFA. Meier and Garcia (2015) also explored political governance in an examination of the power dynamics and influence of FIFA on national governments, due to their control of access into the global commodity of football. Dorsey (2015) examines the political governance issues in football as it pertains to its growing commercialisation in Asia. He highlights a desperate need for a governance restructure, advocating for a code of conduct to be developed to safeguard the sport from political manipulation, and enhance transparency and accountability.

However, the argument persists that sports is unlike any other commodity and its consumption is substantively different from other commodities. Over the years, the role of the government and

national bodies seem to take a steering role in sports by giving legitimacy and autonomy to legislative and administrative actions of private sporting bodies. An example of the role in action is seen in the government's involvement in the creation of the World Anti-Doping Agency (WADA) and its code, a code which states that its sport-specific rules are "not intended to be subject to or limited by any national requirements and legal standards applicable to such proceedings, although they are intended to be applied in a manner which respects the principles of proportionality and human rights" (WADA 2021, p.17). Further, the code states "when reviewing the facts and the law of a given case, all courts, arbitral hearing panels and other adjudicating bodies should be aware of and respect the distinct nature of the anti-doping rules in the Code and the fact that those rules represent the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport" (WADA 2021, p.18).

Even though these government bodies play a role in the formation of such codes, the regulations they contain only come into effect when enacted by the sporting federations (Foster 2019, p.2). The legitimacy of the distinctive nature of professional sports is also recognised in some jurisdictions (such as France), by incorporating the code into the national legal framework as the Code du Sport (Legifrance, 2023)

Nationally, UK courts have shown a reluctance to interfere with disputes involving sporting matters. One justification of this is the belief that an insider with the knowledge of sports and its conventions were better placed to adjudicate on such matters than national courts. In *Wilander v Tobin* (1997) 2 Lloyd's Rep. 293, such a defence was used by the Court of Appeal, advocating for the autonomy of professional sports in stating "while the Courts must be vigilant to protect the genuine rights of sportsmen in the position of the plaintiffs, they must be equally vigilant in preventing the Courts' procedures being used unjustifiably to render perfectly sensible and fair procedures inoperable".

Consequently, it can be deduced that courts only tend to intervene in extreme cases where there is either a “manifest in justice” or “a clear breach of the basic principles of the rule of law” (Flamino da Silva and Mirante, 2020, p.182).

1.3.6. *Lex sportiva* and the Court of Arbitration for Sports (CAS)

This section will primarily review the context of the sporting industry as a transnational order, analysing the commercial football industry and categorising legal aspects of the sector that give its *sui generis* nature.

In the mid-2000s, there was a change in the approach of courts regarding matters of sports. The civil courts changed from an interventionist approach to more of a supervisory role due to the growing 'juridification' within sports (Foster, 2019, p.9). This non-interventionist approach was reiterated by Justice Richard in the judgement of a horse racing case, *Bradley v the Jockey Club* (2004) EWHC 2164, when Justice Richard stressed the importance of the court limiting itself to a supervisory role because the adjudicatory processes and panel within the particular sport are "knowledgeable about the [racing] industry and are better placed than the court to decide on the rules in question and the precise weight to be attached to the breaches of those rules" (*Bradley v the Jockey Club*, 2004). A further statement of sporting autonomy was made by the Court of Appeal in the case of *R v Branes* [2005] 1 WLR 910. In this case, the lower court convicted a player for assault due to a reckless tackle on the pitch. The Court of Appeal overturned the conviction stating that sports have their own standard of conduct and disciplinary measures hence only in exceptional cases should such matters be dealt with in a criminal court.

The concept of *lex sportiva* posits that there is an autonomous transnational legal order which has been created through the reiteration of decisions regarding sports disputes made by the Court of

Arbitration of Sports (CAS) (Foster, 2012; Foster, 2019; de Oliveira, 2017). A broader view of *lex sportiva* assumes that it encompasses more than just the decisions made by CAS, to also include a framework of rules and regulations developed by sports governing bodies (SGB) (de Oliveira, 2017, p. 102; Duval 2013 p.827). Serby (2016, p.38) defines *lex sportiva* as “the element of sporting self-regulation whereby the sporting world has carved a niche private legal order separate and apart from national, EU and international law” suggesting it to be “a form of transnational law, in which disputes between clubs, athletes, federations and SGBs, which arise from the contractual nexus between these entities (with the SGBs on the top of the sporting pyramid), are submitted to private arbitration, often with a right of appeal to the Court of Arbitration of Sport, based in Lausanne, Switzerland”.

However, the concept of *lex sportiva* has drawn no common consensus in the literature over the years. According to Davis (2001), there are three main varying perspectives in the field. The first perspective argues that the concept of *lex sportiva* is unfounded because it is a consolidation of different aspects of law hence no separate body of law is identifiable that characterises it uniquely as sports law (Davis, 2001, p.212). The second perspective suggests that sports law is a developing field of law which is legitimatised by the fact that there are specific sports-related matters which require new methods of applying the law to a sporting context. The last perspective is that it is an independent body of law which has been made distinct either through case law or the creation of specific legislation. Evidence of the latter is exemplified in countries such as France who developed a sports code and incorporated it into legislation, and in Brazil, where the constitution created a Court of Sports which solely deals with sports-related issues (de Oliveira, 2017)².

² See Law no2017-86 in Article L-100-1 of the code; see also Article 217 of the 1988 Constitution of the Federal Republic of Brazil

Furthermore, Blackshaw (2017, p. v), states that “sport poses various unique questions to the law and that various aspects of sport are regulated in ways that have no equivalent in other spheres of business and governance”. For example, it has been suggested that “safeguarding the integrity of sport against practices, such as doping and match-fixing, hardly have any clear parallels outside the world of sport” and “the International Olympic Committee enjoys a special legal status, similar to that enjoyed by international organisations in public international law. As a result, it is now generally accepted that sports law is a distinct subject worthy of recognition, study and, research in its own right” (Blackshaw 2017, p. v).

Foster believes that the concept of *lex sportiva* is sometimes misconstrued to describe a generic body of sports law and regulations, arguing that a distinction must be established between global sports law and international sports law (Foster, 2003; Foster, 2019). Foster (2003, p.2) defines global sports law as a “transnational autonomous legal order created by the private global institutions that govern international sport”, while international sports law is the “principles of international law applicable to sports”. This distinction makes clear that international sports law is a body of law that can be applied by states in varying international domestic courts while global sports law stands as a self-sufficient system that operates without interacting with the domestic legal system. There are also certain well-defined sporting principles which are likely to fall under Foster’s definition of global sports law such as unchallengeable match decisions and the concept of ‘sporting nationality’ being different from the legal definition of nationality (Parrish 2012, p.719). Even though Foster’s distinction has its merits, de Oliveira (2017, p. 106) argues that the notion of a completely self-sufficient legal order is not clear due to the fact that it is a system founded on arbitration, hence it is unlikely that such an arbitral award is completely unchallengeable by domestic courts. Decisions made based on transnational law are not isolated and are based on general principles of law and will have originated from varying domestic laws. For example, an arbitral award from CAS will still be

subject to EU and national laws such as Art.54(1) Convention on the Settlement of Investments which states that the award will be subject to national rules and be enforced in a similar manner to a final judgement of a national court (de Olivera, 2017).

Applicability, legitimacy and jurisdiction are questions that arise when discussing *lex sportiva* (Foster, 2003; de Oliveira, 2017; Anastasiadis and Spence, 2019). Cases determined by CAS are not binding precedent. However, it seems that for reasons of legitimacy and certainty, the decisions made by CAS are being followed (Blackshaw, 2012; Foster 2019). As highlighted in a CAS decision involving the Canadian Olympic Committee, this has meant that the jurisprudence of CAS has enhanced and “developed a number of principles of sports law, such as the concepts of strict liability (in doping cases) and fairness, which might be deemed part of an emerging *lex sportiva*”³. With regards to jurisdiction, due to the transnational framework of sports, some countries tend to extend their national laws to sports matters beyond their territorial borders (Jonson and Thorpe, 2019). An example of this was seen in successful prosecution of corrupt FIFA officials by the Justice department in the United States on charges on money laundering and racketeering despite a number of these offences being committed outside the United States (Jonson and Thorpe, 2019).

De Oliveira (2017) believes that one way to legitimise *lex sportiva* is to use it as the applicable law for sports-related contracts. With regards to sports contracts, the concept of party autonomy allows parties to decide which law their contract is subject to. However, when a dispute is being resolved by CAS, one of the standard clauses prescribed by CAS gives the exclusivity to handle ant dispute in the matter, stating: “any dispute arising from or related to the present contract will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and resolved definitively in accordance with the Code of sports-related arbitration” (ICAS Standard Clauses, 2020). Some parties

³ Arbitration CAS 2002/O/373 Canadian Olympic Committee (COC) and Beckie Scott/International Olympic Committee (IOC), award of 18 December 2003, para 14.

involved in sports-related activities would incorporate either the aforementioned clause into their contracts or draft a clause in a similar vein. The Code of sports-related arbitration will include the rules and regulations of a sports-related body (e.g. a sports federation or association). However, according to de Oliveira (2017), as the CAS standard clause does not explicitly provide a choice of law, the parties can draft (if it is their prerogative) an arbitration clause to state the governing law of the contract to be *lex sportiva*.

Alternatively, other avenues exist for *lex sportiva* to be chosen as the applicable law of a CAS arbitration. According to rule 45 of the Special Provisions Applicable to the Ordinary Arbitration Procedure, the CAS panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss Law (de Oliveira, 2017). The parties may authorise the CAS panel to decide *ex aequo et bono*. In a situation where a choice of law is not stated and Swiss Law applies, the two key applicable provisions here would be Article 116 and 187 of the Swiss Private International Act (PILA). Article 116 (1) allows the parties to choose the applicable law by which the terms of the contract are governed. However, this provision is unlikely to allow *lex sportiva* to be a valid applicable law, due to precedence set by the Federal Supreme Court of Switzerland⁴. On the other hand, if the panel were to use article 187(1) PILA, then CAS can adjudicate a matter “according to the law with which the action is most closely connected” or according to equity if given authorization by the party. In an appellate capacity, a similar avenue to use *lex sportiva* as the applicable governing law is provided by rule 58 of the CAS rules. It states that primarily, a dispute is decided “according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties” (CAS 2023, p.26). Where no choice is stated, the panel will adjudicate on the dispute, either in accordance with “the law of the country in which the federation, association

⁴ In the decision of the Federal Supreme Court of Switzerland BGE 132 III 28, in 20 December 2005, the court decided that no matter of elaborate and detailed it may appear, *lex sportiva* cannot be considered ‘law’, because it is a collection of rules and regulations created by a private entity.

or sports-related body which has issued the challenged decision is domiciled” or using the appropriate rules of law that the CAS Panel deem fit (CAS 2023, p.26). Therefore, in theory, Article 187(1) and rule 58 can allow for the use of *lex sportiva* as applicable governing law in a CAS dispute as it would be up to the panel to decide whether the nature of a dispute merits *lex sportiva* to be appropriate in that instance.

The above review of governance in sports and *lex sportiva* highlights a lack of a unanimous decision on its definition and lack of clarity on its boundaries, suggesting that more time may be needed for CAS to further develop the concepts and utility. For these reasons, De Olivera (2017) argues that *lex sportiva* does not seem functional when used as the governing law for a commercial sports contract. However, he believes that it can be functional to disputes directly related to sporting activities, such as agreements for athletes to be in a competition or a club being part of a competition. If *lex sportiva* is used for such disputes, it will create a harmonious approach and develop stability in dealing with disputes within the international sports world. Another approach suggested is the use of *lex sportiva* as a supporting body of work (rather than as governing law), which supplements and fills necessary gaps in applicable state laws or the regulations of a sports body (de Oliveira, 2017). This is the approach this study conceptualises as it explores the utility of combining state laws and private regulations in setting up an effective governance framework in professional football and its transfer system.

1.3.7. Qualitative Network Analysis on the Football Transfer system

A network can be defined as a variety of points, which represent an object or subject, and are linked as a result of some type of association (McCulloh, Armstrong and Johnson, 2013). A network is formed when numerous nodes are linked together by lines. Using network analysis in qualitative studies allows for in depth collection of data on the individual actors attached, that is: “the meaning individual actors attach to their network ties and the network as a whole”, “data on informal policy networks not available through quantitative analysis”, and “an insider view on the relationship between informal and formal policy networks” (Ahrens, 2018, p.1).

Network analysis has been used effectively to examine the sports research in the past, with particular attention paid to the football transfer system. Liu et al (2016) use network analysis to examine the connection between the number of players a club recruited and a club’s investments in player transfers. Bond, Widdop, and Parnell (2020) use it to examine a European loan system network, and their findings highlight the fact that Italian clubs are the most dependent on the system compared to other European countries. More recently, Xu (2020) uses network analytical framework to examine the endogenous and exogenous factors which influence the player transfer market. In the transfer system, players are regarded as scarce resources in a competitive environment consisting of numerous clubs. As such, football clubs show willingness in the market to spend copious amounts of money in signing these scarce resources on the expectation that the acquisition of talented players will enhance match performance, the brand equity of the club, and financial income. This system is exemplified in European football with its high degrees of competitiveness which in turn leads to a high rate of movement of football players as they resettle across European clubs (Xu, 2020).

Social network analysis (SNA) is very effective in inquiries into complex networks that consist of small groups or international organisations. Xu (2020) conceptualises the transfer market using social network analysis. There are two main elements to social network analysis, namely, nodes and ties.

The theory defines nodes as the “social actors that constitute the network boundary”, and ties are the “social relations between any pairs of actors” (Xu, 2020, p.1). Using this definition, Xu’s (2020, p.1) conceptualisation of the transfer market illustrates “a transaction network that enables the flow of professional players (ties) as scarce resources among football clubs (nodes)”. This framework allows for the connection of micro-level decisions and macro-level structural interdependence.

The process involved in tie formation within networks has been a constantly discussed topic amongst network scholars. Monge and Contractor (2003) built an analytical framework which proposes that a tie in a focal network is driven by exogenous and endogenous factors. Exogenous factors are concerned with the drivers outside the network which shape the possibility of a tie creation within the network. On the other hand, endogenous factors relate to “characteristics of the relations within the network that are themselves used to explain the structural tendencies of that relation” (Monge and Contractor, 2003, p.55).

There are three key endogenous mechanisms that enable the formation of social ties: reciprocity; activity (popularity); and closure. Reciprocity describes a tendency of actors within the network to establish mutual ties. According to Xu (2020, p.3), this is illustrated in the football transfer market: “when club A tries to place a football player in club B, an information channel is established between the two sides during the negotiation process, enabling the latter to better understand the specific needs of the former. As a result, club B may request a player exchange by getting its own player involved in the transaction”. The activity (popularity) mechanism expounds on an inequality in the degree-based distribution of nodes. This incorporates two types of degree measures: outdegree and indegree. In the context of the transfer market, Xu (2020) posits that a club that has partaken in numerous recent transfers has a likelihood to conduct business with other clubs in the future and in turn, alleviate their visibility in the network as value-creators.

The last endogenous mechanism, closure, allows for a “set of possible three-node combinations within the network” (Xu, 2020, p.3). This mechanism posits a high probability of tie formations between two actors who have shared partners. It also facilitates an increase of social capital through building trust and support while reducing uncertainty. When applied to the context of the football transfer market, “club A and club B will likely form a tie if both have already been connected to club C, thus producing a closed triangle in network structure. In this hypothetical scenario, club C can be an intermediary for information or resource exchange, resulting in a direct transfer between the previously disconnected clubs” (Xu, 2020, p.3). Hence in the context of the football transfer market, Reciprocity can be seen to represent the tendency of clubs exchanging players in the transfer market. Activity (popularity) assesses the probability of a club recruiting exorbitant number of players. Closure relates to the propensity of two clubs within the transfer network having a shared third party which results in a closed triangle.

Exogenous factors are in relation to the attributes actors bring into a network and as such, these attributes play a key role as sources of exogenous influencing factors on the formation of a tie. These attributes in network literature are known as nodal attributes and they have the capability of producing sender, receiver and homophily effect on the formation of ties within a network (Xu, 2020, p.3). The exogenous factors must be considered in tandem with the endogenous factors or else there is a risk of forming biased estimations of endogenous influences on the tie formation process (Xu, 2020).

With regards to European policy setting, the structure of the multi-level nature of governance within the EU means that network analysis is an effective theory that is essential to better understand the policy making process of the EU. Research into the informal and formal actors of the EU government has been conducted using network analysis in the past. However, Ahrens (2018) notes that less attention has been given to studying the informal actors due to the lack of a clear definition around

the responsibilities they have, as well as having unclear procedural rules. Although social network analysis facilitates investigations into a plethora of professional and personal networks and their connections with quantitative metrics such as number of contacts and group size, a notable challenge with the analysis technique is the inability to elicit information on social aspects such as inter-agency workings and process related matters (Ahrens, 2018). It is these shortcomings that qualitative network analysis (QNA) intends to address, and it does this in two ways. Firstly, QNA approaches analysis from a micro perspective (which is the complete contrast of SNA which takes the macro perspective when analysing a network). Secondly, taking a micro perspective gives an insider's perspective as opposed to the outsider's perspective that is derived from SNA. As such, a qualitative approach will allow for an effective exploration of personal and social connections that exist between people and organisations within football that do not have a strictly defined job remit.

According to Ahrens (2018, p.2), even though SNA and QNA have similar foundations and basic assumptions, QNA "enables visualizing where and which formal and informal networks exist in everyday working situations; it also allows to detect whether and why networks are stable and what kind of meaning policy-makers attribute to them". According to Schmidt (2013), there are two main criteria into which research into EU governance can be categorised: investigating the output effectiveness of governance; and investigations into the participation of the people in the governance process. Schmidt (2013, p.2), proposes a third category which he refers to as 'throughput legitimacy', meaning "governance processes with the people, analysed regarding their efficacy, accountability, transparency, inclusiveness, and openness". To investigate aspects of this third category in EU governance framework, Ahrens (2018) posits that QNA is an effective method to utilise as it not only remarks on the number of nodes and formations within the network, but it also elucidates on the quality of the relationships within the networks, while revealing distinctive

characteristics of the network. QNA begins by looking at the individual actors to gain essential subjective interpretations of the network. The theory posits that a network is highly dependent on the actions taken by the individual actors involved in the network and at the same time, it is an innate trait of a network to either facilitate or restrict these actions. In turn, this allows the researcher to contextualise the relationships between actors while examining agency roles, policy processes and actor connections (Ahrens, 2018).

The utilisation of this theory for the study was considered due to its prowess of elucidating relationships within governance networks. However, access to key participants within the football governance networks such as the governing bodies and football club executives were rather limited. As such, it would have been an ineffective use of QNA to analyse the data collected for his study. It is for this reason a different direction was taken, using the theoretical triangulation detailed below as the theoretical framework of the study.

1.4. Theoretical Framework

1.4.1. Conceptual Framework: Multiple Streams Framework (MSF)

The aims set by policy makers are usually rather ambiguous. This is due to the time constraints placed on interested actors who struggle to develop effective solutions within their set time frame. The process of setting a policy involves identification of a problem, addressing the problem with a solution, and selection of the solution. As stated by Ackrill and Kay (2011), when the agenda and proposal for a policy change coincide at certain moments, this greatly increases the likelihood a policy reform is agreed and implemented. This is the conceptualisation that frames Kingdon's Multiple Stream Framework (MSF) (Kingdon, 2011). The framework of MSF has its foundations based on 'a bounded rational actor' with the assumption that policymakers have imperfect information and limited time and as such, they have no choice but to use their impressions within the constraints to pick the best solution (Cairney and Jones, 2016). In detailing sequential processes involved in policy setting, the theory offers concepts that can be used to understand the setting of public policies.

Proposed initially by Kingdon (1984), the theory focuses on the interaction of three independent variables and their interactions which lead to 'windows of opportunity' with regards to agenda and policy setting. According to Jones et al. (2016, p.15), these three variables are the public, policy and political stream, and they "are like streams conditionally bound by their banks, carrying complex, and varying content, yet operating independently from one another".

The problem stream is concerned with problems that are regarded as public issues, the need to address these issues, and how these issues reach the attention of policymakers. Public issues come to light and to the attention of the policy makers through certain events such as a global crisis or a dramatic change which draws out the public's attention. As such, public policies derive from such situations when political entities want solutions to these problems. The problem stream involves a

number of operational components which enable effective identification of these problems. These include indicators, load, focusing events and feedback (Jones et. al, 2016). Through the use of indicators, the actors involved are able to identify and monitor potential problems by utilising an array of metrics, ratio and rates. While indicators are known for their use in policy arguments, focusing events tend to be used as “powerful impetus for action or change” as they are attached to a specific problem (Jones et al., 2016, p.15). Load is the third component, and it is in reference to the capacity to deal with a problem. For example, if a body is dealing with a number of problems at a particular time, a new problem would struggle to make it to the top of the policymakers’ agenda. Lastly, feedback is regarded as the information gained from policies comparable to the problem at hand. An example of this is using the information garnered from a successful policy designed to mitigate the marginalisation of female sportspersons as foundations for facilitating equal pay within the industry.

The policy stream is concerned with addressing the issues in the policy stream and the resources (i.e., analysts and experts) available to examine the problems and suggest remedies. It is in this stream that the various avenues are examined and narrowed down to determine what feasible actions to take. Using the metaphor of the primeval soup, Kingdon (1984) explains that the policy stream is a complex collection of ideas whose survival is dependent on meeting certain criteria. This idea of survival is linked to five subcomponents in the policy stream. The first is *value acceptability*, which means that an idea will survive the policy stream if it conforms to existing constraints on value. Secondly, the idea must be *technically feasible* in its real-world application. Third, that there are *adequate resources* available to facilitate the proposal’s implementation. Lastly, survival of an idea will be dependent on the ‘size, capacity and influence’ of associated *policy communities* (networks), as well as the manner and efficacy of the *network integration* (Jones et al., 2016, p.16).

The last stream is the political stream. This stream is concerned with the policymakers' motives and opportunity for choosing a policy to address the problem, as well as setting an environment that facilitate policy change. In making the decision, they take into consideration a variety of beliefs, 'national mood', feedback and survey results from interested parties (political and interest groups). There are three main sub-components within this stream namely, *national mood*, *party ideology* and *balance of interests*. National mood is the proclivity of the public to the concerns and solutions of the policy problem (Jones et al., 2016). Party ideology refers to the proclivity of the political bodies associated with the policy issue. It is this proclivity that will direct the assessment and decision-making processes involved in addressing the policy problem. Lastly, the balance of interests is with regards to the collective position of lobbying groups and the variety of parties associated with the problem (Jones et al., 2016).

Ackrill et al. (2013) posit that the theory is very much applicable when examining transnational policy setting. For example, the interconnected complex nexus of the EU, along with overlapping variety of international jurisdictions and a multi-level government creates spaces for policy entrepreneurs to operate and exploit the windows of opportunity. Ackrill (2014) also believe the added factor of a transnational globalised economy means that an adaptation of the original MSF has to be considered due to the traditional of nation-state sovereignty detailed in the original MSF. Their adaptation of MSF also highlights the significance of 'timing and contingent interplay' of the three streams in the original MSF theory but advance the theory with scalar dimensions (Ackrill 2014, p.3). Furthermore, Zahariadis (2008, p.527) believes that the theory is particularly suited to analysis of the EU because it "drives home the point that ambiguity is an indispensable part of the EU policy process". As such, utilising the theory in analysing policy making within the EU However, there are issues that arise when applying the theory to studying the EU. For example, Kingdon's

(1984) development of the theory was conducted within the context of American legislative processes and as such, before it is applied to the EU, the theory must be decontextualised.

The original theory was designed as a mechanism for analysing policy processes which involved multiple actors in a non-hierarchical setting. As such, Ackrill (2014), believe these characteristics are applicable to transnational policy process and can be readily adapted to do so. However, in its applicability to transnational policy, they argue that the theory has been used effectively in the past in agenda setting and decision making but it becomes problematic during the implementation stage of setting public policy. Following from this, the main argument they pose is that “a given policy involves domestic policy streams flowing around transnational problem and politics streams” (Ackrill 2014, p.3). As such, they adjust the theory for effective adaptation to transnational policy setting.

1.4.2. MSF application to the transnational study

The critical driver in the transnational problem stream is the notion of economic liberalisation and globalisation. When applied to the EU, these notions are represented by the removal of trade barriers and factors which determine the extent of the free movement of people. Ackrill et al. (2013) argue these progressive notions have changed the policy problems and are gradually eroding Westphalian sovereignty of states. This globalisation creates a plethora of actors who are actively involved in the ‘transnational’ problem stream as well as creating issues beyond the definition of ‘problems’ in the original MSF. Transnational problems are catalysed due to individual states lacking sovereign authority over these large international organisations such as sport governing bodies (e.g., FIFA and UEFA). This is also exacerbated by the continuous and rapid development of new technologies and everchanging organizational structures.

Another key difference to the original MSF is the changing relationships of economic actors within the problem stream due to emergence of companies that are akin to the size of some countries. Due to their size and garnered status, such entities operate transnationally, controlling a range of resources and the capacity to move these resources across borders, largely unrestricted by national government controls. This is the case for a sporting governing body such as FIFA and UEFA who tend to operate loosely without clearly defined national boundaries. Furthermore, international non-governmental actors also contribute within the problem stream. They act as informal bodies that are concerned with the interests that formal institutions consider incompatible. According to Teegen (2003, p.472), they “bridge and bond public and private actors”, pursuing their interests framed as partners of the state. This can improve policy outcomes as they act as a cradle of “global value creation and governance”.

There is also the presence of Non-Governmental Organisations (NGOs) within the problem stream and Teegen et al. (2004) makes two distinctions between the roles they play. The first distinction is concerned with NGOs who act independent of state or corporation but take up an advocacy role by engaging with both parties. The second type of NGOs which Ackrill and Kay (2014) identify is a strictly non-governmental actor whose role is distinguished from a social purpose of advocacy, due to inclusion of business entities within its organisation. Another type of actor within this stream is the International Organisations (IO). These IO allows states representation on a global stage (Teegen et al, 2004, p.470). Using the example of WTO, Ackrill (2014, p.12) highlights how such an IO, despite a lack of legal binding powers on the states, provides institutional context of intergovernmental bargaining and agreement. As such, an IO plays the role of a ‘distinct supra-territorial’ authority (Ackrill & Kay 2014, p.12). Within the context of the case being explored, this is

also akin to the role which sports governing bodies such as FIFA, play within football, as they operate beyond strict borders as a supranational entity.

The original MSF has a clear distinction between policy entrepreneurs and policy decision makers. In stressing the independence of the three streams, Kingdon (2003) also notes that participants should be separate from the policy process. This study adopts the variation developed by Ackrill and Kay (2011) which adjusts this and posits that policy entrepreneurs are not single dimensioned individuals with the sole purpose of pushing out ideas to the decision makers but rather, they can be directly involved in the decision-making process. Following this claim, the below analysis of the governance system within professional football embraces this notion in its categorisation of policy entrepreneurs.

Transnational politics and its changing modes of governance produces a challenge to the traditional notion of a traditional state/non-state dichotomy. As such, Ackill (2014) argues that the traditional notion of firms lobbying governments for policies that economically favour their firm, is out of date as it ignores the complex network in the institution. In order to aid understanding of this complex relationship in the transnational policy stream, a distinction can be made between policy networks and governance networks. According to Blanco et al. (2011, p.299), policy networks is defined as 'hierarchical government subverted by the incorporation of non-governmental elites'; whilst governance networks can be described 'as a paradigm shift away from hierarchy towards more plural modes of governing'. It is through the working of governance networks that policies emerge. This is due to 'governing processes that are no longer fully controlled by the government, but subject to negotiations between a wide range of public, semi-public and private actors, whose interactions give rise to a relatively stable pattern of policy making that constitutes a specific form of regulation, or mode of coordination' (Sørensen and Torfing, 2007, p.3-4).

Further extending MSF to transnational policy setting, governance networks are key in the politics stream (Ackrill & Kay, 2014). In Ackrill and Kay's (2014) case study, they set out a non-hierarchical governance network in which the EU plays the role of a policy entrepreneur. They posit that the EU possess five key traits to enable them to influence the transnational network; 'access and resources, shared interests, partnerships in cooperative projects, professional/technical skills, and transnational competencies' (Ackrill & Kay, 2014; Koehn and Rosenau, 2002). The non-hierarchical structure allows for exchange in knowledge that necessitates a voluntary willingness to reach compromises in finding solutions.

Kingdon's model also describes a spill over effect whereby a policy decision in one arena can influence future decisions in other policy arenas. Kingdon (2003, p.190) states that such a spill over 'sometimes establishes a principle that will guide future decisions within a policy arena. At other times, a precedent spill over from one arena into an adjacent one.' In extending the theory, Ackrill and Kay (2011, p.73) argue that a similar spill over in the EU is regarded as a political 'demonstration effect'. Using this term, they argue that policy problems occupying different policy arenas can result in an 'endogenous spill over' whereby a policy decision made in one arena will influence and force decisions in other arena where no decision would have been made otherwise. Ackrill and Kay (2011) also make an adjustment to the original MSF as they posit that endogenous spill overs can keep the policy window open for a longer period of time. They go on to assert that this policy window also creates a space for 'contestation' of control. According to Ackrill and Kay (2011, p.74), 'this contestation is compounded by spill overs which create ambiguities over the decision-making authority of different institutions, in the absence of a clearly-defined institutional hierarchy.' However, it should be noted that some degree of scepticism surrounds this theory due to its

flexibility and rather pluralist assumptions in determining a policy agenda, hindering the scope in distinguishing interests that are purely institutionalised (Houlihan, 2013). As such, the below theories will be utilised in a triangulation will be used in a triangulation with the Multiple Streams Framework, creating a robust theoretical framework to explore the case.

1.4.3. Legitimacy Theory

Suchman (1995, p.574) defines the concept of legitimacy as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions”. Suchman’s (1995) model of legitimacy lays out three different bases for legitimacy, namely: pragmatic, cognitive, and moral bases. This theory is based on the notion that organisations have to justify their existence by taking legitimate and economic measures to be seen as complying with society’s norms and values (Zattoni and Cuomo, 2008; Schiopoiu and Popa, 2013, p. 1578). The theory states that an organisation has a social contract with the society in which it operates. When an organisation does not adhere to the moral values and norms of a society, the organisation will face the possibility of failure as they are sanctioned and held accountable by society. The theory is contextual on the society itself, as some norms, values and beliefs will vary dependent on the society.

When applied to corporate governance, codes are written and adapted by organisations in accordance with the values and norms of the society in which they operate, in a bid to be seen as legitimate. This highlights the facts that organisations will implement practices to improve their legitimacy in society, as opposed to those that improve facets like accountability and transparency. Anastasiadis and Spence (2020) use the legitimacy theory as a theoretical foundation for a study into sport governing bodies, illustrated in the cases of the International Olympic Committee (IOC) and International Football Federation (FIFA). The study delves into the private nature of the governing

bodies as a “prosocial yet commercial” authority which allows them to develop and implement policies, as well as cause “organisation-internal tensions” (Anastasiadis and Spence 2020, p.25).

Advancing Suchman’s (1995) model, Anastasiadis and Spence (2020 p.30) draw on two dimensions of the model’s legitimation dynamics namely, the ‘focus of legitimation’ and ‘temporal’ (episodic and continual) dynamics. Using the IOC and the Olympic Games as examples, they apply these dynamics to sport governing bodies to investigate their claim of legitimacy. When the three bases of Suchman’s (1995) model are applied, Anastasiadis and Spence (2020) deduce that the IOC must enjoy sufficient legitimacy in its operations as numerous countries have aspired to stage the Olympics. However, Anastasiadis and Spence (2020) argue that one of the grounds for the legitimacy of sport governing bodies is local acceptability, and when it is applied to the IOC in recent years, it shows that their legitimacy deficit has become acute. Furthermore, Anastasiadis and Spence (2020) suggest that another reason the IOC has suffered a loss in legitimacy is the increased societal importance of moral legitimacy.

1.4.4. *Organisational Pathology*

Another theory used to examine organisational deficiencies in the governance of sports governing bodies is organisational pathology. In the seminal work of Barnett and Finnemore (1999, p.699), focusing on the traits of bureaucracy, power and legitimacy, they “develop a constructivist approach rooted in sociological institutionalism” to elucidate both the power of international organisations and their propensity for dysfunctional behaviour. They posit that it is the bureaucratic practices that make organisations prone to deficiencies and define organisational pathology as the examination of “deficiencies, malfunctions and internal contradictions within an organisation that hinder effective functioning, promoting self-defeating behaviours that undermine its ability to achieve the goals for which it was established” (Anastasiadis and Spence, 2019, p.28).

Barnett and Finnemore (1999, p. 719) explore five mechanisms through which organisational pathologies are bred, namely “the irrationality of rationalization, universalism, normalization of deviance, organisational insulation, and cultural contestation”. The first three are categorised as constant mechanisms by Anastasiadis and Spence (2020) because they are present in any bureaucracy. The extent of their effect is determined by specific empirical conditions: a vague mission, weak environment, and strong professionalisation (Anastasiadis and Spence, 2020). The last two mechanisms are organisational insulation and cultural contestation. These two mechanisms are dependent on the empirical modifiers, and as such, Anastasiadis and Spence (2020, p. 28) categorise them as “resultant mechanisms”. Enhancing the model created by Barnett and Finnemore in 1999, Anastasiadis and Spence (2020) add another mechanism to the resultant mechanisms known as ‘organisational narcissism’. They define organisational narcissism as “a distinct phenomenon in which vague mission and weak environmental feedback lead to a culture emerging in which the organisation becomes pathologically self-obsessed, self-satisfied and self-referential” (Anastasiadis and Spence, 2019, p.28). Organisations with a ‘prosocial mission’ are at particular risk as they self-identify as inherently virtuous, and as such, they are unable to effectively listen to the views of

external stakeholders (Anastasiadis and Spence, 2020). An example of the narcissism in action is seen in the 2015 FIFA corruption scandal where executives were arrested on bribery and corruption charges with FIFA initially alleging that no crime had been committed and due process followed, as well as the design of rules regarding sponsors' interests which allow for a narrow interpretation (BBC, 2015).

Anastasiadis and Spence (2019, p.30) develop a conceptual framework which posits "that greater organisational pathology can undermine the basis for an organisation's legitimacy, even weakening or potentially removing it". The framework was formed by merging a modified version of Barnett and Finnemore's 1999 model on organisational pathology and Suchman's 1995 legitimacy model. The combination of both models provides a useful tool for researchers and practitioners "to explain and predict challenges faced by [sport governing bodies], as well as pointing to the difficulties they face in repairing legitimacy [and] therefore has the potential to provide a rich vein for future research on [sport governing bodies]" (Anastasiadis and Spence, 2019, p.30).

1.4.5. *Triangulation: MSF, Organisational pathology and legitimacy theory*

The theoretical framework adopted for this study is an incorporation of MSF organisational pathology and legitimacy theory. The combination of the theories into a framework can be effectively used to study actors with sports, particularly governing bodies. According to Anastadiadis and Spence (2020, p.36.), this theoretical framework of organisational pathology and legitimacy theory “can be used to explain and predict challenges faced by Sports Governing Bodies (SGBs,) as well as pointing to the difficulties they face in repairing legitimacy. It therefore has the potential to provide a rich vein for future research on SGBs.” Furthermore, extending the framework and incorporating MSF allows an effective assessment of the policy making processes operating within professional football and the interactions between the parties involved in the process.

As the study is an exploratory study, this framework possesses great exploratory prowess which will allow for an effective portrayal of the governance of the football transfer system, the policies established, and interactions with the various stakeholders. Private sports organisations tend to have ‘private political authority’ (Anastasiadis and Spence, 2020) and as such, this authority is directly linked with the organisations ability to operate with autonomy (Foster,2019; Duval, 2013). In order to operate with such authority and autonomy, these sports organisations will need to be legitimized in society. The study explores the perceptions and assumptions of the football governing bodies while assessing how their actions are conveyed within the society they operate in and based the system of norms, values and belief of the society.

Using Suchman’s (1995) model of legitimacy and the three different bases for legitimacy, namely: pragmatic, cognitive, and moral bases, the study explores how sports governing bodies justify their existence by attempting to take legitimate and economic measures to be conveyed as complying with society’s norms and values (Schiopoiu & Popa, 2013). The study further examines the social contract

between the governing bodies, the EU governmental bodies, and the society in which it operates in, highlighting cases where the governing bodies have not adhered to the regulations, moral values and norms of society. The results in sanctions been administered and the governing bodies held to account for their actions, and in some cases, their inactions.

The theory is contextual on the society, noting that some norms, values, and beliefs will vary dependent on the society. As previously stated, the theory has been used to examine Sports Governing Bodies as Anastasiadis and Spence (2020) use it to examine the legitimacy of the IOC, focusing on less prevalent intersecting dimensions of 'legitimation dynamics' and 'temporal (episodic and continual) dynamics'. The focus on legitimation dynamics examines an organisation and distinguished between 'action and essence (operating desirably vs. being intrinsically desirable) (Anastasiadis & Spence, 2020). This is to say that sport governing entities can portray themselves as being intrinsically legitimate, but their specific actions on various individual cases can convey the contrary.

The other theory that will be used in this study is organisational pathology. The main argument put forward by the theory is that it is the innate nature of bureaucracy that make organisations 'blind to their faults.' (Barnett & Finnemore, 1999, p.719). Expanding on this in their exploration of Organisational pathology within International Sports Organisations, Anastasiadis and Spence (2019, p.28) define Organisational pathology as 'examining the deficiencies, malfunctions and internal contradictions within an organisation that hinder effective functioning, promoting self-defeating behaviours that undermine its ability to achieve the goals for which it was established'. Using this theory, the study explores how highlight the key mechanisms which facilitate organisational pathologies such as organisational insulation and irrationality of rationalization manifest themselves

during the policy setting process and results in a weak and ineffective governance regulatory framework (Barnett and Finnemore 1999).

The triangulation of Multiple Stream Theory, Legitimacy Theory and Organisational Pathology allows for a nuance analysis of football governance. This is because MSF expounds the processes and considerations involved in policy setting while legitimacy theory and organisational pathology elucidates on how football governance entities seek to maintain their legitimacy in light of previous and potential deficiencies and contradictions.

1.5. Thesis Methodology

The paradigm a researcher chooses to adopt is a very important aspect of the research, as it informs the researcher's standpoint, what they consider to be knowledge, as well as the manner they assess multiple and contradictory values they encounter throughout the research process (Lincoln, 2010). Lincoln and Guba (1985) define a paradigm as a "set of basic beliefs (or metaphysics) . . . and a worldview that defines, for its holder, the nature of the 'world', the individual's place in it, and the range of possible relationships to that world and its parts" (Lincoln & Guba, 1985, p.107). These basic beliefs are normative because they inform the manner a researcher does things without needing to question why they are done in such a way (Sparkes & Smith, 2014). As such, it could be argued that researchers have the tendency to undertake research problems that align with their outlook on the world.

When conducting successful research, a researcher must adopt a methodology as it guides the dimensions of the study. According to Schwandt (2007, p.193), methodology provides a systematic model to research, incorporating the researcher's beliefs and assumptions, making it a useful procedural tool when navigating a research study. Reiterating Schwandt (2007), Durdella (2019, p.59) states that methodologies elucidate:

“what problems are worth investigating; what the researchable problems and hypotheses are; how to frame and design procedures to address the problems; how to determine what aspects are down to generalizability; what is considered a legitimate and warranted explanation; how to gather and develop appropriate data; and developing logical links between ‘problem-data generation-analysis-argument’”.

One school of thought a researcher can subscribe to is positivism. A positivist approach believes people are a product of their environment, and the researcher, when conducting his study, becomes an objective observer, in order to better understand the environment (Webley, 2010). Originating from the works of French philosopher August Comte, it is argued that positivism is predominantly associated with the ontological belief that reality can be objectively determined (Bryman, 2016). Researchers with a positivist approach normally conduct quantitative data collection, however, it does not preclude the use of qualitative data collection methods.

Interpretivism, like positivism, considers people as a product of their environment. However, unlike positivism, it also believes that people construct their own environment through their own understanding of it (Webley, 2010). Hence, interpretivism believes that reality is a social construct and not an objective determination. According to Gasper (1999, p.855), interpretivism is based on

the notion that knowledge is "a product of social practices and institutions or of interactions and negotiations between relevant social groups".

One of the key strengths of qualitative research is the evaluative ability to illustrate the 'dynamics of process' (Smith & Sparkes, 2014). A qualitative inquiry into such processes will allow the research to be critical in nature, as well as to open avenues of differing perspectives and to provide potential for a breadth of novel information (Morse & McEvoy, 2014). As such, a key objective of my qualitative research is to gather knowledge from one particular sport in the sports industry (professional football) that is transferable to other sports in an analogous context. Qualitative researchers are predominantly aligned with the constructivist paradigm as they tend to focus on observations and behaviours (Creswell, 2007). This is because they adopt a relativist ontology, as opposed to the quantitative researcher who has a realist ontology (Smith & Sparkes, 2014).

The relativist ontology believes that social reality is subjective, multifaceted and fluid, as a result of being humanly constructed. This view is reiterated by Guba and Lincoln (1994, p.111), stating that people form create realities through mental constructions "socially and experientially based, local and specific in nature (although elements are often shared among many individuals and even across cultures), and dependent for their form and content on the individual persons or group holding the constructions". As such, Smith and Sparkes (2014, p.12) posit that the job of a qualitative researcher to first recognise the existence of multiple realities and report on them, utilising the "voices and interpretations of the participants through extensive quotes, presenting themes that reflect the words and actions of participants, and advancing evidence of different perspectives on each theme."

In terms of epistemic stance, qualitative researchers utilise a subjectivist, transactional and constructionist epistemology, as opposed to the 'dualist and objective' epistemology of the quantitative researcher (Day, 2012; Sparkes & Smith, 2014). The epistemology of the qualitative researchers believes that there is no separation between the researcher and the phenomenon being researched; there is a subject-subject relationship where one's daily happenings and professional behaviours are inseparable from the research being undertaken (Smith, 1989; Sparkes & Smith, 2014).

It should be noted that interdependence of the research and the researcher in qualitative research means that a qualitative researcher adopts an ideographic approach. This approach conceives that the researcher must understand the context of his or her research and the constructs (thoughts, beliefs and actions) of the people involved, by investigating a relatively small number of situations, in order to maintain their individuality throughout the process of analysis (Sparkes & Smith, 2014).

This study aligns with the interpretivist school of thought and as such it is the ontology that guides this research. This study considers there is a social construct or network that exists in both EU and UK professional football. Through inductive research, this study explores this network with the aim of drawing conclusions on the changes in UK football primarily arising due to Brexit as well as assess the role of the EU in the development and governance of the transfer system. Inductive research is commonly associated with interpretive qualitative studies and involves collecting the data, and then using that data to develop a theory and then create a model for the exploratory study (Gratton et al., 2003), as such, "inductive research involves identifying research questions and issues from the process of data collection" (Greenwood, 2002, p.29). This study aims to draw conclusions on the EU's institutional role in football and to establish what changes Brexit will have on the operation of

professional football within the UK, and similar to Gracia (2008), an adoption of a 'research before theory model' is used. This has been determined because the research process began with empirical observation which led to the development of a theoretical framework and research questions for the study.

The developed theoretical framework was used in order to guide the empirical observations and data collected on varying actors and roles within professional football in the EU and the UK. It also serves an analytic purpose as the study utilises such in the analysis of the empirical data gathered. Furthermore, as this study sought to answer '*what, how and why*' questions (with respect to professional football in the UK and the EU) the study utilised a case study approach to answer these questions. (Yin, 2018),

1.5.1. Case study

A case study approach was chosen as it is an appropriate method for a descriptive and explanatory study, placing focus on the analysis of the context and a nexus of interrelations (Yin, 2018). Like other qualitative approaches, the goals of a case study approach is to research are "discovery, description, verification and interpretation" (Durdella, 2019, p.16). According to Yin (2018), a case study approach is an ideal method to use when a study needs to define the research questions (designing the case study to focus on and answer '*what, how and why*' questions). The researcher must also consider the level of control on behaviours involved, as the less control a researcher has, the more stringent the case study design is. Yin (2018) also posits that a case study approach is suitable when addressing a contemporary phenomenon, as opposed to a historical occurrence. As such, a case study design is fitting to this study as it will address contemporary questions on how, what, and why governance mechanisms operate within sports.

Yin (2018, p.15) defines the case study approach as “an empirical inquiry that investigates a contemporary phenomenon (the ‘case’) in-depth and within its real-world context, especially when the boundaries between phenomenon and context may not be clear”. When designing a case study, one must consider four main characteristics: construct validity, internal validity, external validity, and reliability (Yin, 2018). Yin’s (2018) construct of a case study focuses on preparation, establishing key design details at the start of the research process, and making only minor alterations to the design during the data collection stage. This is not to say that major alterations cannot be made. If such alterations are considered, the researcher must review the design from the beginning and reconceptualize the case study construct. Case study is also the preferred method when the research aims to study contemporary events i.e., events in the recent past and the present (Yin, 2018, p.12).

According to Stake (2005), there are three types of case study approaches: the intrinsic, the instrumental and the collective case study. Stake (2005) suggests a researcher undertakes an intrinsic case study if he wants to better understand a particular case. The purpose of an intrinsic case study is not to build a theory or understand a particular phenomenon, but rather it is undertaken merely out of an intrinsic interest. Conversely, an instrumental case study is the examination of a particular case where the case serves a supportive facilitator to providing insight into a particular issue (Sparkes & Smith, 2014). According to Stake (2005), an instrumental case study still looks at the case in depth, scrutinising the context and activities around it, to help pursue an external interest. The collective (or multiple) case study is the third type of case study, and it is an extension of the instrumental case study to numerous cases because it will enhance theorising and understanding of the research subject (Sparkes & Smith, 2014). Hence, a researcher conducting a collective case study will select one issue and apply it to a number of cases to better illustrate that issue.

Case study approaches are popular within the field of sports research (Gratton et al., 2000; Walters et al., 2011; Morse & McEvoy, 2014). For example, Brand et al. (2013) utilise two case studies of Austrian and German football to investigate the notion of the growing Europeanisation of sports. They use the case studies to explore the transnational impact of EU policies in domestic sectors, with particular attention paid to the Bosman ruling and the UEFA competitions. Serby (2016) also uses a case study approach to examine sports governance from a legal perspective. He explores the political strength of UEFA through the recently introduced Financial Fair Play rule and the level of legal intervention in sports by the EU.

Garcia and Welford (2015, p.27) believe that more collective case study research should be conducted within sports management because it “has the potential to increase the generalizability of the research, contributing to better theorising that includes new concepts from governance or management theories”. Giges and Van Raalte (2012, p.483) advocate for the use of case study research in the field of sports research because it “can allow for in-depth exploration of a variety of situations and issues...and include unexpected occurrences, unique and innovative interventions, unusual circumstances, or typical experiences that illustrate important principles in consultation”. Researchers in sports management utilise standard forms of case studies and semi-structured interviews, and Shaw and Hoerber (2016) note that it is a representation of the engagement and potential of qualitative research in increasing the knowledge in the field. However, they note that sports management scholars tend to become too comfortable in carrying out qualitative research, failing to push the boundaries of engagement by not harnessing the practise of “a more self-conscious . . . struggle with a whole set of claims related to authorship, truth, validity, and reliability, and that bring to the fore some of the complex political/ideological agendas hidden in our writing” (Amis & Silk, 2005, as cited in Shaw & Hoerber, 2016, p.257). This is a point reiterated by Garcia and Welford (2015, p.18) with regards to studies conducted on supporters’ involvement in sports

governance, arguing that although qualitative case studies have been conducted in supporter involvement, they have adopted a qualitative inductive strategy with an aim to describe and reflect, rather than create a theoretical understanding. Doherty (2013, p.5) also urges sports management researchers to push the boundaries in their research to developing more theory because “the ability to explain phenomena is based in theory, and so the body of knowledge in sport management must derive from theory-based and theory-building research”. As such, a utilisation of a theoretical triangulation was utilised for this study in order to address this research gap within the field and expand the body knowledge underpinned by theories in sports governance research.

Shaw and Hoeber (2016) believe that the essence of qualitative research is to focus on the interpretive aspects of life, emphasising on the perspectives of lived experiences and it is for this reason they believe it is a useful method for understanding the experiences of the management of sport and those affected by its management. Most sports management research adopting qualitative methods tends to take a positivist epistemological stance, and this is considered a problem by Shaw and Hoeber (2016). This is because epistemic stances such as constructivism, post-modern critical, and interpretivism, lacks in-depth interpretation and challenge to the data, albeit having valuable descriptive information (Crotty, 2020). It should be noted that qualitative methods are not holistically interpretivist in nature as Crotty (2020) remarks that a researcher can take a variety of epistemological approaches to qualitative research (e.g. collecting qualitative data and analysing it from a positivist standpoint). This is to emphasise that a researcher’s epistemic ideology does not intrinsically necessitate an alignment to a specific research method. Shaw and Hoeber (2016), and Stride et al. (2017) believe that the field of sports management qualitative research is dominated by a positivist epistemic stance and calls for more innovative and contemporary approaches to be utilised. It is for this reason that this study aligns with the underrepresented interpretivist stance and an innovative theoretical framework.

1.5.2. *Methods of data collection*

Case study research should be conducted using multiple data sources to converge in a triangulating fashion, and benefit from the prior development of theoretical propositions to guide data analysis and collection (Yin, 2018). Case study researchers make use of six major sources of evidence: “documentation, archival records, interviews, direct observations, participant observation and physical artefacts” each of which has its own strengths and weaknesses (Yin, 2018, p.113). This study uses two methods of data collection: documentary analysis and semi-structured interviews. When collecting data, Yin (2018) advocates the application of four general principles to the evidentiary sources: (a) multiple sources of evidence (evidence from two or more sources, but converging on the same set of facts or findings for the purpose of triangulation); (b) a case study database (a formal assembly of evidence distinct from the final case study report which helps the novice researchers understand how to handle or manage data); (c) a chain of evidence (explicit links between the questions asked, the data collected, and the conclusions drawn which helps “follow the derivation of any evidence, ranging from initial research questions to ultimate case study conclusions”, and (d) exercising care when utilising data from social media sources (Yin, 2018, p.134.). These are principles that are pervasive and applicable to case studies in numerous fields.

Between 2011 and 2013, Shaw and Hoeber (2016) identify 72 articles in the three main sports management journals (Sports Management Review, the Journal of Sports Management, and European Sport Management Quarterly) which exclusively use qualitative research methods. Within those articles, they identified case studies and semi-structured interviews as the most popular research design and data collection method utilised. This failure to push the boundaries may be borne out of environmental and institutional pressures. According to Shaw and Hoeber (2016), there is a widely conceived notion that the qualitative methods are “anecdotal and biased” which has developed due to an overemphasis of quantitative research and methodological conservatism. It is

the intention of this study to rebut this through the use of critical evaluation in the data analysis and ensuring a golden thread runs through the study whereby the theoretical framework chosen is key component in the research design, data analysis and discussion. Yin (2018) also advocates for the use of documentary analysis in conjunction with other methods of data collection. As such, this study utilised documentation in conjunction with semi-structured interviews where appropriate.

Chapter 2 of this study utilised documentary analysis of primary and secondary sources as it takes up the form of historical research (Bowen, 2009). Chapter 3 employed a methodological triangulation of policy documentary analysis and semi-structured interview. Lastly, Chapter 4 utilised a triangulation of documentary analysis and semi-structured interviews. This study has utilised primary and secondary sources in its exploratory research to answer the research questions posed. The table below notes documents and contributions that have been consulted in conducting this research.

Primary Documents	Secondary Documents
<ul style="list-style-type: none"> ▪ Official documents of the European Commission ▪ Judgements of the ECJ ▪ Press releases of football organisations ▪ Official documents of FIFA and UEFA ▪ Official Documents of the FA ▪ Official documents from the UK government ▪ Newspaper and News Website Articles 	<ul style="list-style-type: none"> ▪ Scholarly journals and books ▪ Doctoral dissertations

Table 1 - Types of Documents selected.

Analysis of these documents has enabled an understanding of key decisions made by the EU which impact the governance of professional football and in turn, has allowed insight into the role the EU play within the sport. Through the analysis of publicly available documents, this study has been able to assess what policy and legal changes leaving the EU has had on the UK with regards to governance of professional football, while also assessing what impact it will have in the future. Using Garcia's (2008) research on the EU and the governance of football as a guiding framework, the selection criteria was established to select the cases and documents that were analysed for this thesis:

- Relevance of the document to the governing of professional football.
- Influence on the development of policy setting in professional football in the EU.
- Consequences for the governing structures of football.
- Actors involved.
- Information available.
- Time frame.
- Explanatory powers of the case within the study's wider framework.
- Original contribution to knowledge.

One of the main policy initiatives researched in this study is the resulting impact of the judgment delivered on the Bosman case on the international player transfer system. Extending previous research on this, this study examined the established Bosman ruling, the development of the governance of the international transfer system, and the impact of Brexit on the governance of the transfer system in the UK. The structure of this study has been split to give three varying perspectives of the impact of Brexit: the first is a macro governance perspective, examining the state of governance in football and looking at the effect of Brexit on football from the perspective of the EU; the second is a meso perspective, looking at the state of governance of football in the UK and what

changes have been made due to Brexit; and lastly, a meso perspective of the future of football governance in the UK.

Consequently, the question is then raised of whether the study is a single case study or a multiple case study. It can be understood as an “embedded [longitudinal] single case study” (Yin, 2018, p.51). An embedded single case study is utilised when, “within a single-case (first level), attention is also given to a subunit or subunits (a second level)” (Yin, 2018, p.51). This study agrees with the stance of Yin (2018) as it examines football governance transfer policies on a macro and meso level, before and after Brexit. One might make the argument for it being a multiple case study design of three cases, each one with their own units of analysis. However, in line with Garcia (2008), this seems to be a semantic distinction in this case as both single and multiple case study designs can be considered to be “variants within the same methodological framework” (Yin, 2018, p.54). What is clear is that the study delves into the governance of football, examining the changing roles and decisions of a range of actors within football, as well as a changing regulatory framework.

1.5.3. *Research interviews*

The purpose of reviewing the primary and secondary sources in this study has been to identify the regulations and policies which have relevance to this study. Another source of data collection that was used is research interviews. According to Yin (2018, p.118), interviews are “one of the most important sources of case study evidence”. Once the governance areas examined for this study had been decided, the next step was to identify interview participants. Participants for the interview were selected on merit of being actors within the football network who could provide insight on the research questions posed and on governance of professional football across the UK and the EU. After a selection of the first few participants from professional digital platforms, this study sought participants through use of the snowball method as well as reaching out on an individual basis. The snowball method involved asking participants to recommend other people who could be included in the sample (Sparkes & Smith, 2014). This allowed the sample representation to be more complete. Criteria used to select participants were:

- Knowledge and expertise on football player transfer policies.
- An involvement in the football player transfer system.
- Triangulation.

Semi-structured interviews were chosen as the interview style for this case study investigation.

Participants were informed about the study outline, the research objectives, topics they would be interviewed on and the type of questions that would be likely to come up. Participants were selected from online football directories and professional networks such as LinkedIn. After retrieving their email addresses through these avenues, they were contacted by an email requesting participation in an interview. Upon agreeing to participate, a one-hour timeslot was scheduled at their convenience and the interview was conducted and recorded.

Following the standard ethics practices (Yin, 2018; Bryman, 2016) and University of Salford’s ethical guidelines, this study ensured the following:

- Anonymity in handling of information from the interview.
- Direct quotes relied upon only when granted permission.
- Information gathered was used for triangulation purposes in order to ensure a convergence in gathered from a variety of sources and ensure data validity.
- Right to withdraw permission to use information gathered from the interview was conveyed to participants.
- To use the information from the interview for the specified sole purpose of academic research.
- Any information gained and used as part of the research has been consented to by the interviewee.

Most of the interviews conducted focused on changes in the football player transfer system. As such, the interview coverage is rather limited as it does not cover official representatives of the EU or specific governing bodies as it pertains to the governance of football. This was due to difficulty in accessing such individuals with the limited resources and the timeframe set for this study. However, the extensive unique experiences of participants within the professional football industry made them particularly relevant to the research questions posed. The sample size was also considered to be sufficient to carry out the study due to 'information power' (Malterud et al., 2015). The concept of information power notes that the more relevant the information a participant is able to provide, the fewer participants are needed for the study. Furthermore, the examination and analysis of the official documents of the governmental and sporting bodies, such as the EU and UEFA, provided the necessary information needed.

It should be noted that the interviews were conducted to be used as part of the research but not as the sole instrument of investigation, as such, they will not portray the whole picture. It is for this this

reason that the principle of triangulation will be applied. Case study is rooted in the use of multiple sources of evidence and according to Yin (2018, p. 127), this principle is based on using multiple sources of evidence “to develop converging lines of inquiry”. As such a combination of both methods and a variety of sources were incorporated into this study

1.6. Main Findings

The study explored the role of the EU within the governance of football. It found that the ECJ was an avenue to address concerns of stakeholders within the football nexus due to governance failures and pathologies of the sport governing bodies, albeit these bodies inclination to operate with a certain degree of autonomy. In addition, the study found that the EU Commission and EU council were heavily involved in the policy stream as policy entrepreneurs, negotiating with FIFA and UEFA in developing polices governing the international transfer system and commissioning reports to be conducted that pertain to the transfer system. Furthermore, regarding the development of there have been two key policy windows in shaping the development of the international player transfer system to date. The first policy window was triggered by the Bosman ruling and the second policy window was triggered by FIFPro’s complaint to the ECJ. Lastly, on a national level, the study found that Brexit has impacted the transfer system as EU players coming into the UK are no longer able to rely on the freedom of movement principle of the EU. This has impacted certain aspects of the transfer system in the UK, namely the development of a new Governing Body Endorsement criteria involved in player transfers, and the loss of the 16-18 year old EU player market. These findings have comprehensive expanded on throughout the chapters that follow this, utilising the structure detailed below.

1.7. Structure of Thesis

The approach taken in this study was to consider three areas of investigation, structured into three articles in Chapter 2, 3 and 4. The research is structured into three specific areas of research to deliver upon the overall research objectives and to facilitate publication and dissemination, adding to the growing body of work in the research area of sports governance. Chapter 2 is a historical research study into the development of the international player transfer system within the context of professional football in the EU (including an assessment of the football governing bodies involvement in the player transfer system, an assessment of its supranational role and its interactions with the EU governmental bodies); Chapter 3 focuses on the contemporary phenomenon of Brexit and its impact on the player transfer system on a national (UK) level (including an assessment of the UK player transfer system since Brexit and an analyses on the impact of those changes on football governance polices); and chapter 4 assesses the future of governance in UK professional football based on the analysis and recommendations within the Fan-Led Review. Chapter 6 presents the final conclusions of the study, discussing the limitations of the study as well as highlighting its wider social and practical implications.



Figure 1: Structure and rationale for study.

Chapter 2: Understanding The Governance of Professional Football: An Assessment of The International Football Transfer System.

2.1. Introduction

With the ever-growing levels of finances and diverse income streams involved in the sports sector, sports organisations face multiple challenges and pressures for its numerous stakeholders (general public, sports professionals, athletes, coaches, media, etc.), particularly with regards to issues of transparency (Beech & Chadwick, 2004; O'Boyle & Bradbury, 2013). Without proper governance structures in place, an organisation will be susceptible to poor decision making, policy development and poor strategy planning. It can also lead to external consequences such as intervention from the national government or withdrawal of funding and sponsorship (O'Boyle & Bradbury, 2013).

Geeraert (2018) asserts that good governance in sports has become a ubiquitous concept particularly due to the levels of mismanagement and corruption in international sports organisations. As such, good governance mechanisms are imperative in order to enhance the legitimacy and effectiveness of these organisations, as well as build trust with the stakeholders and the governments. Implementing good governance mechanisms will allow such sports organisations to operate autonomously without the need for extensive intervention from the government.

According to Geeraert (2018, p.7), "Organisations are incentivised to signal their commitment to governance improvements in order to minimise both public interventions and reputation costs imposed by civil society actors." However, Geeraert (2018) posits that there are actors (e.g senior officials) involved in the sports organisation who will oppose reforms as they could restrict their influence and the decision-making powers once conferred to them. Therefore, certain reforms tend to be ineffectively far-reaching as those who are negatively impacted by change will have an incentive to minimise it. In order to redress this ineffectiveness and stop the use of reforms as

merely a public relation ploy, there needs to be an objective external assessment of the governance networks within sports and their interactions within the network (Shilbury & Ferkins, 2019).

The purpose of this chapter is to understand the structures that exist within the governance of football. It examines the governance networks in professional football on a transnational level. According to (Houlihan et al., 2009) “analyses of the work of transnational government organisations such as the European Union...in relation to sport are still in short supply...Too often analyses at the transnational level are either bereft of theory or undertaken with a casual nod in the direction of globalisation theories”. It is also the intention of the chapter to assess the roles of policy entrepreneurs and various stakeholders play within the policy setting network and draw effective conclusions on the roles of international government (The EU) and the UK national government within professional football. It examines the role the EU played within professional football over the years and what impact it has had to the governance of sports, with particular attention paid to the football transfer system. In achieving the above, the chapter will meet two of the overall objectives of the research study namely; to examine and understand the variety of stakeholders and their respective roles within the governance of professional football within the context of the EU and to understand the evolution of the international player transfer system operating in professional football within the context of the EU.

The Research questions formulated to meet the above objectives are:

1. Who are the key entities involved in the governance of the player transfer system in professional football, from an EU context?
2. What role did EU governance hold within the player transfer system in professional football pre-Brexit?

3. What were the key changes or developments in professional football governance policies and structures pre-Brexit?

2.2. Literature Review

2.2.1. Institutional Context: The Involvement of the EU in sports governance

The European Union is made up of member states (nations) who have come together to be governed under one union as they adopt treaties. As of 2021, the European Union is made up of 27 member states, following the final exit of the United Kingdom on the 31st of December 2020. The European Union's primary legislation is the Treaty on the Functioning of the European Union (TFEU – The Lisbon Treaty) and it came into force on the 1st of December 2009, amending the preceding Treaty on European Union and the Treaty establishing the European Community (Jonson & Thorpe, 2019). With regards to sports, Article 6(e) of the Lisbon Treaty confers powers to assist and support the actions of member states in sports. Furthermore, another legislative remit of the EU is Article 165(1) which details the EU's governmental powers in contributions to sports policy (Jonson & Thorpe, 2019).

Institutions in the EU are constrained in developing clear sports legislation and as such, resort to implementing rather vague principles (Serby, 2016). Sport Governing Bodies consider their autonomous power as an innate characteristic which is constantly under threat. A pivotal example of an attempt to diminish their autonomy is presented in the Bosman case. This case saw the European Court of Justice rule that out-of-contract players were allowed to leave their football clubs without the club receiving a transfer fee and that having quotas on restricting the amount of EU nationals in the national league was illegal. The *ratio decedendi* in the case was that sport was like any other trade hence the aforementioned restrictions infringed on the direct effect of Article 39 (now Article 45 Treaty on the Functioning of the European Union), namely the freedom of movement for workers

and the freedom of association. This will be discussed in more detail in this article when discussing the EU's involvement in football.

With a perceived threat to their legal autonomy, the EU released Treaty Declarations and the Helsinki Report, both of which alluded to the 'specificity of sport' (Serby, 2016). According to Garcia and Weatherill (2012, p.18), "specificity is a claim to have the law moulded in application to meet sport's special concerns" while "autonomy is a claim to immunity". Gracia and Weatherill (2012) believe specificity is the next best avenue to autonomy and as such it was incorporated into the European Commission's White paper that was published in 2007. This in turn led to the development and implementation of "a very limited formal competence of the EU in sport" embodied in Article 165 of the Lisbon Treaty (Serby, 2016, p.40). As it pertains to Sport Governing Bodies, the article states that:

"The Union shall contribute to the promotion of European sporting issues, while taking account of its specific nature, its structures based on voluntary activity and its social and educational function. Union action shall be aimed at (...) developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen."(Art. 165 TFEU)

This 'sporting competence' only gives the EU government the right to 'coordinate and supplement' sporting actions made by individual member states (Jonson & Thorpe, 2019, P.39). According to Serby (2016), the article has weak legislative remit and is in fact, not a threat to the autonomy of the

SGBs, but rather a failed attempt by the EU to empower themselves to restrain the autonomy of the SGBs.

He also goes on to note that because sport stands as one of the weaker EU competences, the article cannot then advance the EU's position as the general regulator of sports. Weatherill (2012, p.302) argues that the article 'certainly does not allow the EU to usurp the proper place of sports organisations in selecting their preferred system of governance...'. From a legal standpoint, this is a view that is corroborated by Jonson and Thorpe (2019), who believe that the legislation is merely symbolic and was put in to retrospectively justify EU involvement in sports matters. Although these views convey a general circumspection of the EU's legislative powers in sports, Parrish (2012, p.716) offers a contrasting view as he believes the governance role of these sporting bodies are within the scope of the EU prerogatives because "while EU sports law recognises a territory of sporting self-regulation governed by the *lex sportiva*, it conditions this autonomy on the acceptance of the integration of general principles of law into the *lex sportiva*—such as proportionality and good governance." Similarly, Geeraert & Drieskens (2015, p.1453) believe that the EU have substantial legislative powers within sports through the CJEU and the European Commission who enforce EU laws on international sports organisations such as the IOC and FIFA as they "often fall within the realm of the EU's internal market competence, most directly in relation to freedom of movement and competition law". Although varying differing perspectives, the above views highlight the and continuous debate had by scholars on the nature and autonomy of sports bodies.

On the face of it, Article 165 does not seem to give a substantial legislative jurisdiction to European Commission, but rather gives the Commission a steering role in deriving policies on sports that are implemented by the SGBs (Serby, 2016; Geeraert & Driesken, 2015). Over the years there have been several councils and task forces set up with the goal of advancing good governance within sports. In

the EU, a group known as the EU Expert Group on Good Governance was established following the Council Resolution on an EU Work Plan for Sports 2011-2014 (European Council, 2011).

Following the Council resolution, the group devised the Principles for Good Governance in Sport which contained recommendations on mechanisms of governance which sporting organisations were implored to follow (European Council, 2011). Following that, the group continued the work on governance and developed a declaration which when signed, committed European sports organisations to pledge to implement good governance mechanisms. The IOC has also set up principles that are to be adopted by every member of the IOC (IOC, 2022). In 2015, the Association of Summer Olympic International Federations (ASOIF) also formed a Governance Taskforce which developed a set of governance principles and indicators (along with comprehensive good practice examples), specific to the nature and needs of sport organisations (ASOIF, 2016). In the same year, a group known as the Sport Integrity Global Alliance (SIGA) was assigned the task of forming a coalition with public and private sports organisations to tackle challenges of governance and integrity within the sporting field (ASOIF, 2016).

It can then be inferred that over the past decade, there has been a push in reforming and enhancing good governance within sports organisations. However, there is an argument that these measures in practice, have had a limited concrete impact. According to De Dycker (2019, p. 120), these measures “either constitute a useful working tool to assist sports organisations that already have the political will to introduce governance reforms, hence lacking a binding character; or they only focus on vague or limited aspects of good governance without enabling to verify and improve in concrete terms the management and organisation of sports organisations as a whole.”

2.2.2. EU Member States implementation of sports governance

De Dycker (2019) believes a distinction can be made between approaches EU Member States take to sports governance using four criteria: level of intervention, organisational structure/distribution of responsibilities, political responsibility for sports policy, and organisational structure of the Sports Movement. With regards to the level of intervention, some EU states (particularly northern states like the UK and Netherlands) tend to take a non-interventionist approach by establishing non-specific trends and financial aid for the Sports Movement. Conversely, southern states such as France and parts of Belgium (specifically Flanders), have taken a more interventionist approach to governance in sports. From a macro perspective, Serby (2016) notes that the European commission has a preference for collaborative formulation of sports policy as soft law, rather than instilling hard laws on governing bodies. One example of this in action is the joint working party instituted by the European Commission and selected members of UEFA, to develop policy in European football and the objective of improving governance standards, as well as promoting financial stability and transparency within sports (European Commission, 2014).

Some countries implore sports organisations to adopt voluntary codes which include rules regarding the respect and value of sporting activity as well as recommendations on the internal workings of sporting organisations. In some cases, the voluntary codes have a 'comply-or-explain' caveat attached to it. This is the case for Netherlands where in 2005, the umbrella organisation of sports federations and the national Olympic committee (NOCNSF), adopted a series of 13 Recommendations for good sports governance (*'De 13 aanbevelingen voor Goed Sportbestuur'*) (De Dycker, 2019). The principles in the document applies to all sports federations and associated members. The organisations are advised to comply with the recommendations but are free not to do so provided they are to justify the decision with a written report. Such voluntary principles may seem weak in impacting good governance but it can serve as a useful tool to raise awareness on the existing governance issues,

and serve as a useful roadmap for sports organisations to change their internal functioning (De Dycker, 2019, p. 119). It should also be noted that the Netherlands also developed a list of 11 Minimum Quality Requirements that sports federations must fulfil in order to gain public funding. One of these requirements is the filing of an annual report (comply or explain) on implementation of the 13 recommendations.

Conversely, in France, certain aspects of sports governance are legitimised and made obligatory by law through the incorporation of the Code du Sport into the legislation of the country. France adopted a new law in the Code du Sport in a move to preserve ethics in sports, using regulation to reassert the transparency needed in sports (Legifrance, 2023). According to the law, (*Art. L. 131-15-1 Code du Sport.*), delegated sports federations are obliged to adopt an accord on ethics and deontology that agrees with the covenant developed by the Comité National Olympique et Sportif Français (CNOSF). *Art. L. 131-15-1 Code du Sport* also requires sports organisations to incorporate an independent committee tasked with ensuring compliance with the covenant. Furthermore, sports organisations that the state deem to provide a public service are required by law to include the compulsory provision in their statutes. This is detailed in the Code du Sport (Annexe 1-5). However, the CNOSF recognized that the compulsory provisions only prescribe a few things that affect the composition and working of the organisations and, according to De Dycker (2019, p.119), “even though these type of measures promote fundamental values for sports, they often remain vague and abstract and are not focused on the internal institutional and legal safeguards that may ensure that these values are preserved and promoted in an efficient and concrete way.” Hence, although it may seem obligatory to adhere to these laws which appear to have a major role in the intervention of internal workings of the organisations, in reality, it plays a rather weak role in terms of overall contextual impact because the level of detail in the provisions is rather minuscule.

Albeit this being the case, France is continuously pushing towards improving the state of governance within sports and driving the agenda for concrete and impactful measures. This is evidenced in the launch of the major reform process in 2018 of governance in sports. After numerous consultations with key stakeholders, *Le Ministère des Sports* published a report in August 2018 (Lefevre & Bayeux, 2018, as cited in De Deycker, 2019). The objective of the report was moving sports governance from the currently State-centralized structure to developing a polycentric and participatory governance structure which will be mutually beneficial for the state and the stakeholders through a proper allocation of responsibilities.

The UK, Netherlands, and Belgium are traditionally considered to be non-interventionist especially when compared to the likes of France. This is because unlike France who include aspects of sports governance in their national legislation, the UK, Belgium, and Netherlands have no general law on the functioning of sport organisations as they are considered private bodies by the states (De Dycker 2019). However, in recent years, these states have developed a manière of fostering some aspects of good governance, by creating codes used within funded sports organisations that make granting of funds conditional on compliance with various requirements set out in the code. In the UK, the government started an initiative known as 'Sporting Future', in an effort to protect and further the ever-growing commercialisation of sports. Following this initiative, in 2016, the UK Sport and Sport England developed a code for sports governance. The Code is divided into five themes and sets of 58 mandatory requirements for good governance with a core focus on the preservation of public money invested in the sports. The code outlines a three-tiered approach which is dependent on the amount of subsidy being applied for.

Tier I has the minimum level of mandatory requirements and includes 7 rules which apply to all sports organisations applying for grants of less than £250,000 on a one-off basis. Tier II deals with

applications for grants of between £250,000 and £1,000,000 and will also have to meet requirements laid out in Tier I, as well as a number of mandatory requirements in Tier III. Lastly, Tier III applications are made for grants over a period of time for a continuing activity where the total amount exceeds £1,000,000.

Similar to the UK, a code of good governance was introduced in the Flanders region of (Belgium) in June 2016 which brought a new subsidising system into the organised sports sector (*Code Goed Bestuur in Vlaamse Sportfederaties, Sport Vlaanderen, 2016*) (De Dycker, 2019). The Code, containing 40 principles, is divided into three parts: Transparency, Democracy, and Internal Responsibility and Control. If a sports organisation in the Flanders region required grant funding, then they are encouraged to fulfil the requirements laid out in the code and fulfilment of the requirements is measured by 'soft' and 'hard' indicators. An organisation applying for a grant is encouraged to meet the first 29 requirements as they are 'hard' indicators and a relevant timeline for meeting these indicators will be agreed upon between the applicant sport organisation, Flemish Sport Administration, and *Sport Vlaanderen*. Following that, there are a series of 14 'soft' indicators which implore the applicant sport organisation to increase their level of compliance on certain areas of good governance. From the 14 'soft' indicators, the applicant organisation, in agreement with *Sport Vlaanderen*, will need to choose some of these indicators for implementation. The hard and soft indicators implemented by the sports organisations are used to measure progress and if deemed to have made adequate progress, the sport organisation will be rewarded with an increase in the yearly subsidy received.

This section has covered the institutional context of sports governance in setting out how various member state administer sports governance within the EU. The following section will now narrow

the focus down by examining the governing network that operates within football, with particular attention to the EU.

2.2.3. Governance Structure in Football.

The governance of football operates using a pyramid structure with Fédération Internationale de Football Association (FIFA) at the top of the pyramid. Having one controlling body at the top of the pyramid serves as a key governance mechanism to control football on a global scale. FIFA is a private entity which was established under Swiss Civil Code (1907, Art.60) as an association. Pursuant to Swiss Law, an association is assigned its own legal personality, and it is defined as a group of persons that pursues a non-economic purpose. There is generally no state approval or supervision needed for the formation of an association, no requirement for the association to be registered, and they are allowed to freely develop statutes and regulations that pertain to admission of members (Smith & Bush, 2022). With such powers awarded them by law, FIFA developed its bespoke statutes and assigned themselves the power to develop and enforce regulations that govern the game of football and its associated matters (FIFA Statutes, 2022, Art. 2).

In the governance pyramid, immediately below FIFA, sit the continental confederations who administer and implement governance policies to the football associations of the nations within their respective continents. These confederations are - the Asian Football Confederation (AFC) (Asia); the Confédération Africaine de Football (CAF) (Africa); the Confederation of North, Central American and Caribbean Association Football (CONCACAF); the Confederación Sudamericana de Fútbol (CONMEBOL); the Oceania Football Confederation (OFC); the Union of European Football Associations (UEFA).

In total, there are 211 national governing bodies that come under the above continental federations (FIFA, 2023a)⁵. FIFA and its confederations, administer control and governance mechanisms by requiring member national associations to adopt constitutions laid out in FIFA's standard statutes. These are bespoke statutes that have been created by FIFA and oblige its member associations to "comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time as well as the decisions of the Court of Arbitration for Sport (CAS)" (FIFA Statutes, 2022, Art. 14). The statutes also give FIFA the remit "to control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game." (FIFA Statutes, 2022, Art. 2)

Under each national association, there are numerous stakeholders, such as football leagues, football clubs, officials, players, managers, intermediaries, etc. These stakeholders would be directly subject to the power and regulatory authority of the governing bodies. There are other stakeholders who would not fall under such direct authority of the governing bodies but are key stakeholders in the football eco system. These include commercial partners, fans, supporter groups, national government agencies and media (Smith & Bush, 2022).

⁵ A full list of the Member Associations is published on the FIFA website: <https://www.fifa.com/about-fifa/associations>



Figure 2 - The Football Governing Pyramid

The above diagram highlights the unique pyramid model approach to the structure of governance in football. Its uniqueness is further emphasized by the fact that all national associations are deemed to be FIFA and confederation members. However, confederations are not considered to be FIFA members but rather ‘recognised’ by FIFA. As such, one can draw a conclusion that confederations are separate from FIFA as they manage the dealings and affairs within their region, organising their own tournaments, and develop governance mechanisms and regulations for the nations within their region (Smith & Bush, 2022). However, most confederations objectives and statutory documents are aligned with FIFA. The member associations themselves are also separate members of both FIFA and their respective confederation (“an overlapping dual pyramid structure”), with the confederation having its own autonomous governance responsibility that is separate from FIFA(Smith & Bush, 2022). The nature of the relationship between FIFA and the confederations will be discussed further in the subsequent section.

Confederations

There is an indirect legal relationship that exists between FIFA and the confederations below them. It can be described as indirect because the confederations are recognised by FIFA but are not considered to be members. Albeit indirect, FIFA still impose control on confederations by requiring implementation of certain FIFA statutes. Confederations are obliged by FIFA to 'comply with and enforce compliance with the statutes, regulations and decisions of FIFA' as well as have their regulations and constitutions approved by FIFA (FIFA Statutes, 2022, Art. 22).

Furthermore, in accordance with Article 23 of the FIFA statutes (2022), the confederations are also obliged to comply with good governance principles when developing their constitutions. They are also meant to be in agreement with their relevant stakeholders, respect the Laws of the Game, the principles of loyalty, integrity, sportsmanship and fair play, as well as the Statutes, regulations and decisions of FIFA and of the respective confederation. The confederations also have a duty to regulate matters of refereeing, doping, club licensing, imposing disciplinary measures, ethical misconduct, and matters of integrity of the game. Within the public arena, Confederations are required to be politically and religiously neutral, prohibiting discrimination. They must establish a clear separation of powers and independence from the judicial bodies and must have the competencies of their decision-making bodies clearly outlined in order to avoid conflicts of interest in decision making. FIFA statutes also legislate that confederations must recognize CAS and have their legislative bodies constituted on principles of democracy and gender equality. All the above form the foundations of a confederation and they are kept to account through yearly independent audits required by FIFA (FIFA Statutes, 2022, Art. 23).

Another relationship to consider is the relationship between a confederation and its member associations. This relationship is a contractual legal relationship where there is an annual membership fee paid by the associations to their confederations.

Member Associations

In the same manner member associations have a contractual relationship with their confederations, FIFA's' relationship with the Member Associations (MA) is one that is contractually prescribed. The associations pay an annual subscription fee which allows participation in competitions organised by FIFA, a vote in FIFA congress, and gives them the following rights:"

- a) to take part in the Congress;
- b) to draw up proposals for inclusion in the agenda of the Congress;
- c) to nominate candidates for the FIFA presidency and the Council;
- d) to participate in and cast their votes at all FIFA elections in accordance with the FIFA Governance Regulations;
- e) to take part in competitions organised by FIFA;
- f) to take part in FIFA's assistance and development programmes; and
- g) to exercise all other rights arising from these Statutes and other regulations" (FIFA Statutes, 2022, Art. 13.1)

In addition to these rights, FIFA also reserve the authority to preclude over the executive affairs of Member Associations. However, this can only happen in exceptional circumstances and the statute allows FIFA to alter the executive body of an MA and install an normalisation committee in its place

for a stipulated timeframe(FIFA Statutes, 2022, Art. 8.2). Furthermore, In accordance to Article 14 of the FIFA statutes, they also owe the following obligations to FIFA:

- a) “to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time as well as the decisions of the Court of Arbitration for Sport (CAS) passed on appeal on the basis of Art. 56 par. 1 of the FIFA Statutes;
- b) to take part in competitions organised by FIFA;
- c) to pay their membership subscriptions;
- d) to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies;
- e) to convene its supreme and legislative body at regular intervals, at least every two years;
- f) to ratify statutes that are in accordance with the requirements of the FIFA Standard Statutes;
- g) to create a referees’ committee that is directly subordinate to the member association;
- h) to respect the Laws of the Game;
- i) to manage their affairs independently and ensure that their own affairs are not influenced by any third parties in accordance with Art. 19 of these Statutes;
- j) to comply fully with all other duties arising from these Statutes and other regulations”(FIFA Statutes, 2022, Art. 14)

Affiliates

The bottom tier of the pyramid above are stakeholders who have connections to the national member associations and have an indirect legal relationship with FIFA and their respective confederations. These include representative groups such as player unions, Commercial partners, national leagues and their organisers, media, pressure groups, national governments and supporters. This relationship is formalised in the FIFA statutes (2022, Art. 8.3) which states that “Every person and organisation involved in the game of football is obliged to observe the Statutes and regulations of FIFA as well as the principles of fair play.” The language used also gives FIFA a wide remit on how to apply its power to the varying sizes and structures of these affiliate groups. Confederations also hold similar power over affiliates of confederations and MAs. Affiliates who are not considered members of the association to which they are affiliated with would enter participation agreements when entering into varying competitions thus obliged to recognise the jurisdiction of FIFA and the confederation (Smith & Bush, 2022).

The Governance controls implemented by FIFA

The main mechanism is the pyramidal structure which FIFA has created that sees FIFA at the top as the supreme controlling body. This pyramidal structure means that MAs and confederations cede autonomous decision-making powers and control to FIFA. Smith and Bush (2022) refer to their powers as ‘structural subordination’ as FIFA states in its statutes that “Clubs, leagues or any other groups affiliated to a member association shall be subordinate to and recognised by that member association. The member association’s statutes shall define the scope of authority and the rights and duties of these groups. The statutes and regulations of these groups shall be approved by the member association.” (FIFA Statutes, 2022, Art. 20)

Further control is implemented by enforcing sanction to MAs and confederations when they fail to comply with FIFA's principles and regulations. In line with FIFA being the ultimate controlling body in football, FIFA and the confederations only allow for one football association to represent a country/territory (FIFA Statutes, 2022, Art. 11.1). This ensures stability and clarity of control within the region and allows for the effective development of regulations that can be enforced by a sole MA.

It is also mandatory for MAs to have democratically elected executive bodies. If a democratic election or appointment process is not followed, the executive body will see all their decisions not recognised on the international stage (FIFA Statutes, 2022, Art. 19.2). FIFA also require MAs to incorporate a number of FIFA's principles, regulations and clauses (e.g. FIFA Regulations on the Status and Transfer of Players, 2022, Art. 1) into their own national regulatory framework. According to Smith and Bush (2022, p.35), this is done to enforce some 'quasi-uniformity' in the international and national regulations.

FIFA statutes (2022, Art. 20) also ensure the prohibition of third party control whereby a legal entity or person is able to control more than one club or group as it will have an adverse impact on the integrity of a competition. Regarding this implementation of this statute on the national level, we will see further on in this chapter, its incorporation by the English FA in their regulations. Furthermore, within the same article, there is also the prohibition of third-party influence on the decisions made by the MAs. Although there is no clear definition in their statutes, this is usually referred to as 'government interference'.

It is a rather topical issue and FIFA seem to want their MAs to operate outside the public sector that is the national governments (including national courts)(Foster, 2012; Pouliopoulos & Georgiadis, 2022; Smith & Bush, 2022). Once the democratic election process is influenced by the government or an instances of attempts to administer matters that come under the MA's remit, there is a high chance that FIFA will suspend the MA involved (Smith & Bush, 2022).

FIFA prohibition on the involvement of national state courts in its affairs is as a result of choosing arbitration as the primary legal avenue to resolve disputes within sports.(FIFA Statutes, 2022, Art. 58). This is because of the 'specificity of sports' whereby it is different from the traditional commercial enterprise which national courts are accustomed to(De Dycker, 2019; Garcia, 2008; Meredith & García, 2023). Arbitration is viewed by many as a fitting alternative as matters are adjudicated on by experts in the sports, proceeding tend to be inexpensive and quick. The structure of FIFA, its confederations and member associations, mean that its operational territories are span across the globe, exceeding the limits of state courts. Private arbitration will ensure some form of uniformity in decisions made and laws enforced, regardless of the countries involved (Smith & Bush, 2022). The next chapter will go further into the arbitration framework that is used in football.

Regulatory Powers – What areas do FIFA or the confederations have authority?

FIFA being top of the pyramid is responsible for numerous regulatory matters. However, there are areas where the confederations have regulatory authority and in some instances, areas where both FIFA and the confederations both have regulatory authority.

It is FIFA's exclusive prerogative to regulate matters which are global in nature. This is as a result of being top of the pyramid and the general overseer (Smith & Bush, 2022). Some of the areas which FIFA are solely responsible for are: International Match calendar; Status and transfer of players; National eligibility; Football agents; and the laws of the game. On the other hand, Confederations are responsible for regulating coaching education and the club licencing system. As a result of the dual pyramid structure that FIFA and the confederation operate with, there are certain overlapping matters that fall under the remit of both FIFA and the confederations. These include setting up competitions, the continuous development of football, elections of officials, anti-doping, ethical standards and disciplinary.

International Match Calendar

The international match calendar is governed firstly in the FIFA Statutes (2022, Art. 69). This article empowers the FIFA council to compile an international match calendar which is binding and must be complied with by the confederation's, members associations and leagues. The dates are set after direct negotiations and consultations with the confederation's and other bodies such as the World Leagues forum and FIFAPRO (Smith & Bush, 2022). During those dates set, clubs are required to allow their players to participate in those matches. However, regarding matches that are not

organised by FIFA and fall outside of the dates set by the council, it is not mandatory for clubs to release the player to the national team.⁶

The organisation of competitions each year is done by both FIFA and the confederations. This involves raising funds for the competitions primarily through the sales of broadcasting rights. The confederations will organise their own continental and interclub competitions in line with the international match calendar (Smith & Bush, 2022). The confederations must ensure that their competitions implement the laws of the game (LOTG) and the FIFA regulations that pertain to sporting nationality, transfer of players, eligibility regulations.

Development of the game

In FIFA statutes (2022, Art. 2), it stipulates that one of its main objectives is to “improve the game of football constantly and promote it globally in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes.” In an effort to meet this objective, FIFA has established a number of programmes in MAs and fund them through the redistribution of monies earned from its competitions. In order to avoid misappropriation of fund, the MA programmes have to be established under strict guidelines. These include publishing financial statements, separate bank accounts, quarterly reports, a require number of technical persons appointed, and an annual audit to be performed (Smith & Bush, 2022). Similar robust regulations and frameworks are expected to be implemented by confederations as well.

⁶There have been arbitration decisions the reiterate this. For example, CAS 2008/A/1622 FC Schalke 04 v FIFA and CAS 2008/A/1623 SV Werder Bremen v FIFA ; CAS 2008/A/1624 FC Barcelona v FIFA.

Governing of Agents:

In 2015, FIFA introduced new legislation that broadened the scope of an agent into a categorisation of intermediaries as well as the deregulation of agents. This legislation is the FIFA Regulations on Working with Intermediaries (RWI). It defines what is considered an intermediary as well as assigning powers of regulating intermediaries to the Member associations while ensuring there is a minimum standard criteria which is met (Smith & Bush, 2022). The RWI (2015, p.4) explicitly defines an intermediary as any 'natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement.'

Prior to the RWI being implemented, a licencing and regulation system detailed in the FIFA Player's Agents Regulations (2008 Edition) governed the operations of football agents and it was mandatory for all MA's to implement these regulations in their respective countries. FIFA took the decision to reform this system to what is the RWI in 2015 as it became increasingly difficult to implement and police these standards effectively and as such, numerous international player transfers were conducted with unlicensed agents (Smith & Bush, 2022). The RWI laid out standards to be met regarding the registration of intermediaries, representation contracts, conflict of interest matters of intermediary remunerations and transparency of payments.

The subject of governing Intermediaries has been rather topical over the years amongst a range of stakeholders in professional football and in October 2019, the FIFA Council approved the below principles to implement further regulations on intermediaries. A new mandatory licencing system involving education and exams in professional development; the use of FIFA Clearing House for the payment of intermediary fees; a dispute resolution system addressing concerns of players, agents

and clubs; applying a cap of amount of service fees paid to agents ; and limiting multiple representation (representing club and player) to avoid conflicts of interest arising (FIFA, 2023b).

In the recent FIFA Football Law Annual Review Conference which took place on the 10th -11th March 2022, more details of the new incoming regulations were announce. There are now 5 mandatory requirements in order to be made a football agent which include being a natural person, meeting the eligibility criteria, taking and examination and the payment of an annual fees. (FIFA, 2023b)

Once granted a licence, the intermediary must continue their education in order to maintain the licence. Under the previous regulations, Lawyers and family member of footballers were exempt from gaining agency licence but will now be required to obtain one. In a bid to improve the integrity of the football transfer system and after consultations with key stakeholders, the new FIFA Football Agent Regulations (FFAR) came into force on 9th January 2023(FIFA, 2023b). The FFAR coming into force replaces the RWI. The key objective of the FFAR is to introduce institutional standards for football agents in a bid to achieve financial stability and transparency within the transfer system. FIFA have included a transition period before there is a mandatory obligation to only use licensed football agents, as well as the introduction of the cap on the agent fees. This transition period will end of the 1st October 2023.

UEFA

The Union of European Football Associations (UEFA) is the governing body in charge of football at the confederation level i.e. the European governing body. It is one of six confederations below FIFA in the governance pyramid and is responsible for 55 national associations. Its organisational structure is rather akin to that of FIFA. This structure consists of is made up of four 'organs' of operation; 'Congress, Executive Committee, the President and the Organs for Administration of Justice' (UEFA Statutes, 2021).

UEFA's powers and governing remit are consolidated in the UEFA statutes with the most recent version adopted on 20th April 2021. The UEFA Statutes (2021, Article 2) set out the below primary objectives of UEFA. These include dealing with all questions relating to European football; promote football in Europe without any discrimination; monitoring and regulating the development of every type of football in Europe. UEFA is also responsible for organising international football competitions at European level for every type of football while promoting good governance and ethics, ensuring the prevalence of that sporting over commercial interests. In its role as a confederation, it facilitates the unity amongst member associations while safeguarding their interests.

Membership to the UEFA confederation is open to national football associations that are located within the continent of Europe (UEFA Statutes, 2021, Article 5.1). Before Brexit, the countries in the United Kingdom were recognised as members of the UEFA as they were part of the European Union. However, upon leaving the EU, their status as member of UEFA remained unchanged. This is because there is an exception in UEFA statutes which allow national football associations who are not part of the continent to be admitted membership, provided they are not a member of another confederation (UEFA Statutes, 2021, Article 5.2).

It should be noted that UEFA is unlike any of the other confederations as it is the only confederation that has a specific provision in its statutes that allows it to enter into formal contractual relationship with FIFA (UEFA Statutes, 2021, Article 3) although no contractual relationship has ever been established till date. However, Garcia (2008, p.112) notes that “although FIFA and UEFA are part of the same multilevel system of governance, one should not assume that they will always agree on every issue”.

The UEFA Congress is the controlling body of UEFA and it holds a meeting yearly to discuss the matters concerning the confederation. Their powers include: elections of a variety of member of UEFA (president, executives, EU members of the FIFA council), amending the statutes, reviewing member association applications to join UEFA as well as the power to suspend and exclude MAs (UEFA Statutes, 2021, Article 13). The executive committee is UEFA’s office executive body and comprises of the UEFA president and 16 elected members. The majority of the members are elected by the Congress while two are elected by European club association and one by the European leagues (Smith & Bush, 2022). The role of the executive committee is to adopt regulations and preside on all matters that do not fall within the jurisdiction of the Congress or any other UEFA organ and can be viewed as the management sector of UEFA (UEFA Statutes, 2021, Article 21-28).

The administration of affairs is handled by the General Secretary who is appointed by the Congress. They are responsible for the ‘organisation, management and direction of the administration’ and duties of the general secretary include; representing UEFA when delegated by the UEFA President; appointments and dismissals of directors and administrative staff; submitting an annual business plan; compiling reports and presenting them to Congress; reporting on accounting estimates for income and expenditure; and initiating expenses within the budget framework set (UEFA Statutes, 2021, Article 30).

There is also the UEFA Professional Football Strategy Council (PFSC) that is set up as the organ responsible for working on solutions to the major concerns and issues affecting the game. As such, it is made up of the major stakeholders have some involvement in the European game.

The council is made up of four UEFA vice-presidents of the UEFA Executive Committee, representatives of the European leagues, representatives of the football clubs involved in UEFA competitions, representatives from the players' union that is recognised by UEFA in Europe (FIFPro). Its powers are designated in Article 35 of the UEFA statutes (UEFA Statutes, 2021).

The Football Association

The national governing body responsible for English football is the Football Association (The FA).

Operating with its headquarters at Wembley Stadium, The FA oversees the governance of football and its stakeholders ranging from professional football all the way down to grassroots level, as well as all its affiliated groups. Like FIFA and UEFA, it is a not-for-profit organisation, with millions of pounds being invested back into football at all levels. The FA is not just concerned with football players, but also governing responsibilities over coaches, volunteers and referees. The FA is also responsible for the running of the men's national football team, the women's national football team and all the youth level teams. All the above highlight the wide operational and governing remit that the FA have (Smith & Bush, 2022). This remit is codified in the articles of association, rules, and regulations, consolidated and annually published in the FA Handbook.

The FA Council is concerned with the regulation of football matters and are key to developing policies within the policy stream, as well as working with bodies in the political stream (e.g. government organs such as the Home Office and the DCMS). Their powers and duties are defined in the FA's Articles of Association (2022, Art.79) and include delegation powers to a range of policy entrepreneurs in the form of established committees and workgroups. These include concerns in football matches, referees, competitions and team sanctions, and football disciplinary matters. On the council sits a variety of representatives from stakeholder groups such as the County FA, the Premier League, EFL, National Leagues, Managers, players and supporter groups (The Football Association, 2022, Art. 75). Within the council there are two different bodies that carry out the duties of the council. These bodies are the Football Regulatory Authority (FRA) and The FA Judicial Panel.

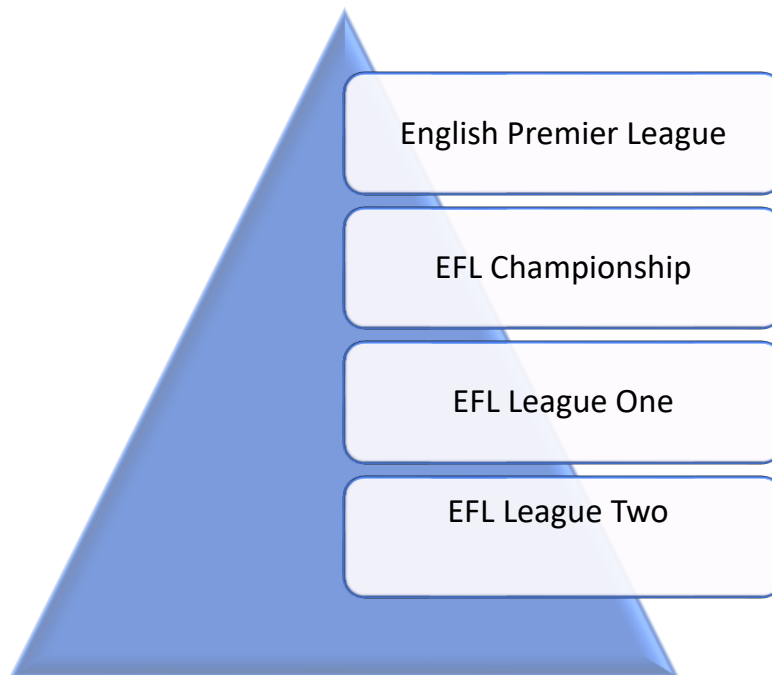
The Council delegates its powers to the FRA to be the rule making organ of the FA concerned with regulatory and disciplinary matters, monitoring compliance with statutes regulations and Laws of the game. (The Football Association, 2022, p.38). They also have the power to propose amendments to the rules and regulations of the FA, ensuring that the FA's regulatory remit is legitimised through development of polices and regulations in line with national laws. The council is made up of four representatives of the national game, four from the professional game, and four other independent representatives (Smith & Bush, 2022).

The FA Judicial Panel is made up of individuals who when needed, are called upon to form the FA Regulatory Commissions and appeals boards. These individuals are highly qualified in the maters of football and its associated activities, and they include members of the FA Council, legal practitioners and professionals with the relevant expertise. The utilization of experienced legal practitioners further legitimizes the decisions that are made by the Judicial Panel. Furthermore, the Regulatory

Commissions are established to ensure the imposition of sanctions and penalties on deserving and the appeals boards are in place to consider the cases and appeals in certain circumstances (Smith & Bush, 2022).

The FA Board is concerned with the financial operations and strategy of the FA (The Football Association, 2022, Art. 55). In a similar manner to the council, it has the power to delegate responsibilities to established committees as well as create new committees as needs necessitate (The Football Association, 2022, Art. 56). It is made up of 12 directors which include; The FA Chair person, the Chief Executive Officer and the FA's Audit Committee Chair. The committee is also made up of representatives from the different levels of the pyramid. This includes three independent non-executive directors (at a maximum), three non-executive directors from the 'Professional Game' (at a maximum and appointed by the Premier League and the English Football League). The amateur game is also represented by a Maximum of three nonexecutive directors from the 'National Game' (Smith & Bush, 2022; The Football Association, 2022, Art. 50-53). The Articles of Association of the MA can be amended by the board or the shareholders. The shareholders must reach a binding decision of majority votes (of not less than 75%) (The Football Association, 2022, Art. 86-87).

The English Football Leagues



The English League system (as highlighted in the diagram above) operates using a pyramidal framework whereby football clubs have the ability to move between the leagues through promotion or relegation. Within the men's professional league system, there are four leagues: The Premier League which sits at the top of the Pyramid, followed by the EFL Championship, the EFL League One in the 3rd tier, with EFL League Two sitting at the bottom of the pyramid (Smith & Bush, 2022).

The Premier League is organised by the Football Association Premier League limited and it is the pinnacle league in English professional Football (Smith & Bush, 2022). The Premier League is organised by the Football Association Premier League limited (FAPL) and it is the pinnacle league in English professional Football. It is the role of the FAPL to adopt and publish rules and regulations that

concern the management of the league and this is done annually through publishing the Premier League Handbook (Premier League, 2022). The handbook contains a number of governance, disciplinary, commercial and operational matters, including procedural instructions, that govern the football clubs in the league and affiliated stakeholders.

The English Football League (EFL) is made up of three leagues: EFL Championship, EFL League One, and EFL League Two. All three leagues are organised by the Football League limited. IN a similar manner to the premier league, the Football League limited also annually publishes a handbook which governs management of the league on a wide range of matters, be it disciplinary, commercial, regulatory, or resolution procedures(Smith & Bush, 2022). The National League is beyond the scope of this article as it is not part of the professional game.

[The FIFA Regulations on the Status and Transfer of Players \(RSTP\)](#)

The FIFA RSTP (2022b, Article 1) is the global governing sporting rules and legislation concerned with the status and transfer of players between football clubs that operate in the different member associations. It is also extended to the transfer and registration of minors under the age of 18 in exceptional circumstances.(FIFA, 2022b, Article 19). These circumstances include:

- When a player's parents move to the country of the new club for reasons unconnected to football
- Transfer of a player agreed between 16-18 years old within the EU territory or the European Economic Area (with safeguarding conditions met).
- Transfer of players aged between 16-18 years old within the same country (with safeguarding conditions met)

- Transferring to a club in a different association provided that the minor lives no more than 50km from the National border and the club he is to be registered with is also within 50km of the National border.
- When a minor has lived in a country for over 5 years having initially moved for reasons unconnected to football.
- The minor had fled their country of origin due to Humanitarian reasons.
- The minor is a student who is on a temporary academic exchange.

Recently, the rules have been amended to also include the transfer of coaches, as well as include a minimum standards and protections for the female professional football, but that is beyond the scope of this thesis. According to Smith & Bush (2022, p.37), the FIFA RSTP “effectively acts as the international ‘labour law’ in football, providing basic minimum standards and protections for players who participate in professional football outside of their country of origin”. The transfer of players between their member association (MA) is governed by each member association who develop their own rules and implement them after approval from FIFA. It should be noted, that although the member association rules are different, there are certain provision in the RSTP that must be incorporated into the member association rules.(FIFA, 2022b, Article 3a).

The governing of international player transfers is done through FIFA’s Transfer Matching System (TMS). It is mandatory for a player to be registered with a MA in order for them to participate in any form of professional or amateur football. The registration period opens up in what is known as the transfer window and this window opens twice a year (Smith and Bush, 2022). This registration period is only applicable to players already in contract with a club. On the other hand, a player whose contract is expired before the end of the registration period or transfer window can be registered outside of the transfer window. When a player enters into a contract with a new club in a different

MA, the new club and the MA it operates in, along with the former club and their MA, are required to disclose documents that will allow an international transfer certificate to be transferred from the old MA to the new MA. It is only once the International Transfer Certificate (ITC) has been transferred to the new MA that a player is considered eligible to play for the new club. When there are matters of dispute arising between the clubs on players eligibility, contract status, or registration on TMS, such matters are adjudicated on by the Players' Status Chamber of the FIFA Football Tribunal (FIFA, 2022b).

It should also be noted that FIFA no longer allow third party ownership of the economic rights of players (FIFA, 2022b, Article 18ter). Third party ownership in this instance is when there is an entitlement (in full or part) to compensation when a player transfers from one club to another. Two famous examples of this are the transfers of Carlos Tevez and Javier Mascherano in 2006 where it emerged that the registration rights of both these players were owned by companies (MSI and Just Sports) which were in turn, represented by their agent (De Cosemo, 2021).

Employment contracts are also governed by the RSTP. It protects both the player and the employer stating that contract may only be terminate if the term has expired, mutual consent, or there is 'just cause' by either party to terminate the contract. There is also the avenue for a player to terminate their contract if there is a 'sporting just cause'. This would be a situation in a situation where their appearances amount to less than 10% of the available official club matches in the season (Smith & Bush, 2022).

2.3. Data and Methodology

This chapter is a longitudinal exploratory case study into the multi-level governance structure that exists in professional football. It also explores the relationships/interactions of the governing bodies within professional football and the EU governmental bodies, with particular attention to the development of the transfer system. Documentary analysis and archival research were chosen as the research method for this chapter. The utilisation of a systematic procedure enabled the in-depth evaluation of key primary and secondary documents within the governance of football. It allowed the generation of knowledge and insight into the multi-level interactions of these governing entities. According to Bowen (2009), documentary analysis allows the researcher to gain an understanding and enhance one's empirical knowledge of the data collected in an unobtrusive and nonreactive manner. The use of archival records was also implemented in this study as it facilitated the collection of data through different points in time; a necessity when conducting a longitudinal study (Welch 2000; Quinn, 2013)

2.3.1. Documentary Analysis

Documentary analysis as a research method is also highly compatible with qualitative studies due to its prowess of producing rich descriptions of events, organisations, and phenomenon (Bowen 2009). This research method allows data to be retrieved from both technical and non-technical literature such reports, correspondence within organisations, and regulatory documents. It allows the researcher to develop an understanding of the context of the phenomenon being investigated and the context participants operate in (Bowen 2009, Yin 2018). Documentary analysis is often combined in triangulation with other qualitative research methods such as interviews, surveys, or participant observation. This is done to draw information from multiple sources to enhance the credibility and objectivity of the research through the convergence of different data sources (Denzin, 2017; Fusch et al., 2018) However, documentary analysis can be implemented as the only necessary method for studies that are designed in an interpretive paradigm and the only viable method with regards to historical research (Bowen, 2009). This is the case with the case study research in this chapter, as its aim is to establish the role of the EU within football governance and the transfer system before Brexit.

2.3.2. Archival Records

A research study should draw on multiple sources of evidence in an effort to facilitate convergence of data ensure its credibility, as well as reduce potential biases that may arise (Bowen, 2009; Yin, 2018). In order to facilitate this, the use of archival sources and contemporary sources have been implemented in this study. Welch (2000) advocates for the use of archival research in longitudinal studies on business networks. Welch (2000, p.198) defines archival sources as “documents made or received and accumulated by a person or organization in the course of the conduct of affairs and preserved because of their continuing value.” It is most commonly used when dealing with the

business and economic historical histories but does have its usefulness in contemporary studies (Quinn, 2013). The choice of undertaking research using archival sources is typically made when 'following an organisational process or aspect over time' or when 'examining the effects of (mainly external) events on organizations over time' (Quinn, 2013, p. 13). Archival sources are also valuable in locating regulations and their interactions with other practises over a period of time (Quinn, 2013). This is apt for this chapter, as it maps out changes within the football transfer system and its regulations through the interactions with the EU government which have occurred over time, since the inception of the international transfer system.

Welch (2000, p.198) posits that it is also useful in conducting contemporary studies as it adds empirical depth by enabling verification with existing data derived from other sources; facilitates the researcher in 'generating developmental explanations' (i.e. 'explaining process of change and evolution'); and it can be used to develop foundations of new theories, as well as challenge already existing theories. Using archival research, this study will generate longitudinal data that will develop explanations of the governmental networks within the football transfer system and as such, facilitate the exploration of the role of the EU governmental bodies in developing the system.

The data from the sources used were verified for trustworthiness by comparison with other data sources, as well as ensuring the use of the selected source documents by a multitude of researchers in the area (Welch 2000). In such longitudinal studies, archival sources such as the documentation of organisations tend to be very detailed, yielding thick description, and do not have to rely on human memory, as opposed to data collected from interviews (Quin, 2013). This is not to say that these sources are objective, but rather an assessment that they provide insights from the perspective of those who produced them, as well providing 'detailed knowledge of how and how often network

actors were in contact' (Welch 2000, p.200). Another advantage of archival sources is its unobtrusive and non-reactive nature, allowing for an iterative process in analysis that allow the flexible reassessment of the sources for the duration of the study.

Using documentary and archival sources for this exploratory case study, facilitated a rich evaluation of the interactions of the football governance bodies and the EU governmental bodies in the development of the international transfer system. The analysis of the selected sourced was then conducted and interpreted through thematic analysis.

2.3.3. Document selection process

The documents selected are primary sources of publicly available official documents of key stakeholders within professional football, as well as official documents from the EU intergovernmental bodies. These rich sources of information were analysed concurrently along with secondary sources of existing academic research. The selection of the documents was assessed based on their authenticity, credibility, representativeness, and meaning (Morgan, 2022). Furthermore, time constraint, accessibility, and available resources were also factors implemented in the selection of documents reviewed. The authenticity of the documents were checked by ensuring they were from the original source of the writer. For example, governing body documents retrieved directly from the websites and repositories of the governing bodies) in order to ensure that they were primary sources. Any secondary sources used were thoroughly verified by retrieving them from official repositories, journals, newspaper websites, and confirming the primary sources to which they allude to ensure the content was not misinterpreted or omitted.

In order to further verify authenticity of the documents used, I confirmed the authorship, date and location of the publications before including them as data sources for the study (Morgan, 2022). I also assessed their credibility by ensuring they were free from error or distortion, as well as assessing the reliability of the authors. I was cautious with the use of the documents produced by the governing bodies and like commercial organisations as there is a tendency in such documents to include distorted perspectives, deliberately omitting errors and wrongdoings in order to paint a positive impression (Morgan, 2022). However, one of the main aims of the study is to understand why and how the interactions of the various EU intergovernmental bodies interact with the private football governing bodies and the analysis of documents produced by both sides generated a less biased understanding of the context.

Representativeness was also a factor considered in selecting the documents and according to Morgan (2022, p.72), “if a document contains idiosyncratic content rather than material that reflects the content of a collection of other documents about the same topic, it lacks representativeness”. As such, this criterion, along with my research objectives, allowed me to assess the documents for their representativeness. However, an issue of note with the selected document of the governing bodies and organisations is that they are rather difficult to assess for representativeness as the executive bodies will only share documents with a bias of allowing access to only specific documents (Payne & Payne, 2004). This was however, mitigated by retrieving EU intergovernmental documents; document produced by the football governing bodies, as well as commentary and scholarly articles to ensure a number of perspectives are assessed.

Assessing documents against the criterion of meaning involves establishing the significance of its content, its clarity and understandability (Morgan, 2022). Some of the documents were chosen for their literal meanings, while others were selected for their interpretive prowess on the subject area.

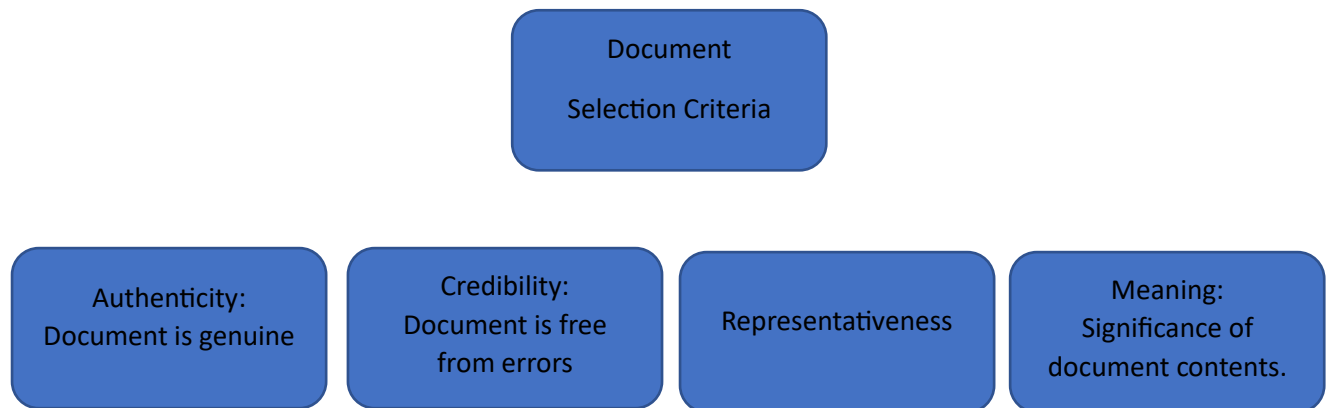


Figure 3 - Document selection criteria

The selected documents include:

Primary Sources	Secondary sources
EU case law European Statues EU Government Reports FIFA Regulatory documents UEFA Regulatory documents FA Regulatory documents FA Handbook 2022- 2023 Press releases of football organisations	Scholarly journals and books Doctoral dissertations Newspaper Articles

Table 2 - Primary and Secondary Sources

Upon establishing the above, the primary sources were then categories into three tiers:

Strategic level documents	TFEU ECJ Judgements European Commission Reports European Council Reports Treaty Declarations
Organisational Level policy documents (Global Level)	FIFA Regulatory documents FIFA Policy documents
Organisational Level policy documents (European Level)	UEFA Regulatory documents UEFA Policy documents

Table 3 - Categories of Primary Sources

2.3.4. Thematic analysis

Thematic analysis involves the recognition of evolving themes through an in-depth review of the data sources selected. According to Bowen (2009, p.32), the process involves taking “a closer look at the selected data and performs coding and category construction, based on the data’s characteristics, to uncover themes pertinent to a phenomenon.” The chosen type of thematic analysis used for this study is Reflexive Thematic Analysis (RTA). The seminal work of Braun and Clarke (2012, 2022) sets out an interpretive approach to qualitative data analysis in a six-step process. They define RTA “as a method for developing, analysing, and interpreting patterns across a qualitative data sets which involve systematic process is of data coding to develop themes” (Braun & Clarke, 2022,p.4)

At its core, RTA has its values embedded in the qualitative paradigm as its application necessitates an inherently subjective worldview. This is the belief which states that meaning experience can be explicated as an interplay of subjective and intersubjective construction. However, it should be noted that's RTA does not have an implied theoretical stance and can be used when conducting inductive or deductive analysis. The qualitative paradigm research bias is not considered to be a key proponent of good research and one way to effectively use a researcher’s subjectivity is by being reflexive(Morgan, 2022).

Inductive analysis is a data driven approach whereby the researcher develops data codes based on cover data that is free from preconceived theoretical notions and frameworks. Deductive analysis is the contrast of this as it is theory driven and the codes are developed based on a previously

established conceptual and theoretical framework. The flexible nature of RTA makes it possible for both methods of analysis to be used encoding as it is not strictly prescriptive (Byrne, 2022).

According to Byrne (2022), one could argue for the impossibility of conducting a solely deductive or solely inductive analysis. The reason being that if an exclusive deductive analysis is attempted, the researcher will still need to expand on the relationship between different pieces of information within the data set to identify commonalities and recurring patterns in light of the pre-established theory or framework. A similar situation is apparent when conducting exclusively deductive analysis; the researcher will need a criterion that allows the identification of the relevant pieces of information for the coding process to adequately answer the research questions posed. Braun and Clarke (2012) note that both approaches will be used but one will predominantly operate over the other, but it is the predominant analysis approach used in the analysis that indicates the researcher's overall position.

The coding method employed for this chapter is both latent and semantic coding. Semantic coding elicits codes based on the surface meaning of the data, while latent coding attempts to go beyond that by further identifying a deeper underlying meaning that goes beyond mere description (Byrne, 2022). In some instances, the use of latent coding involves the researcher to take an active role and is much more interpretive than semantic coding. Utilizing both approaches allowed for a rich and in-depth interpretation of the data through my own scholarly knowledge and assumptions (Morgan, 2022)

2.4. Discussion and Analysis

2.4.1. The Involvement of the EU in the Governance of Football Transfers

The previous section has established the roles and structures involved in the governing of professional football. This section analyses how the EU has been able to govern within these structures and how professional football became part of the EU agenda, with particular focus on the regulating of the football player transfer market. The intention of this section is to contribute to understanding the role of the EU within football and the policies developed.

The employment of footballers is regulated largely through the transfer system and within the transfer system, there are norms on nationality quotas for the number of international players in a club (Garcia, 2008). In order for football clubs to participate in the club competitions, they would be required to register players with their National FA's to be eligible to play in the competition and would need to adhere to the nationality quotas in place (De Marco KC, 2022). A similar registration process with UEFA is required for clubs engaged in the European competitions.

2.4.2. The Football Transfer System

Player transfers are a vital element of the football industry as it allows football clubs to change components of their squads through buying and selling players, generate substantial revenue, and display ambition to their fans (Geey, 2020, p.11).

In order to play for a professional football club, you have to be signed (hired) by the football club. The club and its scouting team would decide on a player to sign and once signed, the club must register the player with the governing body or the League organiser (e.g. The Premier League). This registration grants the player to partake in the competition while representing that club. If a situation were to arise whereby the player no longer represents the clubs he is registered with, such as the player wanting to leave to another club or the club no longer requiring the player's services, then the player will need to transfer to a new club.

When a player transfers from one club to the other, the registration of the player with the governing body, granting the player the licence to participate in the competition, will have to be transferred to the new club as well. The set of rules which facilitate and regulate the movement of players from one club to another, including the registration rights to participate within competitions, is what one would describe as the transfer system (Garcia, 2008). Within the system, buying and selling clubs negotiate with each other for the player's services by agreeing what type of transfer fee is to be paid. Furthermore, an agreement also has to be reached between the buying clubs and the player being transferred (Geey, 2020). A transfer fee can be defined as the amount payable or the acquisition cost for a player's registration rights (i.e. the exclusive playing rights) which has been acquired from another team (Gerrard, 2014). The next section explores the genesis and development of the international transfer system as we know it today.

The Birth of the Transfer System

The inception of the transfer system can be traced back to the 1880s when football in England turned professional (Garcia, 2008, p.88). It was then that the Football League, working in the policy stream, put a registration system in place in order to prevent players from being able to switch clubs during the season. In 1885, the FA policy required the English Football League to annually register players on one-year contracts (Tomlinson, 2010). This system also seemed rather disproportionately more in favour of the clubs and limiting the power of the player. This was because the clubs were allowed to retain a player's services after the player's contract had expired when there was no compensation agreement reached for the transfer (Garcia, 2008). The 'retain and transfer system' as it was popularly known as, was also a contentious part of the transfer system and was adopted by the English Football League between 1891 to 1963 (Tomlinson, 2010). This system required the permissions of the current club of a player before a transfer was allowed to take place at the end of the season. Although it did seem that the system was a legitimate governance mechanism to govern the player market, the system faced challenges due to a perceived inequitable framework. The retain and transfer system with its restrictive nature and a clear power imbalance between players and their employing clubs, highlights a historical problem stream as it infringed on player's rights and their freedom of movement.

In the political stream, challenges to this system were brought forward by players and player unions in various countries in the EU. The unions, formed to protect the players' interests, began organising protests. The first country that saw a challenge to this system was the United Kingdom where the English Professional Footballer's Association (PFA) were fighting to amend the employment rights of footballers in the early 1950's (Garcia, 2008). These protests occurring in the political stream not only highlight the unions' attempt to align players' rights with other industries in the country, but also highlight a legitimacy challenge due to a shift in societal expectation regarding player employment.

rights. This led to a legal challenge in 1963 that was brought by George Eastham while he was at Newcastle. With the support of the PFA, George Eastham went to court against his club, the Football League and the FA, citing the system to be disproportionate as his employer was preventing a move to his choice of new club, Arsenal, at the end of his contract, as well as the regulations on maximum wages (Boyes, 2013).

The ruling can be placed within the policy stream as it marks a shift in the policy landscape and the need for reform of the system. This is because although the system was not illegal, the High Court ruled that the system was an 'unreasonable restraint of trade' and thus began the reform process of transfer system *George (Eastham v Newcastle United FC [1963] 3 All ER 139)*. Furthermore, the involvement of the PFA, the Football League, the FA, and the court ruling, also occurred in political stream as the ruling was a political decision that heavily influenced the reform of the football transfer system. The legal challenge also serves as convergence in the problem stream, highlighting the critical issues of the system such as the restrictions of players freedom of movement and wage caps. Furthermore, the classification of the system as an 'unreasonable restraint of trade' also challenged its legitimacy, as well as an indication of an organisational dysfunction requiring reform as the corrective action.

Albeit no formal link, the Eastham ruling marked the beginning of an opposition to the transfer system that was followed other EU countries taking action against the status quo; the French league, after negotiations with the players' unions were able to strike a deal that abolished player contracts that kept players at a club until the age of 35 (Lanfranchi and Taylor 2001, p.217). In Spain, after a period of strikes in the late 1970's and 1980's, the intervention of the national government saw a deal struck between the Spanish FA, Clubs, and players that abolished the right to retain policy and improved employment rights (Garcia, 2008). There were other facets of the transfer system whose

legitimacy have been subject to challenge and reform within the problem and policy stream, such as the nationality quota requirements that clubs had to adhere to, heavily influencing recruitment strategies that clubs employed.

The Nationality Quota system

The aim of nationality quotas is to have a set number of non-nationals that can feature in a football game. The quotas allowed for the clear distinction between national players and foreign players. National player in this case, are those who are eligible to be selected in the national team of a country in which the player's club is located. Foreign players are those who are ineligible for selection in the national team of the country in which the player's club is located (Garcia,2008). An example of a national player in the UK would be Jack Grealish who plays at Manchester City and having English nationality grants him the eligibility to play for the national team. On the other hand, his teammate, Julian Alvarez, would be considered a foreign player as he cannot be selected for the English national Team due to his Argentinian nationality.

The nationality quotas considered all foreign players as all being in the same pool, including the European players. This created a problem in the problem stream as it served as a restriction on football clubs and players, particularly because having a nationality of a member state in the EU meant you had a right to freedom of movement to work freely in any of the member states. The stakeholders who had issues with this system were the football clubs who had the ability to employ foreign players and wanted to do so without any restrictions, as well as players who wanted to make the move to the European football clubs. The system was brought to the attention of the EU to be

considered by the European Court of Justice (ECJ) in the Donà case (Donà v. Mantero, case C-13/76 [1976] ECR 01333, hereinafter *Dona*), and following that in the Bosman case.

The Dona ruling

In the case of *Dona*, the rules at the time in Italy made it a requirement for players to have a federations membership card in order to participate in the competitions; however Article 28(g) of the federation rules only allowed the card to be issued to Italian nationals who were residing in Italy (Parrish et al., 2003, p. 87). This rule restricted non-Italian players from being able to play in the country. The attention of the ECJ to this rule was brought forward by an agent Getano Dona when he sued the Italian League on the matter. The implementation of such a rule exemplifies the governing bodies pathological orientation as the rule presents a discrimination of other nationals in EU member states. In assessing this problem in the policy stream, the Italian national courts referred the matter to the ECJ for a preliminary hearing in order to establish the compatibility of nationality requirements in professional football competitions with EU law (Parrish et al., 2003, p. 87). The ECJ ruled that:

“Rules or a national practice, even adopted by a sporting organisation, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the state in question, are incompatible with article 7 [now article 26 TFEU] and, as the case may be, with articles 48 to 51 [now Art. 45 – 48 TFEU] or 59 to 66 [now Art. 56 - 63 TFEU] of the treaty, unless such rules or practice exclude foreign players from participation in certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only.” (*Dona*, Operative part, para. 1)

Article 45-48 TFEU is the provision in European Law that allows the free movement of workers within the member states of the European Union and abolished the discrimination of workers based on their nationality (European Union, 2016). Article 56 – 63 TFEU is the operative part of the legislation that allows the freedom to provide services throughout the member states without any prejudice or discrimination on grounds of nationality or residence (European Union, 2016).

The judgement from the ECJ in the policy stream further emphasised that nationality quotas were indeed a problem defined in the problem stream, stating that it was completely in contravention with European law. The first consideration was to establish if sports was considered an economic activity within the meaning of European community Law. The ECJ confirmed that it is an economic activity and one that should be applied to football on both the professional and semi-professional level (Dona, para. 12). This followed the precedent set in the previous case of *Walrave*, where the ECJ established that sport does fall under the remit of an economic activity and can be considered as substantial employment for a remunerated service (Parrish et al., 2003, p. 88). The ruling from the ECJ and recognition of an economic activity highlights the fact that professional football requires a legal framework which recognizes the rights and responsibilities of football players, to be legitimised in the society in which it operates in.

However, the ruling did acknowledge that there is a so-called 'sporting exception' whereby a non-economic aspect of sport (or regulations that have economic effects but are exclusively implemented for a sporting interest) falls outside the Treaty prohibitions if the regulations are implemented proportionately to the objective it is trying to achieve (Dalziel et al., 2013). In recognizing the 'sporting exception', the ECJ acknowledged that sport is unlike other professional industries and as

such, a proportional approach must be implemented in setting out regulations which address the unique facets of sports, and in turn, contributes to a perceived fairness of the formulated legal framework. Furthermore, this acknowledgement highlights need to avoid pathologies and potential challenges that professional football could face if its unique characteristics are not recognized. The decision in *Walrave* also highlighted that footballers are considered as workers within the meaning of the legislation and as such can rely on the rights afforded them by the Treaty. The broad definition of workers laid down by the ECJ means that professional footballers are employees of the club and as such considered workers. It also means that footballers who are remunerated for the service they provided, albeit being semi-profession or amateur, are also considered as workers under the definition of the ECJ (Parrish et al., 2003).

The ECJ also reiterated that the freedom to provide service and the freedom of movement for workers must be applied at national level as the provisions “have a direct effect in the legal orders of the member states and confer on individual’s rights which national courts must protect” (*Dona*, Summary, para.2). This decisions also made it clear that the principle of freedom of movement for workers was not only vertically directly effective, but also horizontally directly effective(Parrish et al., 2003, p. 90). This meant that the principle applied to the national public bodies but also covered the regulations set by private bodies such as sports associations. This afforded footballers the right to go to their national courts to challenge any restrictions set by sports governing bodies that contravened the aforementioned principles of the Treaty.

The ECJ also highlighted the application of its rights and freedoms to provide services permeates through the public authorities in member states and is very much applicable to sports (*Dona*, para.17). The Articles (now Article 56 – 63 TFEU) also protected sportsmen and sportswomen who were not employed by clubs from discrimination unless the rule was “economic in nature and not purely of sporting interest” (Parrish et al., 2003, p. 90). Therefore, such provisions are set by football governing bodies that contravene EU law can be challenged by the players (Garcia, 2008).

In summary, the case laid down a key precedent by recognising that footballers fall within the definition of workers under the EU Treaty and as such afforded them the right to challenge any decisions/regulations implemented by the governing bodies that infringed on their right. However, although the ruling highlighted a problem in the transfer system in contravening EU Law, a policy window was not opened. It is possible that the ruling at the time did not frame the problem in a manner that caught the public’s attention and as such, and because it was not clearly defined in the problem stream, it was not on the agenda for policy entrepreneurs within football to actively devise policy solutions. Alternatively, it is possible that at the time, the issue presented by the nationality quota was not a priority on the agenda of the EU governing entities (Garcia, 2008). However, FIFA’s and UEFA’s inactivity to respond to the ruling does highlight an ‘organisational narcissism’ in which they believe their self-regulatory framework of the transfer system does not need to adhere to the EU principles of freedom of movement for workers (Anastasiadis & Spence, 2020).

The Effect of the Dona ruling- Negotiations within the Policy Stream

The decision in the 1976 case (Dona) did not bring the end to nationality quotas albeit being very clear that the principles of freedom of movement for workers were applicable to sporting organisations. Unwilling to enforce the rulings and precedent set by *Walrave* and *Dona*, the European Commission opted to work towards policy change within the policy stream through consultations with UEFA and continue the use of modified nationality system. (Parrish et al., 2003, p. 91). These consultations lasted for over 20 years before an end to the nationality quota system following the Bosman ruling. This further highlight the fact that a policy window was not opened for the streams to converge and facilitate the necessary policy change due to the continuous negotiations between the European Commission and UEFA. In 1985, upon the request of the Commission to amend its discriminatory rules, UEFA and its member association approved a plan to amend its rules. The proposal were; allowing a maximum of two non-nationals per on the field per game, attainment of 'sporting' nationality after a five year uninterrupted period playing under one association, implementing a qualifying period where 'sporting' nationality applications are considered, a further examination of the aforementioned rule changes to analyse the outcome in 1989 (Parrish et al., 2003, p. 91) .

These proposals were refuted by the EU commissioner as unsatisfactory as he believed it still constituted contravention of EU, reiterating the need for no restriction at all (Parrish et al., 2003). A further request was given by the commission to end discriminatory regulations in sports and in 1987, and a proposal was put forward by the Commission to UEFA and its member associations. However, the proposal was also deemed to be unsatisfactory by the UEFA and negotiations continued between the parties(Parrish et al., 2003). According to Garcia (2008), the commissions reaction following the Dona case and the willingness to draw out continuous negotiations is an indication that football was not a priority on the agenda at the time. The lack of an assertive authoritative decisions form the

Commission does seem to follow Garcia's (2008) assessment. From the perspective of multiple stream framework, it does seem that the Dona case presented a policy window whereby an incremental policy change could have been made by the Commission. This was not the case however and one of the possible reasons for this was that the issue of nationality quotas was not on the agenda of enough policy entrepreneurs (e.g. key stakeholders such as owner, players, player unions, managers) who saw it as a major issue at the time. This is reiterated by Lanfranchi and Taylor (2001, p.221) who note that there was not a unified consensus on the quota system at the time of the ruling as some member associations and player unions agreed with the quota systems in place while others objected to it. The lack of unity would have hindered the issue being at the forefront of the Commission's agenda.

A compromise was reached in the end leading to the convergence of the streams and a policy window opening in 1991. Following further consultations, an agreement was reached between the EU Commission and UEFA to implement a rule known as the 3+2 rule (De Marco KC, 2022; Parrish et al., 2003). In the 1992 season, the rule stated that teams could not field more than three non-nationals and two 'assimilated players' UEFA defines assimilated players as those who have been in the country for an uninterrupted 5-year period, including three years in a junior team (Parrish et al. 2003, p.92). The Commission's approach of negotiating a settlement with UEFA as opposed to a 'comply or else' stance is rather interesting. One view could be that the Commission did recognise the specificity of sport in this instance and as such were reluctant to apply firm and absolute ruling as they possibly would were it to be a different economic activity. This is a point affirmed by Parrish et al. (2003, p.92) stating that "the Commission recognised that, although sport could be defined as an economic activity, it still possessed certain qualities necessitating a softer interpretation of the law."

However, this was still a restriction to the number of foreign players allowed in a squad as it only allowed a total of 5 foreign players and as such, was still discriminatory on ground of nationality. The 3+2 rule was not in place for long as it was ended following the landmark ruling in the Bosman case.

The Bosman Ruling – The Opening of a Policy Window

The section will begin by setting out the background to the landmark case and discusses the ruling in the case. In May 1988, a Belgian footballer named Jean-Marc Bosman entered a two contract with RC Liege who were a first division Belgian football team. Towards the end of his contract in April 1990, RC liege made their intentions known that they would like the player to continue for another season, offering him a new contract. However, the club offered the player a one-year contract but with a reduced wage package of BFR 30,000 (the minimum wage set by the Belgian League at the time). Unhappy with the offer, Bosman refused the offer and the club decided to place him on the transfer list with an asking price of BFR 11,734,000. At the point of placing him on the transfer list, the player's contract with the club had expired but a retain and transfer system was still in operation. The Belgian Association rules at the time allowed for fixed transfer price to be calculated based on the player's last wage and the minimum wage where he to be transferred without the consent on RC Liege (Parrish et al., 2003). This served as a triggering price that allowed the player to transfer to a buying club without the consent of the selling club, insofar as the transfer price is paid.

The club did not receive any offer for Bosman at the price set and on June 1st 1990, the period of a transfer with that set price ended, marking the beginning of a free transfer period (Parrish et al., 2003). Bosman decided to reach out to US Dunkerque, a second division side in France. US Dunkerque offered Bosman a salary package of around BFR 100,000 plus a signing-on bonus of approximately BFR 900,000. A transfer fee of BFR 1,200,000 was agreed by the clubs and the contract between all the parties were conditional on the issuance of a transfer certificate by the Belgian

Association. The transfer between all parties broke down when RC Leige refused to undertake the necessary process with the Belgian FA to get a transfer certificate issued; a right which the club was afforded due to the retain and transfer system (Garcia, 2008). RC Liege took it a step further to suspend Bosman and being out of contract, he was unable to play professional football.

Bosman made the decision to take legal action by seeking order that guaranteed RC Leige and the Belgian League paid him BFR 100,000 until he was able to find employment. Furthermore, he wanted a restraint was placed on the club and the league from claiming levy on any earing when employment was eventually found, and crucially, requested that the case be referred to the ECJ (Parrish et al., 2003). This represented a critical shift in the power and legitimacy of governing bodies. The ruling created a precedent whereby stakeholders such as leagues, clubs, and players, can externally challenge the decisions of the governing bodies at the ECJ. After going through several appeal processes, a judgement from the ECJ was finally given on 15th December 1995. This was following the release of the opinion of Advocate General Lenz's on the 20th September 1995 in which he concluded that the international transfer system, nationality quotas and regulations of FIFA and its member associations, imposed unjustifiable restrictions on the fundamental principle of the freedom of movement for workers within the EU (Lenz, 1995, para. 287).

The ECJ ruling did not depart from the opinion given by Advocate General Lenz. Confirming the ruling in *Walrave and Dona*, the ECJ ruled that the player transfer regulations and the eligibility criteria implemented by the football governing bodies infringed on Art.45 TFEU (formerly Art. 48) which prohibits any restriction on the freedom of movement for workers within the EU (Bosman, para.92). The ECJ also ruled the demand of a mandatory transfer fee for an out-of-contract player was a breach of Article 45 TFEU.

Regarding the same article, the ECJ noted that the article prohibits ‘the application of rules laid down by sporting associations under which, in matches in competitions which they organise, football clubs may field only a limited number of professional players who are nationals of other Member States (Bosman, para. 2)

Once the ECJ established that the eligibility criteria and the transfer system were restrictions on Article 45 TFEU, they then had to consider their justification and proportionality. Evidence submitted to justify the rules and as such argue for ‘sporting exception’ were dismissed (Parrish et al., 2003). However, the ECJ, recognised that there a certain features within sports that distinguish it from other economic industries, but the restrictions in this case were considered disproportionate to the aims put forward.

It noted that the regulations attempt to place restrictions on the fundamental principle of freedom of movement as “a legitimate objective and is proportionate to the aim pursued” was not justified (Bosman, para.105). This ruling made it clear that the transfer system and its restrictions on the number of European nationals had to be reformed due to its incompatibility with EU Law. Similar to the situation in *Dona*, this presented a problem in the policy stream that needed to be addressed. For this to happen, the policy stream and the politics stream would have to align with the problem stream to open up a policy window to address the problems in the transfer system. The next section details how these streams coupled up and opened up the policy window for a policy change in order for the football governing bodies to legitimise their transfer system.

The Effect of the Bosman ruling on the transfer system

Unlike the ruling *Dona*, the Bosman ruling clearly defined a problem in the problem stream and brought football regulations to the forefront of the agenda of the EU government, highlighting the challenge faced by football governing bodies to legitimise their governance framework in line with EU regulations. Furthermore, it exemplifies how pathologies such as contravention of EU law occur when the unique nature of professional football is not considered in the policy stream when setting governance policies. However, one might question where the onus lies in this case. On one hand, it could be argued that the responsibility is on the EU government to create clearer and poignant regulations that consider the 'sporting exception' when the fundamental principles of EU regulations are considered. Alternatively, the point could be made that EU regulations offer a wide enough scope for proper interpretation when devising football regulations, and as such, the onus lies on the football governing bodies to set of fit and proper governance frameworks which are in line with EU laws.

The ruling was met with varying reactions from the stakeholders involved. The decision meant that negotiations in the policy stream between the football governing bodies, the Member States, and the Commission would be required to make sure the football transfer system is in compliance with EU law. The reaction of the EU Commission was more proactive this time in comparison to the ruling in *Dona* as they delivered letters to FIFA and UEFA setting a six-week deadline to begin taking remedial steps to ensure they comply with EU Law (Garcia 2008, p.106). If unsatisfied with the steps taken, the EU Commission had the power to bring further legal proceedings against them. On the other hand, a more sympathetic response was received from the national governments towards the governing bodies. This was exemplified by the Belgian Prime Minister, Jean-Luc Dehaene, who called for the amendment of the European treaty to incorporate a 'sporting exception' provision. (Garcia, 2008).

The 3+2 nationality quota system that distinguished between 'foreign' and 'assimilated' players was also deemed to be illegal following the ruling. This placed foreign players at a disadvantage as it restricted their ability to access the EU free market, as well as being a clear example of discrimination. This decision forged a strong connection between sports and the EU (Parrish et al., 2003, p.99). It made it clear that a policy regulation with an economic nature, implemented for a genuine sporting interest, does not automatically excluded it as being categorised as an economic activity. In England, the football league's executive committee immediately removed nationality quotas in February 1996 (Parrish et al., 2003). In the 1996/97 football season, the European Club Competitions required the registration of a 25-player squad with no restrictions on the players nationality. UEFA implored its member associations and their leagues to remove all kinds of nationality quotas; this was complied with by some member while other chose to still make the decision between players from the European Economic Area (EEA) and those from outside the EEA (Garcia 2008, p.107). The ruling also gave the stakeholders such as agents, players, and clubs, an alternative avenue to challenge the decisions of the governing bodies and leagues by appealing to the ECJ.

The Interpretation of Article 45 TFEU

Article 45 TFEU rights are applied to all working nationals of the Member States. An individual or a company is afforded these rights when they are engaged in an economic activity. The article is also vertically and horizontally directly effective which means that it applies to the public governing bodies of the Member States (vertical) but must also be complied with by the private bodies which regulate services and employment within the state(horizontal) (Walrave, para. 17). As such, private bodies such as UEFA and National FA's have to ensure that their regulations do not contravene this article.

The court considers restrictions on Article 45 in three ways; direct, indirect and non-discriminatory measures. Dalziel et al. (2013, p.75) defines direct discrimination as “an overt form of differential treatment to be found in circumstances in which the migrant worker is treated less favourably than the national worker.” On the other hand, indirect discrimination is concerned with regulations and measures which, although apply regardless of the nationality of the worker, only impacts the migrant workers (or affects a large majority of migrant worker). These are substantially easier to meet by national workers than by migrant workers, or where the measures/regulations possess a risk that its operation will put migrant workers at a disadvantage (Dalziel et al., 2013)⁷. Non-discriminatory measures are concerned with less overt measure that do not explicitly reference restrictions on nationality, but still have an underlying effect which restrict nationals of other member states. In *Bosman* (para.96), the court ruled that regulations “which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement... constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned”.

It is possible to justify the use of direct discrimination measures in a situation whereby it is of public policy, public health, or public security, as prescribed in the Treaty (European Union, 2016, Article 45(4)). However, indirect and non-discriminatory measures can be allowed if they fulfil a set of objective justifications. These are four conditions that were laid out in *Reinhard Gebhard v Consiglio dell’Ordine degli Avvocati e Procuratori di Milano* (hereinafter *Gebhard*) (1995, para. 37), namely; “they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the

⁷ See also Case C-237/94 O’Flynn v Adjudication Officer [1996] ECR 2631, paragraph 18

objective which they pursue; and they must not go beyond what is necessary in order to attain it.”

However, not all measures can be justified using the criteria, as the ECJ has rejected the category of economic aims as a reasonable justification for restricting the free movement of workers (Dalziel et al., 2013). The restrictive measure also have to be deemed proportionate to the aims it intends to achieve and as such the suitability and necessity of the measure is assessed (Parrish et al., 2003).

The above assessment was applied to the transfer system and ECJ considered it to have placed a non-discriminatory restriction on the players (Parrish et al., 2003, p.100). The ruling meant that footballers, at the end of their contracts, were free to enter into an agreement to join another club without the permission of their former club. Any attempt by a club to impede this by withholding the registration document would be seen as an illegal contravention of EU law. The ruling somewhat shifted the scales of power that were formerly imbalanced in favour of the football clubs over the players. In the late 90's, there was an influx of players exercising their new right to free transfer; Sol Campbell's move from Tottenham to Arsenal was a big one at the time, and so too was Steve McManaman's move from Liverpool to Real Madrid (De Marco KC, 2022). It has allowed players to have a stronger negotiating power when their contracts are coming to an end, as clubs would not want to lose them for free. From the perspective of the buying club, they tend to offer higher signing on fees and wages to a player when there is no transfer fee involved (De Marco KC, 2022).

The negotiations between the Commissions and the football governing bodies commenced as they began to review the international transfer system to remodel it to be compatible with EU law. Parrish et al. (2003) notes that the ruling, in theory, did not affect the transfer system on the national level. However, as mentioned earlier, FIFA and UEFA expect the member associations to implement their regulations and statutes on the national level (FIFA Statutes, 2022, Art. 14). Although the ruling is applied to the EU and its member states, it is also applied to member association in UEFA who are

not part of the EU as they would also be required to implement their regulations in line with FIFA and UEFA regulations. During negotiations between the Commission and FIFA/UEFA, the EU Commission noted that having national transfer systems could limit the ability of clubs to hire the players they wanted as their choice could be unduly influenced by the national transfer system in place; this point was refuted by FIFA and UEFA as they only wanted to alter issues to the system were noted in *Bosman* (Parrish et al. 2003, p.140). The negotiations carried on in the policy stream and ended with the development of a new international transfer system.

2.4.3. The Birth of the International Transfer System

The Bosman ruling established two key pathologies within the governance of the player transfer process at the time that infringed on the freedom of movement for players. These took the form of the payment of transfer fees for out of contract players, and the implementation of nationality quotas (Parrish et al., 2003). This reiterated the need for a new international transfer system to be developed by the policy decision makers and policy entrepreneurs that would be compatible with EU law and deemed satisfactory to the European Commission. This development process began between 1996-2000, whereby long negotiations between the Commission and FIFA/UEFA (including consultations with FIFPro) took place in the policy stream to address issues that were beyond the scope of the Bosman ruling were raised (Garcia-Garcia, 2011).⁸ These negotiations highlight a pivotal shift in the stance of the EU on football governance. It represented a key policy window that was opened up by the ruling which required the policy entrepreneurs involved in the EU governing organs and the FIFA governing organs, to work together to find an adequate solution going forward.

⁸ See also Parrish et al. 2003, p.138-150 for details on negotiations between Commission and FIFA Bodies on the International Transfer System.

Furthermore, it also highlighted a shift in the EU's attitude as the EU Commission was seen to take a more proactive stance in the governance of football, a stark contrast to its reaction to the *Dona* ruling.

The starting point of the negotiations was a system that rewarded football clubs for the training and investment in young players, a more stable contractual system, and an income distribution system to ensure an equilibrium is maintained between clubs (Parrish et al., 2003). Whilst these negotiations were ongoing, there was an EU summit (Amsterdam European Council summit) which took place in 1997 to make revisions to the existing Treaty. FIFA and UEFA would have wanted an amendment that gave sporting activities a general exemption within the meaning of the New Treaty. However, the revision regarding sports, came in the form of a non-binding 'Declaration on Sports' which called on the EU to listen to sports associations and their issues (Commission of the European Communities, 1997). In December 2000, there was another summit in Nice, held by the Member States to sign a new Treaty agreement but the revision for sports came in the form of another legally non-binding declaration (Parrish et al., 2003).

This meant that the negotiations during this policy window in the policy stream between the Commission and FIFA/UEFA had to continue. Albeit having a power struggle between UEFA and FIFA on what body should lead the negotiations, a hard deadline of 31st October 2000 was set by the Commission to present formal proposals of change to the international transfer system (Garcia-Garcia, 2011). This deadline led to the governing bodies setting up a transfer task force that involves FIFA, UEFA, player union (FIFPro), and the professional leagues in Europe who were able to present a formal proposal to the Commission (Garcia, 2008). Upon reaching an agreement with the European Commission, the FIFA Executive Committee implemented the new transfer system in July 2001 (in

effect from September 2001) and introduced set of new regulations that we know today as the Regulations for the Status and Transfer of Players (FIFA, 2001).

Policy Developed: Key aspects of the 2001 Regulations for the Status and Transfer of Players

The regulations implemented the decisions from *Bosman* as it allowed players to transfer clubs freely after their contracts expired, as well as removed all EU quota restrictions for clubs and leagues within the EU. The agreed principles the new regulations were based on were as follows (Garcia 2008, Parrish et al. 2003); Firstly, the implementation of transfer windows where there was one main transfer period during a season, as well as a limited window in the middle of the season. Through the cooperation of the football governing bodies, the EU Commission, and FIFPro, there a transfer deadlines and player registration deadlines which have been implemented into the transfer system (Beal KC, 2022). At the time of writing, the majority of the European leagues have a transfer window in the summer months following the end of a playing season (June to August) and a mid-season window in the winter (January) (Beal KC, 2022). These windows could be deemed as restricting the player ability to freely obtain work throughout the year. However, it can be argued that the implementation of the windows serves to protect the integrity and the leagues as it avoids constant disruption during the playing season.

Additionally, schemes such as the training compensation and solidarity mechanisms that applied to players under a certain age were included in the new system. These were implemented to facilitate the redistribution of finance to compensate clubs (professional and amateur) involved in training and educating a player. Furthermore, a key objective of the new system was maintaining contractual stability that within the transfer system (Garcia 2008). The transfer system also Implemented

alternative dispute resolution (ADR) body that gave players the power to seek legal redress when required and this saw the ascension of the FIFA Dispute Resolution Chamber (DRC) (Beal KC, 2022). The transfer of players under the age of 18 was permitted under certain conditions, with a code of conduct to be developed by the governing bodies providing a sporting, training, and academic pathway (Parrish et al., 2003).

The EU Commission seal of approval

In June 2002, the Commission issued a press release stating that it has concluded its investigations into the governance of international transfers of football players as FIFA, in agreement with FIFPro, had adopted new regulations that were consistent with the principles of the EU (European Commission, 2002). The EU Competition Commissioner, Mario Monti, noted that the new regulations “find a balance between the players' fundamental right to free movement and stability of contracts together with the legitimate objective of integrity of the sport and the stability of championships”(European Commission, 2002). The changes following Bosman make up the core of the transfer system and these changes were modernised in 2010 with the introduction of the software application used to facilitate the international transfer of players, known as the FIFA Transfer Matching System (TMS). The TMS is where the agreements for a player transfer are submitted and it is also where the International Transfer Certificate is generated to allow the player to be registered with his new club (De Marco, 2022; FIFA 2022a).

Following the legally non-binding agreement between the Commission and FIFA, the Commission seemed to have taken a step back with regards to further challenges to the legality of the transfer system but there have been numerous cases lodged at the private arbitration body in the Court of Arbitration for Sports (CAS) (Pearson, 2015). Furthermore, since Bosman, the legal framework for

addressing sporting matters have advanced to give sporting matters more autonomy and recognising its unique characteristics in comparison to other economic activities (Pearson, 2015).

The unique characteristic of professional sports was further reiterated in the 2006 *Meca-Medina* case, which ruled that “the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by the rule or the body which it has laid down” (*David Meca-Medina and Igor Majcen v Commission of the European Communities*, 2006, para. 27). If this same reasoning is applied to the EU’s engagement with the transfer system, it is arguable that the ECJ will approach it as a sporting rule and as such, outside of their scope. In 2007, the White Paper on Sport was released by the EU Commission which further emphasizing the notion that the specificity of sport must be considered when implementing rules with restrictive effects, noting that the “assessment whether a certain sporting rule is compatible with EU competition law can only be made on a case-by-case basis”(European Commission, 2007, para. 4.1). This notion was further strengthened by the amendment of the TFEU in 2009 to include Article 165 TFEU which states that the specific nature of sports should be considered by the EU when dealing with its concerns. However, the EU governing bodies did get involved in the transfer system again in 2015, when FIFPro made a formal complaint to the EU Commission.

2.4.4. FIFPro makes formal complaint to Commission- A Second Policy Window Opens

In 2015, FIFPro made a formal complaint to the Commission on various aspects of the post-Bosman transfer system, stating that the system and its regulations are anti-competitive and illegal (Slater, 2015). This complaint also highlights how society's expectation can shift over time and be considered illegitimate as the post Bosman system had been functioning as a legitimate legal framework. However, it was the intention of the complaint to open a policy window to reform the system as the complaint argues that the transfer system represented an interference with labour mobility and employment opportunities.

Therefore, it was infringing on the freedom of movement rights and competition law granted by the TFEU, albeit being in operation and informally agreed by European Commission, UEFA and FIFA since 2001. FIFPro went on to argue that the system does not do enough to safeguard players contracts and stability to ensure that players could not be unilaterally fired without just cause or be required to pay exorbitant amounts to a former club when they breach their contract (FIFA, 2022b, Art. 13-18; De Marco, 2022, p.82). The complaint also noted that more needs to be done to promote solidarity down the football pyramid, to improve the competition and financial stability within the transfer system, and to further the competitive balance within the league (De Marco, 2022).

Two years following the complaint, FIFA and FIFPro entered into a cooperation agreement and FIFPro withdrew its complaint lodged with the Commission (FIFA, 2017). It was agreed that FIFA would set up a taskforce to examine areas of reform to 'improve the governance of professional football' (FIFA, 2017). Further steps following this were taken after FIFA Council approved further transfer reforms to

the system through reform packages, a lot of which have been included in the 2022 edition of the RSTP(FIFA, 2021a)⁹.

2.4.5. FIFA Transfer System Reform (2017-2022)

In 2020, Gianni Infantino, set out objectives developed in the policy stream for the period between 2020-2023 with the intention to ‘make football truly global’, and his first objective was to ‘modernise the football regulatory framework’(FIFA, 2022a, p. 1). One of the key objectives was reforming the transfer system to promote the investment in youth while protecting minors, protect the integrity of the competitions, and ensure that training clubs are properly rewarded(FIFA, 2022a).

A task force of policy entrepreneurs was set up by FIFA in order to address the policy problems brought forward by the complaint. Following the setup of the transfer system task force in 2017, a six-year plan to address FIFPro’s concerns were divided into three reform packages. In 2018, the first transfer system White Paper was endorsed by the Football Stakeholders Committee and the transfer system task force at FIFA after negotiations with FIFA, FIFPro, Member associations and affiliates (FIFA, 2022a). Working with Member of the European Commission, the key conclusion reached by the White Paper, with respects to the working of the transfer system, was the need to restore a competitive balance to the system. The White Paper also noted that there was a lack of financial transparency within the system, a lack of global consistency in the registration period for players, issues regarding exploitation of loan transfers, issues with player passport mechanisms within the

⁹ “The reforms concern important regulatory matters regarding the international transfer of minors, squad sizes (in particular with respect to loans), player registration periods and transfer windows, financial regulation, and related matters, including collective bargaining agreements, sporting just cause and registration.”(FIFA, 2021a)

transfer system led to an inconsistency in applying training rewards and solidarity payments, and the lack of opportunity for homegrown players(FIFA, 2022a). The issues discussed in the White Paper were also considered by a number of European intergovernmental bodies. The European Commission et al. (2018) noted in its report that:

“The lack of transparency on the transfer market has direct impacts on the enforcement of the training compensation and solidarity mechanisms, which remains a challenge and shows no signs of improvement over the years. The development of a Global Clearing House could increase transparency and strengthen the effectiveness of current measures for the redistribution of revenues, including the solidarity and training compensations.” (European Commission et al., 2018, p. 8)

The report went on to recommend further reforms such as improving social dialogue process with stakeholders regarding the transfer of players, increasing the amount payable on the solidarity mechanism within football transfers, the reform of the regulations governing agents, regulating the number of loan transfer allowed by clubs, and implementing a luxury tax on transfer fees beyond a certain amount. (European Commission et al., 2018)

In order to address the issues in the White Paper, FIFA set out policy reform packages to be implemented systematically to address the policy problems. In its first reform package, FIFA looked to address the issue around the training compensation system in place and establishing the FIFA Clearing House (FIFA, 2022a). The main problem with the existing training compensation was the disparity between monies due to clubs and the actual amounts that were declared as being paid.

FIFA established that the key reason for this was the player passport system, which was used to trace the previous clubs of a player was not electronic and was not applied uniformly across the member associations. In October 2018, FIFA Council approved the implementation of a mandatory electronic transfer and registration by July 2020, gave the green light for the establishment of FIFA Clearing House, and revised the solidarity compensation regulations which extend the mechanism to national transfers with an ‘international dimension’(FIFA, 2022a)¹⁰.

The second package of reforms were adopted in 2019 and were aimed at addressing the player loans system, the governing of agents, and amending the solidarity payment system and modernising the training compensation system (FIFA, 2022a). It should also be noted that there was a ‘special package’ reform which included an amendment to the international transfer of minors, amending the regulations to allow players between the age of 16-18 years old to transfer between clubs in two associations located in the same country (FIFA, 2022b, Art. 19.2(b)(ii)). This was amended to address the situation of a hard Brexit whereby players in the between four different member associations of the four countries that make up the EU, were unable to transfer clubs.

The third package which is to be implemented in 2023, is aimed at reforming the international transfer of minors, transfer windows and registration periods, as well as other financial and regulatory matters (FIFA, 2022a).

The next section assesses the key mechanisms of the international transfer system mentioned from the Bosman ruling and the aftermath of the FIFPro complaint to the Commission.

¹⁰ “i.e. for national transfers involving a player with one or more training clubs affiliated to a different member association from that of the transfer” (FIFA, 2022a, p. 28).

FIFA Clearing House(FCH) – Addressing the transparency problem

Once adopted by the FIFA Council, the process of establishing the FCH by determining its operational remit through draft regulations and external consultations (FIFA, 2019). It also engaged the cooperation of Council of Europe in drafting its facets of its transfer system reform (Drago KOS, 2021). This collaborative approach is one we have seen FIFA continuously adopt since *Bosman* in order to ensure the regulations and systems are legitimised in line with EU regulations and in turn, reducing the susceptibility to pathologies that led to contravention of EU law. Appointed by the Council of Europe to undertake the report, Dargo Kos (2021, p.28) acknowledges that “the decision of FIFA to review and further develop the transfer system of football players in the world will undoubtedly and significantly improve the overall climate in the world football.” The report goes on to make recommendations on the establishing of the Clearing House, as well as the regulations and needed for its use(Drago KOS, 2021).

In September 2022, FIFA Clearing house was granted a licence that allowed it to operate as a payment institution and once its regulations were approved by the FIFA Council, the FCH became operational in November 2022. The FCH serves as a separate entity from FIFA, serving as a system “to centralise, process and automate payments between clubs, initially relating to training rewards (training compensation and solidarity contribution)... [and] promote financial transparency and avoid fraudulent conduct in the football transfer system” (FIFA, 2022a, p. 30). It acts as an intermediary in handling payments concerned with football transfers, to ensure that training compensation and solidarity payments are made.

This involves the MA’s having an electronic registration system, whereby players details are correctly updated and the system is integrated with FCH (FIFA, 2022a). This allows FIFA to be able to generate an accurate player passport where a player’s training history can be traced, and in turn, facilitate the

payment of training compensations and solidarity payments. In October 2022, the regulations governing the FCH were released, detailing the processes involved in payments, as well as the calculations of the training rewards(FIFA, 2022c).

It should be noted that the FCH is only used for paying training rewards (detailed in the section below) while the transfer fees and agreements are processed used the FIFA Transfer Matching System (TMS). The diagram below shows how this process flows between the necessary parties.

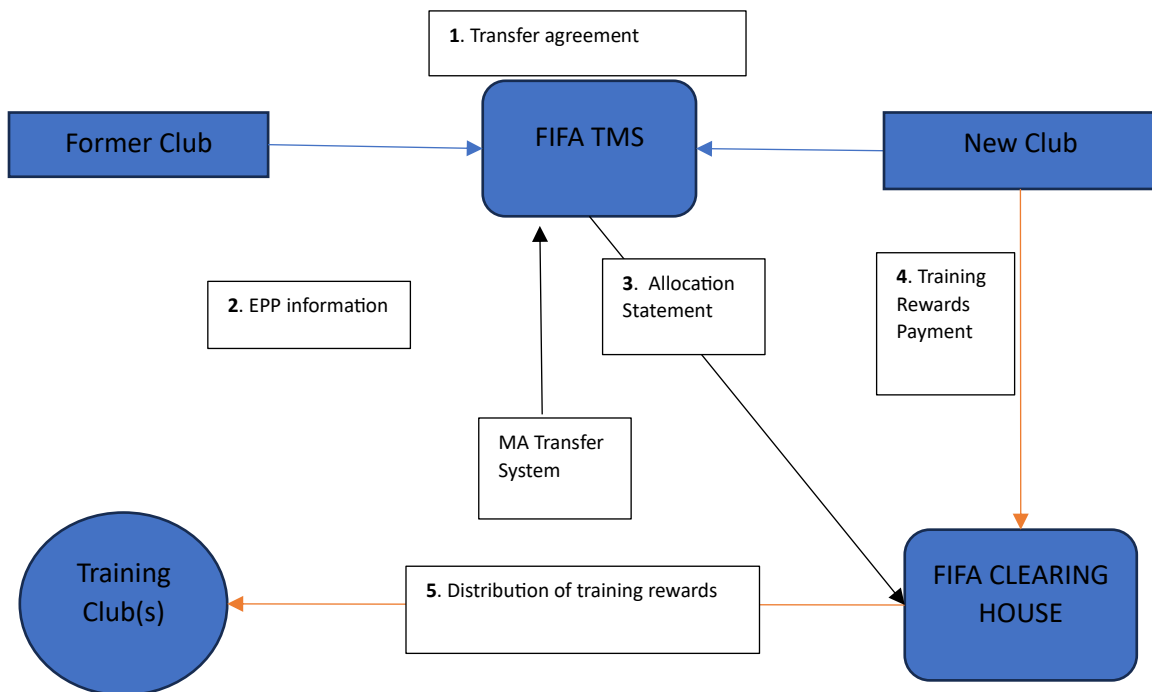


Figure 4 - FIFA TMS and Clearing House Flow

Source: FIFA (2022b)

Training Compensation

UEFA is responsible for ensuring the “implementation of the training compensation fee system was created in response to the ECJ ruling in Bosman that recognised the training of youth players as a legitimate objective” (UEFA, 2021, Art 2(h)). The ECJ noted that “in view of the considerable social importance of sporting activities and in particular football in the community, the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate,” (Bosman, para. 106)

The training compensation system was implemented as one of the initiatives to encourage the recruitment and training of youth players in the new international transfer system, amending the old transfer fee system (Parrish et al., 2003). However, it should be noted that the payment of transfer fees applies to all players under a contract while the payment of training compensation only applies to players under the age of 23 (Geey, 2020).

The regulations stipulate that a compensation is payable to a player’s training club(s) responsible for the training and development of the player between the ages of 12 and 21 years old (FIFA, 2022b, Annexe 4). Training compensation is entitled to “every club with which the player has previously been registered (in accordance with the players’ career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday” (FIFA, 2022b, Annexe 4, Art.3).

However, no training compensation will be due if the former club terminate the player's contract without a cause or when a professional player regains amateur status after a transfer (FIFA, 2022b, Annexe 4, Art.2)¹¹

The amount becomes payable when the player signs his first professional contract and then each time the player transfers clubs until the end of the season of the year the player turns 23 years old (FIFA, 2022b, Art.20). Payment of the compensation fee must be made within 30 days of the player's registration with the new national association (FIFA, 2022b, Annexe 4, Art.3). The compensation is only payable with respects to an international transfer and as such, a training club will not be entitled to receive a training compensation fee if the players transfer to a domestic club (a club within the same national association). This is because the RSTP governs the transfer of players internationally, moving between two different national associations (FIFA, 2022b, Art.1). The training compensation fees is also payable irrespective of a transfer fee being involved in the players move and whether the player is in a contract with a club or at the end of his contract (Geey, 2020). The amount payable can differ from club to club and the cost are dependent on the categorisation of the club on a confederation level and with respect to the club's categorisation by the National FA; both of which are published on the FIFA website (FIFA, 2022b, Annexe 4). The training club(s) must also be a member of a national association under FIFA.¹²

¹¹ There is also no training compensation payable if the player transfers to a Category 4 club (FIFA, 2022b, Annexe 4, Art.2).

¹² Please when this was considered further by CAS in the below case CAS 2008/A/1751, *Brazilian Football Federation v. Sport Lisboa e Benfica-Futebol S.A.D.*, award of 5 August 2009

In calculating sums due as training compensation for the first transfer after signing the first professional contract, FIFA sets a general rule that the new club considers the amount it would have cost them to train the player themselves, multiplied by the number of years of training and development the player would have had between the ages of 12 and 21 years old (FIFA, 2022b, Annexe 4). Any subsequent transfer will follow a similar pattern by multiplying the number of years of training with the now former club, with the training cost of the new club. This calculation is used when players transfer internationally but FIFA includes a different calculation system for the EU. The same calculations are also applicable to player loan transfers in accordance with Article 10 RSTP (FIFA, 2022b). In a situation where the training club(s) cannot be located, no longer involved in professional football, or is no longer in operation, then the amount due for training compensation is paid to the relevant national association(FIFA, 2022b, Annexe 4, Art.3; FIFA, 2021, p. 299)

The legitimacy of the training compensation mechanism implemented by the French League was also considered by the ECJ in the *Bernard* case in 2008. Assessing its legality in the political and policy stream, the ECJ stated that the principle on which it operates, whereby payment of a financial compensation is awarded a training club when he signs a professional contract with a different club is justified because it is proportional to its objective of incentivising the recruitment and development of youth players(*Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, 2008; hereinafter *Bernard*). The court did rule that the French training compensation scheme did go beyond what is considered proportionate to the objective it was pursuing. This was because the payment which Olympique Lyonnais were seeking from Newcastle for the transfer surpassed the actual amount calculated for training costs, and included what was considered to be unrelated damages for a breach of contract(Van den Bogaert, 2022).

Th ECJ noted in its ruling, that in order for such a mechanism to be legal, it 'must be actually capable of attaining that objective and be proportionate to it, taking due account of the costs borne by the

clubs in training both future professional players and those who will never play professionally' (*Bernard*, para. 45). This direction from the politics stream is intended to ensure the a legitimate framework is set up with the FCH to ensure equity for its stakeholders and in turn, further reduce the deviances that are bred within governance frameworks, when a sporting organisation's insulates itself from state legislation. The payments are now automated via FIFA clearing house following the recent reform to the transfer system (FIFA, 2022c).

TRAINING COMPENSATION – A SPECIAL CASE FOR THE EU/EEA

There are slightly different provisions with regards to calculating the compensation due for a player transferring from a club in on association to another within the territory of the EU/EEA. Firstly, a player can be deemed to have completed his training and development before the aforementioned stipulated final calendar year of the player's 21st birthday (FIFA, 2022b, Annexe 4). This would mean that if established, the training compensation due to the new club can be calculated using a final calendar year of training as one before the player's 21st birthday. Furthermore, based on the published categories on FIFA's websites, when a plater transfers from a lower category club to a higher category club, the training compensation due is calculated based on the average training cost of the two clubs (FIFA, 2022b, Annexe 4). Alternatively, when a player transfers from a higher category club to a lower category club, then the fee payable is based on the training costs of the club in the lower category (FIFA, 2022b, Annexe 4). However, this is no longer applicable to associations within the United Kingdom. As noted by FIFA (2021, p.318) in its commentary, "following the United Kingdom's withdrawal from the EU and considering that it also no longer forms part of the EEA, as from 1 January 2021 article 6 of annexe 4 no longer applies to the registration or transfer of players that would ordinarily trigger payment of training compensation, whether to or from clubs affiliated

to The FA, the Scottish Football Association, the Irish Football Association, or the Football Association of Wales.”

Solidarity Payments

Solidarity Payments were another mechanism introduced with the International Transfer System following the *Bosman* ruling. When a player transfer to another club in a different association, a portion of 5% of the full transfer fee paid for the player, shall become payable by the new club to the player’s previous clubs that have been responsible for his training and education between the ages of 12 and 23 years old (FIFA, 2022b, Art.21). The 5% fees is spread the players previous clubs using formula set out by FIFA in the Regulations (FIFA, 2022b, Annexe 5, Art.1).

Albeit rather similar in nature to training compensation provision, there are some key differences between the two. One key difference is that solidarity payments are only payable when a player, who is already professional, makes an international transfer to another club. Furthermore, it is also only payable when a transfer fee is paid for a player between two clubs in different national associations, prior to the expiration of the player’s employment contract. However, like training compensation, solidarity payments are also payable on loans that involve loan transfer fees for a player, in accordance with Article 10 RSTP (FIFA, 2022b). Another similarity to the training compensation is that the national association will be entitled to a portion of the solidarity payment where the training club(s) cannot be located, no longer involved in professional football, or is no longer in operation (FIFA, 2022b, Annexe 5, Art.2 (3)). Solidarity payments are due within 30 days after the player is registered by the new club or 30 days after a payment when contingent fees are involved FIFA, 2022b, Annexe 5, Art.2)

In the study commissioned by the EU Commission (European Commission et al., 2013), it was found that there was an issue of competitive imbalance that was prevalent within the football transfer market and one of the main reasons for this was the solidarity payment mechanism (particularly the UEFA solidarity mechanism). The study argued that solidarity payments focused on the wealthiest and most successful clubs in the leagues, urging the governing bodies to look into reforming the mechanism for a better equitable distribution of funds down the pyramid, as this will facilitate youth development and go toward remedying the competitive imbalance prevalent in a number of leagues (European Commission et al., 2013). Similarly, FIFPro, in its complaint to the European Commission, noted that the intended redistribution effect of mechanisms such as the solidarity payment system is rather limited and does not adequately address the competitive and financial balance within the football pyramid. This is because highest transfer spending is done between the biggest clubs and as such, the sums are being re-circulated among the big clubs as opposed to trickling down the football pyramid (De Marco, 2022, p.84). Therefore, it would seem that only a limited amount of clubs and countries benefit from this mechanism of the transfer system.

UEFA homegrown Players Rule

Another key component of the international transfer system is the homegrown policy system. The homegrown (locally-trained) player initiative was adopted in April 2005 when it was adopted after consultations with European government authorities, national governments, and football stakeholders (“clubs, leagues, national associations, players' bodies, coaches”) and accepted by the 52 national member associations in UEFA (UEFA, 2005). The implementation of the home grown player rule follows a series of measures that have been adopted by UEFA following the consequences the ECJ’s decision in *Bosman* (Downward et al., 2014).

UEFA believed there were negative trends in European football such as a reduced incentive in training players, a lack of identity in local teams, and a competitive imbalance (Dalziel et al., 2013). The regulations are only applied to UEFA club competitions. However, they have since been expanded and adopted by other national member associations such as the English FA, who apply the rule to their leagues (EFL 2022, Art.44.9; Premier League, 2022, A.1.109).

The UEFA Congress decided on the implementation of the locally-trained player rule towards remedying these negative trends, stating that “football is not encouraging enough development of new talent and instead clubs are looking for 'quick fix' solutions and opting to buy players rather than train them”(The Guardian, 2005). The aim of the rule was to remedy the situation and serve to encourage the utilisation of locally trained players in UEFA competitions and in turn, creating more playing opportunities for these players.

The regulations require that clubs register a maximum of 25 players in their A list team (UEFA, 2023, Art.45). In the first season of the locally-trained player initiative, there a transition period that allowed the squad registration of a minimum of four locally trained players in 2006/2007, followed by a minimum of six locally trained players in the subsequent season. Following the transition period, a minimum of eight players had to be registered from 2008/2009 onwards (UEFA, 2023, Art.45). The regulations categorize locally trained players into two; 'club-trained' and 'association-trained'. A club-trained player is one who between the age of 15 and 21 has been registered at his current club for a continuous period of three full seasons, regardless of the nationality of the player. An association-trained player is one who between the ages of 15 and 21 has been registered in a club or other clubs within the same National Football Association for a continuous period of three full seasons, regardless of the nationality of the player. Clubs are required to register a list of players (List A) to UEFA made up of up to a maximum of 25 player. Within this list, 8 players are required to be locally-trained (UEFA, 2023, Art.45.02). Clubs also register an unlimited number of players in a separate list known as 'List B' (UEFA, 2023, Art.45.10).

Following the implementation of the rule, clubs involved in the UEFA competitions began to take the rule into consideration with regards to their recruitment, particularly because the are limited number of players that are allowed to be registered in List 'A'. It was also intended that this would address the competitive balance within competitions in its member associations, as well as incentivize clubs more of an incentive to revitalise their training infrastructure and football academies to train their own players (Garcia, 2008; Dalziel et al., 2013). UEFA makes it clear that nationality is of no importance when these rules are applied. This is done to ensure the precedent set in Bosman is followed and the rules are not in contravention of the EU principle of the freedom of movement for workers, further legitimising the homegrown policy and UEFA's role as a governing body. According to Garcia (2008, p.124), UEFA were rather "confident with the legality of the rules on

locally-trained players and it is especially happy with the political support received by the EP and the Commission". UEFA wanted to ensure the EU governing bodies were involved in the process of developing the rule as they were keen to avoid a litigious situation like Bosman. As such, a proactive relationship where the EU's expertise and political support was key, became the relationship fostered by UEFA (Garcia, 2008). This was done through the organisation of meetings with official representatives from the Commission with UEFA framing the rule to have social and cultural values that will benefit the local communities (Garcia,2008).

UEFA ensured that they kept the Commission informed on the plans to implement the homegrown players initiative and engaged in continuous constructive dialogue. An example of this is seen when UEFA sent a delegation to meet with Commissioners Neelie Kroes (Competition) and Jan Figel (Education and Culture) (Garcia, 2008). Furthermore, UEFA engaged the Members of European Parliament (MEP) in several discussions on the rule through the creation of an informal group they called 'Friends of Football group' and received the backing of the MEPs (Garcia, 2008, p.125).

From its engagement with the various facets of the EU governing institutions, UEFA took a collaborative approach with the EU to ensure the initiative's message aligned with the EU's principles. The collaborative effort also ensured they avoided putting nationality-based restrictions in place that would have contravened Article 45 TFEU. The support garnered from the EU governing institutions was formalised in a statement in a report commissioned by the European Parliament on the future of Professional football in Europe (Belet, 2007).

On topic of the social, cultural and educational role of football, Belet (2007, para.32) stated that the European Parliament expressed "its clear support for the UEFA measures to encourage the education

of young players by requiring a minimum of home-grown players in a professional club's squad and by placing a limit on the size of the squads; believes that these incentive measures are proportionate and calls on professional clubs to strictly implement this rule." This highlights the role of the European Parliament as one of UEFA's main supporting governmental institutions. In 2008, the European Commission also formally somewhat supported the rule, noting that the rule does not contain any nationality conditions but will need to be monitored to see if it will lead to indirect discrimination (European Commission, 2008). However, the rule was challenged in 2020 when Royal Antwerp, a Belgian first division side, challenged the legality and their Belgium FA's homegrown player rule that hindered them fielding their Israeli signing, Lior Refaelov (Petrequin, 2023). The case was then referred to the ECJ in 2021 by the Belgian courts to adjudicate on the legality of the rule in line Article 45 TFEU and Article 101 TFEU.¹³

As mentioned earlier, Article 45. TFEU is vertically and horizontally directly effective and as such applies to both private and public organisation. This means that UEFA as a "private collective regulator" will have to ensure that the rules they set which govern the employment and services have to be in line with Article 45 TFEU (Dalziel et al., 2013, p.5). The ruling is yet to be given by the ECJ. However, in March 2023, Advocate General Szpunar gave his opinion on the case stating that "rules on home-grown players are likely to create indirect discrimination against nationals of other Member States" (Advocate General Szpunar, 2023).

This opinion is not binding on the ECJ but will be taken into consideration by the ECJ to decide on the final verdict where they will follow or depart from this opinion (InfoCuria, 2023). If the opinion of Advocate General Szpunar is followed, then the homegrown players rule would be deemed illegal

¹³For more detail on the case please see; *Case C-680/21: Request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles (Belgium) lodged on 11 November 2021 — UL, SA Royal Antwerp Football Club v Union royale belge des sociétés de football association ASBL*, 2021)

and UEFA will need to follow suit by amending the rules in line with EU law. It is likely that a similar consultation process that followed the *Bosman* ruling, as well as the creation of the locally trained players rule, will be initiated with the EU governmental institutions.

2.4.6. The Regulations on the Transfer of Minors

The transfer of minors has always been at the forefront of discussion within FIFA and the football industry. Between 2015-2020, a recorded total of 20,468 applications were made for the international transfer of minors (FIFA, 2020). In an FAQ guide explaining the reasons behind FIFA's controls on the transfer of minors, it was noted that even though international transfers can be favourable in specific cases, majority of international transfers experience the antithesis (FIFA, 2016). To prevent incidents of child exploitation and ensure the integrity of the sport is adhered to, the first edition of the Regulations on the Status and Transfer of Players (2001 edition) established that players under the age of 18 were only permitted to transfer if their family were relocating for reasons outside of football, "in the case of players between the minimum working age in the new training club's country and the age of 18, suitable arrangements are guaranteed for their sports training and academic education by the new training club. For this purpose, a code of conduct will be established and enforced by the football authorities" (FIFA, 2001, Art. 12 (b)).

However, this article was amended in 2005 and 2009 to become Article 19 and is also supplemented by the Minor Application Guide which details the application process (FIFA, 2020a). The article is split into two parts part; Article 19 (concerned with the protection of minors), Article 19bis (concerned

with the registration of minors at club academies) (FIFA, 2022b). FIFA aims to continue work in the protection of minors by implements stringent rules to govern private academies, improving the duty of care to protect against the abuse of minor, extending a wider application of allowing transfer of minors under the humanitarian exception in article 19, and establishing a clearer and more cost effective framework in football trials (FIFA, 2022a).

One key amendment to the transfer system concerning the transfer of minor is a further exception which was incorporated into Article 19 (RSTP) in 2020. Following the UK's exit from the EU, as there were some legal uncertainty regarding the provision (FIFA, 2022a). This is because there is an exception in the prohibition of the transfer of players under the age of 18, which permitted the transfer of a player between the age of 16-18 years old if they were transferring between clubs in the EU/EEA. Following Brexit, this has now been amended to all for the transfer of players between member associations within the same country. The new exemption in Article 19.2 (b)(ii) RSTP will enable the transfer of players between the different Football Associations in the four countries (England, Scotland, Wales and Northern Ireland) that make up the UK (FIFA, 2022a). Therefore, albeit not able to rely on the exception allowing the transfer on minors between clubs in the EU, the loss of this market is mitigated by the fact that minors (aged between 16-18 years old) are able to transfer between clubs in the four countries that make up the UK. Such implications of Brexit on the football transfer system is examined further in the next chapter.

2.5. Conclusion

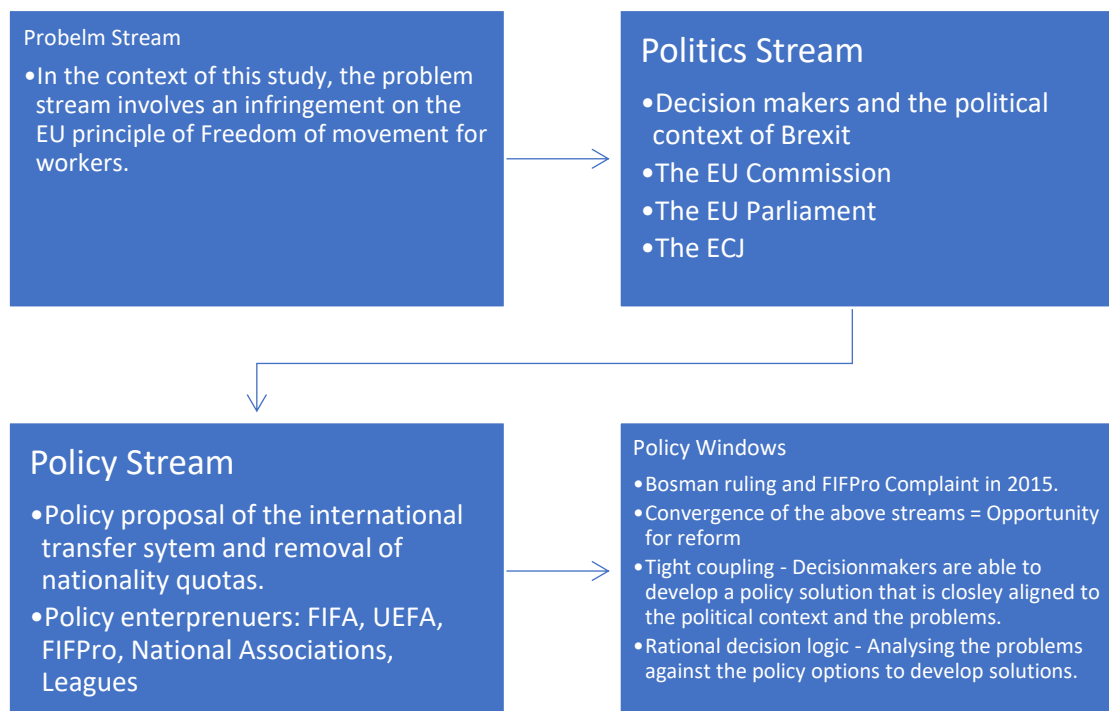


Figure 5 - MSF assessment of the role of the EU and FIFA on the transfer system

Professional football takes a precarious spot in the agenda of the EU as it is one of the of main sporting activities with a ‘true European Dimension’, particularly because of the constant cross-border mobility that occurs as a result of the transfer of players from club to club (European Commission et al., 2013, 2018). This chapter assessed the governance of the international transfer system and the policy setting framework involved in the system. In answering the research questions posed, it highlights the key stakeholders involved in the governance of the transfer system, exploring significant changes to the policies and structures, while noting the key role the EU government and operating bodies such as the Council, Parliament, and Commission have played in the development of the transfer system.

The chapter uses a theoretical triangulation in the assessment of the development of the transfer system, extending the use of MSF theory, legitimacy theory and organisational pathology theory, extending the utility of these theories in the research field of sports governance. In extending the work of Garcia (2008), the study posits that there are two key policy windows in the development of the transfer system namely, the Bosman ruling and FIFPro's complaint. These are the two points that triggered key reforms to the international transfer system. The coupling of the streams allowed interactions between the policy stream and the politics stream during these policy windows and allowed FIFA bodies (e.g. FIFA Council), FIFPro, and European state bodies (e.g. the ECJ, European Commission and the European Parliament) to interact with each other in developing key policies that shaped the international football transfer system.

Following the Bosman case, an international transfer system was developed to address the issue of contravention of the EU principle of the freedom of movement for workers due to nationality quotas. One of the resulting policies of the new international system was the removal of nationality quotas after it was defined as a problem within the problem stream. Through the consultations between the policy entrepreneurs and the governmental bodies in the politics stream in developing the international transfer system, their varying interest would have come into play and common ground found to develop a system that addresses their varying needs to some degree. Furthermore, in agreement with the MSF variation developed by Ackrill and Kay (2011), this chapter has highlighted the FIFA and UEFA operate as policy entrepreneurs who are not single dimensioned entities with the sole purpose of pushing out ideas to the decision makers but rather, they can be directly involved in the decision-making process within the policy stream as they engage in consultations and negotiations with the EU in the politics stream.

The concept of supervised autonomy is explored in this chapter. It is evident in the system that policies set by the sports governing bodies are subjected to Commission reports, adjudicated on by the ECJ, and constitute topics of debate in the European Parliament. This was exemplified earlier by the Directorate-General for Education, Youth, Sport and Culture (DG EAC), who requested reports to be conducted into the governance of football transfers. Additionally, the case currently waiting judgement from the ECJ on the legality of the homegrown players rule is another instance in which a government public body involvement is necessitated.

Furthermore, in a report commissioned by the EU Commission, it was found that “EU law has had an important impact on the evolution of the rules by favouring mobility of players and by recognizing to a significant extent sport’s specificities thus legitimising the recourse to rules that are a derogation from normal employment practices” (European Commission et al., 2013, p. 6).

Lastly, assessing the case using the Anastiadis and Spence’s (2020) legitimacy and organisational pathology, it is evident that before the introduction of the international transfer system in 2001, FIFA believed it could operate a transfer system that was not adhering to European laws. This is emphasised by its inaction following the *Dona* ruling. In order to legitimise its position within the football governance network and the public arena, FIFA and the governing bodies had to implement a new transfer system in a move to ensure regulatory legitimacy.

Chapter 3: Understanding The Governance of Professional Football: An Assessment of The Impact of Brexit on The Football Player Transfer System.

3.1. Introduction

Player transfers tend to take two forms: either a form of a buyout, or that of a loan transaction (Geey, 2020). With the buyout option, the player transfers permanently from one club to another. On the other hand, the loan option allows a new club to temporarily obtain the service of a player, without transferring full ownership rights. Leaving the EU will mean the UK will see changes to its policies on immigration, which in turn will impact the freedom of movement for people (Perry & Steenson, 2019). The Withdrawal Agreement governs the relationship between the EU and the UK and as such, the UK is no longer bound to implement the EU Free Movement Directive and can create and enforce its own policies (European Commission, 2019). In the UK, the professional football system is like any other professional industry and it is subject to the same immigration and employment legal framework that employees and employers are subjected to in these other professional industries. (Mace & Smith, 2022)

This chapter examines and evaluate the football transfer system in the UK to establish the extent of the impact of Brexit. It looks into the pertinent regulations and policies that have been affected by Brexit. Through documentary analysis and semi-structured interviews, this chapter details what changes, both regulatory and practical, have already been enforced and its initial impact on the transfer system in the UK, focusing on the national transfer system in England.

The chapter is empirically driven, and the research questions are formed from the observation of the topic studied, as well as from a theoretical framework utilised. As such, the following research questions will serve as a guide in exploring the impact of Brexit on the UK transfer system:

1. How is the player transfer and immigration system in professional football in the UK governed?
2. How did the UK's membership in the European Union affect the football player transfer system in the UK pre-Brexit?
3. What impact has the UK's Withdrawal from the EU had on player transfers and policies in professional football?

The aim of the first research question is to understand the role and working of the football transfer system operating in English football. The question enables the effective contextualization of the transfer system in the country. This then led to an analysis of the policy making documents and documents governing the transfer system in professional football in the UK. Furthermore, the study utilises concepts from policy-making theoretical models to better understand the network involved in the governing of the transfer system.

The aim of the second research question is a policy-focused research, as it presents and critically analyses key decisions made by the British government, the FA and the governing bodies of the football leagues. It focuses on how these decisions have shaped the post Brexit transfer system.

The third research question investigates the impact of the UK's withdrawal from the EU and the resulting policy changes. It analyses the already established policies and regulations in the transfer system and its impact on the structures in England.

3.2. Literature Review

3.2.1. Legal And Socio-Economic Context of The EU Football Transfer System Regulations

Transfers and restrictions of players are governed by the FIFA Regulation of the Status and Transfer of Players (RSTP). Following the Bosman case in 1995 and numerous consultations, the ECJ allowed restrictions on the freedom of movement for players. However, this was only to the extent of them remaining compatible with European Community Law and providing they are defensible by compelling reasons relating to general interest and the measures are proportionate to what they intend to achieve (Bosman, 1995). This landmark case also established that football falls under the 'economic activity' umbrella, when it involves a players' employment by a club and an agreement to receive remunerations. Jean Marc Bosman was a player at RC Liege in the Belgian first division. When his contract ran out, he refused to sign a renewal and was consequently placed on the transfer list by the club. He then transferred to a club in the French second division, US Dunkerque. It was a requirement of the transfer completion that a transfer certificate be given by the former club and presented to the football association of the player's new club. Knowing that US Dunkerque were unable to pay the requested transfer fee, RC Liege withheld the transfer certificate which led to Bosman's suspension from football. These were the circumstances that led to his legal challenge of the football transfer system.

The ECJ ruled that there was a power imbalance in the system as the requirements of transfer fees and transfer certificates gave football associations and clubs excessive power over the players. They also ruled that the system went against the fundamental right of freedom of movement for workers by requiring transfer fees for players who are out of contract and having a quota limiting foreign players. The court ruled that "provisions which preclude or deter a national of a Member State from leaving his country of origin, in order to exercise his right to freedom of movement, therefore

constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned" (Bosman, para. 96).

This was however, caveated with restrictions such as transfer windows and deadlines being allowed as they were "necessary to secure a legitimate sporting objective, namely to regulate competition" (Perry & Steenson, 2019, p. 18). Upon a settlement between the European Commission and FIFA in 2001, the international transfer system was born, governed by the Regulations on the Status and Transfer of Players (RSTP). However, following Brexit, although the international transfer system is still applicable to the United Kingdom, there are certain nuanced changes from the national perspective which impacts the transfer system. The next section outlines the process of the players transfer system in the UK, exploring key aspects of the international transfer system that have been applied on the national level.

3.2.2. The Player Transfer Process in the UK

The transfer of a football player involves the transfer of the economic and federative rights of the player from one club to another, i.e. the rights to place an economic value on the player and the rights to be able to register a player with a National Federation (Participant 4). The FIFA RSTP is the primary regulation governing the international transfers of football players. However, the player transfer is also subject to national immigration laws and domestic football regulations prescribed by the FA. The FA have to work with the Home Office to ensure that their transfer regulations are in line with the immigration policies of the country (Mace & Smith, 2022). The figure below shows the parties involved in this process and how an international player transfer is conducted.

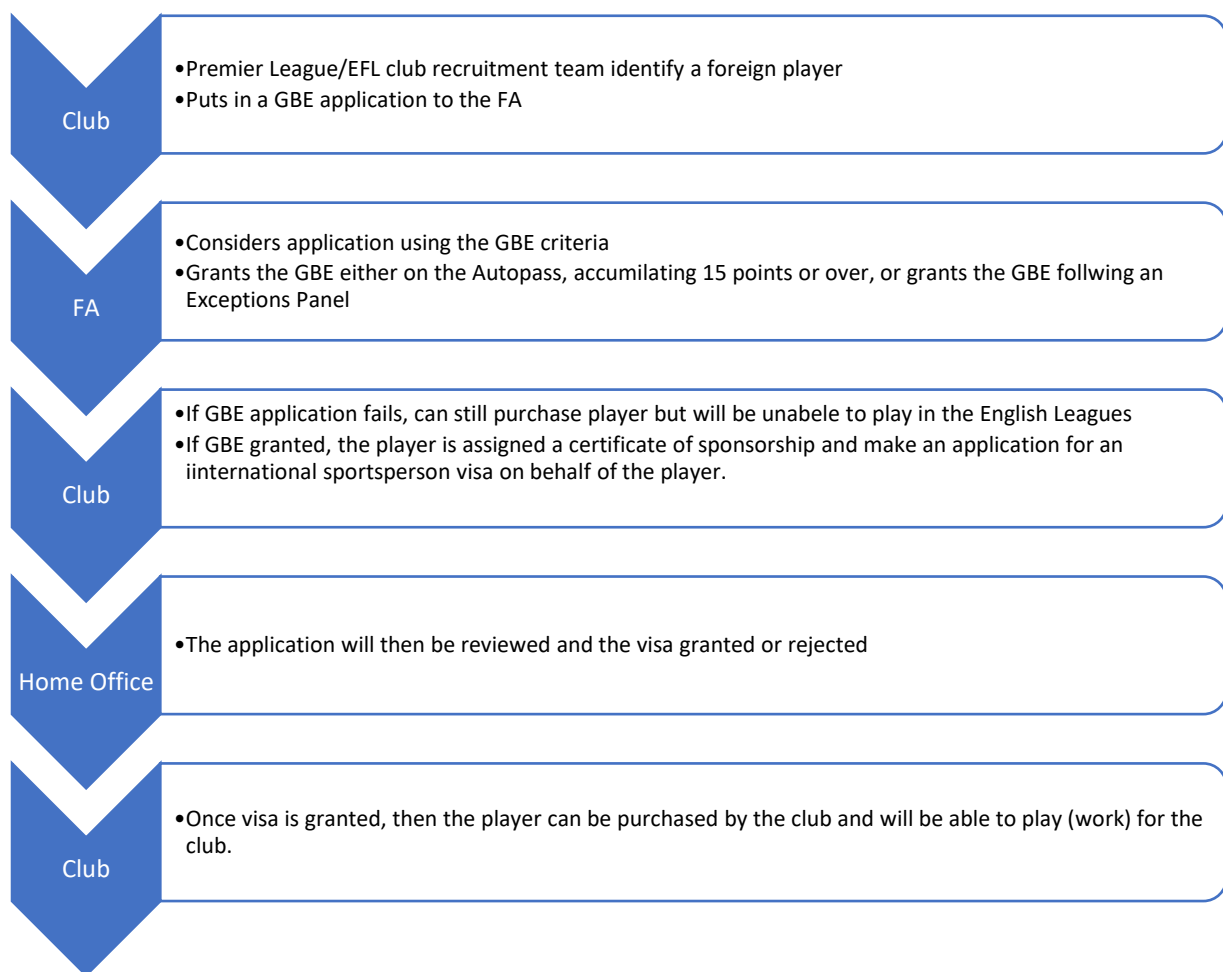


Figure 6 - The Player Transfer process in the UK

3.3. Data and Methodology

3.3.1. *Method of Data collection - Policy Documentary analysis*

This chapter implements a data collection triangulation of policy documentary analysis and the use of semi-structured interviews. Policy documentary analysis was chosen for its advantage of the availability of the policy documents, the cost-effective nature, and the unobtrusive prowess it possesses for gathering data (Bowen, 2009; Cardno, 2018). The analysis of policy documentation involves looking into the nature of the documents produced, the context in which it was produced and understanding the purpose and aims of the policy. The context for the investigation is limited to the transfer system in professional football in the UK. At the highest level of policy setting is the making and development of policies (Cardno, 2018). With respects to this study, the highest level is the legislation that is provided by the government such as the acts of parliament and treaties. The level after that is the implementation and management of these policies by private governing bodies, who then develop their own policies in line with the government legislation and policies, to disseminate to the organisations within the they govern.

Using policy documentary analysis, this article assesses the regulatory changes brought about by Brexit on the national level, as it pertains to the impact on the football transfer system within the UK. Although there are a number of general characteristics that are similar in documentary analysis, Cardno (2018) posits that public policy documentary analysis involves contextualising the nature and attributes of the policy documents in order for effective analysis to be conducted. Such documents are produced in the political arena and they span across a multi-disciplinary academic field. Furthermore, Cardno (2018) elaborates on three key distinctions that aid in contextualising the study of policy documents; Policy context, Policy text, and Policy consequences.

Although Cardno (2018) uses this in the context of educational policy research, I believe it is very much applicable to the research in sports policy and governance. As such, this chapter intends to extend the use of this analytical technique to football governance and policy assessment.

Firstly, the study of policy context is in relation “to the socio-political environment and requires understanding of the antecedents of the policy; the issues and pressures that gave rise to a need for the policy in the first place” (Cardno, 2018, p.628). This is concerned with the historical background of the policy and assessing what the context was for developing the policy. Assessing the policy text is focusing the documentary analysis on the content of the policy documents. This involves a deep analysis of the text, the purpose of the policy, considering the deeper meaning and interpretations behind the text in the documents. Lastly, policy consequences is concerned with assessing the effectiveness of the implementation of the policy in practice. All three aspects were considered when assessing the documents for this study. However, the study primarily adopted an analysis of policy text and policy consequences in the assessment of this policies introduced in the football transfer system as a result of Brexit.

3.3.2. Research Interviews

Semi-structured interviews were also utilised in this study. Semi- structured interviews were chosen as the interview style for this case study investigation as it allows the researcher to gain insight into a relatively unexplored phenomenon, facilitating the depth of information gathered, and enhancing greater contextual understanding (Yin, 2018). The documentary analysis of primary and secondary documents facilitated the identification of the policy area within the transfer system that is to be investigated, as well as provident detailed information for developing the study. Research interviews were adopted alongside this for their ability to suggest explanations of key occurrences and provide

invaluable insights on the research topic (Yin, 2018). The main policy area chosen for this article is the immigration policy operating within the UK transfer system, utilising the main policy initiative called the Governing Body Endorsement.

Interviewees were informed about the thesis outline, the research objectives, topics they will be interviewed on and the type of questions to be posed. The selection criteria used for the research sample of participants was informed by the policy being investigated (i.e. the immigration changes to the transfer system and understanding the regulatory impact of Brexit). As such, a group of academics, sports and immigration lawyers, and data analysts were selected and contacted as the group to participate in the research, with an additional selection criterion of a minimum of 10 years' experience working in the sport governance arena. Out of the group contacted for interviews, a group of 10 participants agreed to participate in the process. The participants were informed of the anonymity of the information provided in the study, the ethical considerations, their right to withdraw from the process. Participants were sent a consent form which was duly signed, informing them on the data collection process. During the interview, questions were posed to understand the player transfer system in the UK, the role the impact of Brexit of player movement, the impact of Brexit on transfer policies and recruitment¹⁴.

Participants Role	Number of interviews
Academics	3
Senior Lawyers	6
Football Data Analyst	1

Table 4 - Table of participants

¹⁴ Please see Appendix for more information on interview guidelines and participant information table.

It is necessary to acknowledge the small sample size utilized in this article. This is partly because of the nuanced specialist area of the immigration aspects of the national transfer system and Governing Body Endorsement that formed primary policy document analysed in the study. Furthermore, it should be noted that a number of officials at the FA were contacted for the study but a response to participate in the study was not received. Other experts were contacted for interviews but were unable to participate or withdrew due to time constraints on their part. The use of press releases and other academic accounts addressed the lack of the participation from the FA officials contacted.

It is also necessary to acknowledge the lack of clear representation of football clubs or players within the sample. However, albeit not a direct representation of the clubs, the sample includes participants who have represented football clubs and players on matters regarding the transfer system as external lawyers and as former representatives of the football club. Lastly, although it may seem there is a heavy reliance on senior lawyers in the sample, it is as result of the nuanced nature of the selected policy to be examined. Furthermore, the extensive years of experience of these renowned experts in their field, in previous roles at football clubs, and working in a specialist sports context, provided rich data and insights to the phenomenon being explored. Nevertheless, the adoption of a triangulation of policy documentary analysis and semi structured interviews was adopted to corroborate findings and ensure data validity is achieved (Malterud et al., 2016; Yin, 2018).

3.4. Discussion and Analysis – Understanding the GBE

3.4.1. *Immigration process of Football players in the UK Post Brexit.*

In its origins, the UK immigration policy was a protectionist policy which restricted the mobility of working EU and other foreign nationals, in order to protect the interest of the domestic job force from external competition (Perry & Steenson, 2019). However, joining the EU in 1973 meant that this role changed, and the UK had to abide by the EU's fundamental principles such as the free movement of workers. Albeit abiding by these principles, in 2015, the UK Home Office decided to rework the regulations governing work visas for other foreign nationals in order to make them more stringent. This was the case for foreign athletes as they would only be granted work permits if they were established athletes and "sponsored on a long-term contract to make a significant contribution to the development of sport at the highest level in the UK" ([Home Office, 2023](#))

Brexit saw the UK's complete withdrawal from the European Union following the end of the transition period on the 31st of December 2020. Therefore, the UK was no longer subject to the TFEU after the withdrawal and as such, the fundamental treaty rights, such as the freedom of movement for workers, was no longer applicable to the UK. This meant that EU nationals are now subject to the same immigration rules as all other foreign nationals outside of the UK (Mace & Smith, 2022). The Home Office requires employers to obtain a sponsorship licence in order to be able to employ such foreign nationals. The employer will be required to act as a sponsor for an employee's visa/residence permit to allow the employee to freely reside and work in the country ([Home Office, 2023b](#)).¹⁵

¹⁵ This is excluding the workers and players that were already in the country pre-Brexit and were eligible to apply for settled or pre-status as provided by the EU Settlement Scheme (EUSS) and those who are eligible to work through a different scheme. For a more detailed explanation of the EUSS, please see (Mace & Smith, 2022)

“If we want to move jobs, generally, we will have either a fixed term contract which expires on a certain date, and then we can move freely at the end of that, or we will have a rolling contract, which has a defined notice period within it. Obviously, the difference with footballers is very much that there is a value placed upon them and in some ways, we are all valuable assets to the organizations we work for. But it is quite restrictive for footballers, in terms of their ability to move on” (Participant 2)

Professional footballers are classed as employees and the football clubs to which they are contracted to are considered their employers. However, a point of note is the unique nature of the employment of footballers following the Bosman ruling. Footballers who are under contract with a club are only allowed to leave to a new club during a specific transfer window. This distinctive facet of the professional football industry restricts the freedom of movement which players have, and this is highlighted by Participant 2 above.

The core immigration route for foreign professional footballers who intend to play in the UK is the International Sports person visa (Home Office, 2023c). During the Brexit transition period, the Home Office made changes to the immigration routes and the International Sports Person Visa was announced in September 2021 and implemented on 11th October 2021.¹⁶ Pre-Brexit, the category was split into two; the T2 sports person route and the T5 (temporary Worker) Creative or Sporting Worker Route. Merging both categories, the Home Office aim was to provide a simplified visa procedure under this ‘one dedicated category’ (Mace & Smith, 2022, p. 169). However, within the category, there is a route where the sports person is applying for a period of stay of less than 12 months; and a route when the sports person is applying for a period over 12 months. Both routes

¹⁶ For full assessment of the immigration changes announced, please see [Statement of changes in Immigration Rules: HC 617, 10 September 2021](#)

have their nuanced differences as well. For example, when applying for a term less than 12 months, there is no need to show proof of 'knowledge of English language (Home Office, 2023c). However, on the route of over 12 months, it is mandatory to provide a proof of English language. Furthermore, a sportsperson applying to stay in the UK can apply for a maximum duration of 3 years at a time which can subsequently be renewed for another 3 year period. (Home Office, 2023c)

3.4.2. Sponsorship Licence and Governing Body Endorsement

“The FA, confirm that they endorsed this player. So that's stage one; endorsement to the FA then once that's approved, then it's stage two - application to the home office - the main document is that endorsement...and there is an English language requirement, it's level A1 so it's a basic level of English, but that is a requirement.” (Participant 6)

For a foreign player to be granted a visa under this category, the player must be sponsored by an eligible football club which holds an International Sportsperson A-rated Worker sponsor licence, as well as obtained an endorsement from the FA known as the Governing Body Endorsement (GBE).¹⁷ With regards to men's professional football, sponsorship licences from the Home office and GBE's from the FA are only granted to clubs in the Premier League and the English Football League (Mace & Smith, 2022). This emphasizes a network whereby the Home Office acts as the main policy setter in developing criteria for clubs to attain licences to legitimise their actions in hiring foreign players. Furthermore, the position of the FA as a policy setter is also legitimised by the Home Office here as

¹⁷ For England, this is the English FA. However, the Scottish FA, the Football Association of Wales and the Irish FA are also approved to issue endorsements for their respective territories (Mace & Smith, 2022)

they have developed the GBE policy in the policy stream and conferred powers of authority to the FA to administer the GBE criteria.

A club is granted a sponsor's licence if it is able to meet the eligibility criteria set out by the Home Office in the Worker's and Temporary Workers Guidance for Sponsors and the specific guidance tailored for the International Sportsperson licence (Home Office, 2023d). The club will need to provide evidence of lawful operation in the UK, dependable and honest behaviour that does not contravene the public good, capacity to comply with sponsor duties and meet the eligibility criteria (Mace & Smith, 2022). Once application for the licence is approved, the applicant organisation will be awarded a rating of either 'A' or 'B' in accordance the risk profile assessed by the Home Office and added to a Register of Sponsors which is published by the Home Office (Mace & Smith, 2022). However, the international sportsperson visa requires a sponsor to have an A rating. Therefore, it is mandatory for football clubs who wish to sponsor foreign players under this route to have an 'A' rated licence. The sponsorship licence is awarded for an initial term of four years, after which it is extendable in four year increments (Mace & Smith, 2022)

“The endorsement requirements for an international sports person are: the applicant must provide a letter from the relevant sports governing body listed in the appendix sports governing bodies - so under football, it is the FA; that the applicant is internationally established at the highest level; and that the applicant will make a significant contribution to the development of their sport at the highest level in the UK.” (Participant 5)

A key component of the international sportsperson visa is the Governing Body Endorsement (GBE). A GBE is awarded by a sports governing body to a non-UK sportsperson as an acknowledgement that they are well established in their field and as such, will make a significant contribution to the sport in UK. Each sport governing body publishes a set of criteria that is used to assess a sportsperson's eligibility. Once the criteria are met, the governing body will issue a GBE to the sportsperson's employer, who will then issue the sportsperson a Certificate of Sponsorship which will be used for a visa application (Mace & Smith, 2022).

The Home Office is responsible for the visas and immigration status of workers in the UK. However, the Home Office as a policy entrepreneur will collaborate with the sport governing bodies as policy entrepreneurs as well, to establish a set of effective policy criteria in the policy stream by which sportspersons are assessed on, based on the bodies respective sport. In England, the FA is the governing body that endorses part of the visa applications for professional footballers, to the Home Office, following an assessment of the GBE criteria in place.

With regards to football and playing in the English Leagues, "a club must obtain a GBE from the FA before a player is permitted to undertake any employment duties for the club (including participation at training and in friendly matches)"(FA, 2022). Prior to Brexit, the GBE only applied to non-EU/EEA citizen, as EU citizens could rely on the fundamental right of free movement of workers, and the resulting automatic right to play football in the UK. In an analysis conducted by the BBC of the first tiers of the English and Scottish football leagues, it was established that under the regulations set by the Home Office for foreign nationals, a total of 332 players would fail to meet the criteria (Slater, 2016).

On 1st December 2020, following the FA's consultations with the Premier League and the EFL on the problem defined by Brexit, the new GBE criteria was developed and approved by the Home Office within the policy stream (FA, 2020). The FA released the GBE criteria for the Men's and Women's game, for players, coaches, assistant coaches, performance managers and directors. However, this study focuses solely on the GBE Men's player criteria. The new regulations came into effect on 1st January 2021, at the end of UK's transition period following the breakaway from the EU. The statement released by the FA is that the new criteria "meets the joint objectives of the Premier League, EFL and the FA allowing access to the best players and future talent for clubs, as well as safeguarding England teams, by ensuring opportunities for homegrown players" (FA, 2020). The following section will now assess the GBE in two categories; firstly the GBE as it applies to senior player, and then the GBE as it applies to players under the age of 21.

3.4.3. The requirements for GBE status for senior players

Clubs may apply for a GBE for a player at any point during the season on behalf of a player and they must have a valid Sponsor's licence from the Home Office. According to the revised regulations, there are six categories by which a player's eligibility is assessed, requiring them to achieve a score total of 15 points.

The first category is **international appearances**. A player is assessed on the percentage of appearances they make for their national team in the preceding 2 years of the GBE application. The national team FIFA ranking is also considered in this category. Players from countries with higher FIFA rankings are required to have made a lower percentage of international appearance while

players from lower ranking countries are required to have a higher percentage of international appearances.

It should also be noted that in this category, a player can be granted an automatic GBE (an 'Auto pass') without achieving points in any other categories. However, the auto pass is unavailable to players from countries outside FIFA top 50 rankings. Table 5 below shows the points awarded to a player for the percentage of international appearances made.

Player's International Appearances	1-10	11-20	21-30	31-50	51+
90-100%	Auto Pass	Auto Pass	Auto Pass	Auto Pass	2 points
80-89%	Auto Pass	Auto Pass	Auto Pass	Auto Pass	1 point
70-79%	Auto Pass	Auto Pass	Auto Pass	Auto Pass	0 points
60-69%	Auto Pass	Auto Pass	Auto Pass	10 points	0 points
50-59%	Auto Pass	Auto Pass	10 points	8 points	0 points
40-49%	Auto Pass	Auto Pass	9 points	7 points	0 points
30-39%	Auto Pass	10 points	8 points	6 points	0 points
20-29%	10 points	9 points	7 points	0 points	0 points
10-19%	9 points	8 points	0 points	0 points	0 points
1-9%	8 points	7 points	0 points	0 points	0 points

Table 5 - GBE- Player's International Appearances

The second category is the **domestic minutes** the player has achieved in the preceding two years of the GBE application. The GBE regulations introduce a new ranking system for the domestic leagues, putting them in 'Bands 1- 6'(FA, 2022, p. 2).

According to this category, the more minutes a player plays in a club from a higher banded league, the more points he is awarded towards the GBE. Furthermore, if a player is eligible for points in more than one column, the player is only awarded the higher of the points (FA, 2022, p. 11). One such situation is if a player is eligible to attain points one set of points under this section the player played in two different domestic competitions during the reference period in which the GBE is assessed. This is also the case for a youth player eligible to attain points in multiple columns if he made a debut appearance in more than one band or if the youth player made his appearance for the senior team and has also played the requisite percentage of minutes to attain points(FA, 2022, p. 11).

Bands	Leagues Included
Band 1	English Premier League, Bundesliga, La Liga, Serie A, and Ligue 1.
Band 2	Portuguese Primeira Liga, Eredivisie, Belgian First Division A, Turkish Super Lig, and the English Championship
Band 3	Russian Premier League, Campeonato Brasileiro Série A, Primera División of Argentina, Liga MX, and the Scottish Premiership.
Band 4	Czech First League, Croatian First Football League, Swiss Super League, La Liga 2, Bundesliga 2, Ukrainian Premier League, Greek Superleague, Colombian Categoría Primera A, USA's Major League Soccer, Austrian Football Bundesliga, Danish Superliga, and Ligue 2.
Band 5	Serbian SuperLiga, Polish Ekstraklasa, Slovenian PrvaLiga, Chilean Primera División, Uruguayan Primera División, the Swedish Allsvenskan division, the Norwegian Elitserien division, and Chinese Super League

Band 6	All leagues not mentioned in Bands 1-5
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Table 6 - GBE - Banding of the Leagues

Player's Domestic Minutes	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6
90-100%	12 points	10 points	8 points	6 points	4 points	2 points
80-89%	11 points	9 points	7 points	5 points	3 points	1 point
70-79%	10 points	8 points	6 points	4 points	2 points	0 points
60-69%	9 points	7 points	5 points	3 points	1 point	0 points
50-59%	8 points	6 points	4 points	2 points	0 points	0 points
40-49%	7 points	5 points	3 points	1 point	0 points	0 points
30-39%	6 points	4 points	2 points	0 points	0 points	0 points
20-29%	0 points	0 points	0 points	0 points	0 points	0 points
10-19%	0 points	0 points	0 points	0 points	0 points	0 points
1-9%	0 points	0 points	0 points	0 points	0 points	0 points
Debut for Youth Player*	6 Points	5 Points	4 points	3 points	2 points	1 point

Table 7 - GBE - Players Domestic Minutes

The third category considered is the '**Player's Continental Minutes**'. In a similar way as the domestic league, the continental competitions are classified into 3 bands (FA, 2022).

- Band 1 Continental Competition includes the UEFA Champions League and the Copa Libertadores.
- Band 2 Continental Competition includes the UEFA Europa League and the Copa Sudamericana.
- Band 3 Continental Competition includes other continental competition that have not been included in Band 1 Continental Competition or Band 2 Continental Competition.

The inclusion of the South American competitions in Bands 1 and 2, alongside the UEFA competitions, highlights the value and significant contribution which South American players and players within that league have on football in the UK. Regarding a player's points allocated per minutes played in the category, please see Table 8 below (FA, 2022).

<u>Player's</u>	<u>Band 1</u>	<u>Band 2</u>	<u>Band 3</u>
<u>Continental</u>			
<u>Minutes</u>			
90-100%	10 points	5 points	2 points
80-89%	9 points	4 points	1 point
70-79%	8 points	3 points	0 points
60-69%	7 points	2 points	0 points
50-59%	6 points	1 point	0 points
40-49%	5 points	0 points	0 points
30-39%	4 points	0 points	0 points
20-29%	0 points	0 points	0 points
10-19%	0 points	0 points	0 points
1-9%	0 points	0 points	0 points

Table 8 - GBE - Player's Continental Minutes

The fourth category considered is the **domestic league position of the club** which the player is transferring from. In order for the player to be awarded points in this category, there is a requirement for the player to have been included in at least one matchday squad in the domestic league of his former club, as well as to have played at least 1% of the minutes available in the domestic cup competition (i.e. the domestic cup such as the FA cup which incorporates a route to qualifying for a continental competition) (FA, 2022, p. 5). According to Table 9 below, a player will achieve more points if the team they are transferring from play in a higher domestic league (i.e. in accordance with the bands of domestic leagues in Table 6).

Last Club's Final Domestic League Position	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6
Title Winner	6 points	5 points	4 points	3 points	2 points	1 point
Qualified for Group Stages of Band 1 Continental Competition	5 points	4 points	3 points	2 points	1 point	0 points
Qualified for Qualifiers of Band 1 Continental Competition	4 points	3 points	2 points	1 point	0 points	0 points
Qualified for Group Stages of Band 2 Continental Competition	3 points	2 points	1 point	0 points	0 points	0 points
Qualified for Qualifiers of Band 2 Continental Competition	2 points	1 point	0 points	0 points	0 points	0 points
Mid-table	1 point	0 points	0 points	0 point	0 points	0 points
Relegated to lower division	0 points	0 points	0 points	0 points	0 points	0 points
Promoted to higher division	N/A	1 point	1 point	1 point	1 point	1 point

Table 9 - GBE - Last Club's Final Domestic League Position

It should be noted that in a situation where the player's former club wins the league and in doing so, also qualifies for the continental competition, the player will only be awarded the higher of the points they are eligible for, as opposed to a combination of points for both winning the league and qualifying for the continental competition (FA, 2022).

The fifth category is the **Continental Progression of the player's last club**. Points will be awarded to the player based on the progress of his last club in a continental competition. However, these points will only be awarded if the player was included for at least one match day squad in the domestic or continental competition and played at least 1% of the minutes available in the domestic cup competition. The continental competition bands are the same as described above in the third category, and the further the team progress in a higher banded competition, the more points are awarded to the player (see Table 10 below). It should be noted that the player is only awarded the higher of the points he is eligible for (e.g. a player will only awarded 10 points if his team reaches the final of a band 1 competition, and not a combination of points for getting through the preliminary stages) (FA, 2022).

Continental Progression	Band 1	Band 2	Band 3
Final	10 points	7 points	2 points
Semi-final	9 points	6 points	1 point
Quarter-final	8 points	5 points	0 points
Round of 16	7 points	4 points	0 points
Round of 32	6 points	3 points	0 points
Group Stage	5 points	2 points	0 points
Other	0 points	0 points	0 points

Table 10 - GBE - Continental Progression

The last category is the **Quality of the club the player is transferring from**. Points will be awarded to a player if the club he is transferring from plays in one of the league bands (1-6). He will be eligible to receive points under this category provided he was in a match day squad for at least one match in either the domestic league or the continental competition and played at least 1% of the minutes in the domestic cup competition. Table 11 shows the number of points awarded in accordance with the domestic league bands(FA, 2022).

<u>Band of Player's Current Club</u>	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6
<u>Points</u>	12	10	8	6	4	2

Table 11 - GBE - Band of Player's Current Club (Pre -Transfer)

After assessment on the six criteria above, the FA will grant a player a GBE if the player attains 15 points or more. The application is moved on to the Home Office to grant an international work permit. However, in a situation where the player has 10-14 points, an application is possible to an Exceptions Panel, in which the club can give evidence of exceptional circumstances hindering the player from attaining 15 points(FA, 2022).

3.4.4. The requirements for GBE status for U21 players (Youth Criteria) (January 2021)

The GBE rules also set out different criteria which youth players must meet to be granted a GBE. The regulations define youth players as those under the age of 21 as at the date of making the GBE application. A set of six criteria based on their age and level of experience is used when assessing the GBE application (FA, 2022).

Youth internationals: This criterion is categorized into 2 bands. Band 1 Youth Internationals is concerned with match appearances made in specific tournaments. These tournaments include u17 and u21 World cup; FIFA's confederations championships as it pertains to their age groups (UEFA, CAF, CONMEBOL, AFC, CONCACAF, and OFC); the Olympic Games, and the Toulon Tournament.

On the other hand, Band 2 Youth Internationals are concerned with the qualification matches for the tournaments listed in Band 1, as well as all other youth international matches.

A youth player will be awarded 7 points under this criterion if they make an appearance in at least 30% of Band 1 Youth Internationals in which he was available for selection in the preceding 12 months for the GBE application is made (FA, 2022). Alternatively, a youth player will be awarded 5 points under this criterion if they make an appearance in at least 30% of Band 2 Youth Internationals in the 12 months preceding GBE application.

Senior team debut: If a youth player makes his debut for the senior team of the club he is signed to in the 12 month period before the GBE application is made, the reputation of the club and league is considered and the player will awarded points in accordance to the Band in which the league is categorised into. Making a debut for a team in Band 1 will award a youth player 6 points in this category. The other bands are as follows

- Band 2 = 5 points
- Band 3 = 4 points
- Band 4 = 3 points
- Band 5 = 2 points
- Band 6 = 1 point

Final League Position: A youth player may also score points based on the league position of the club he is transferring from, provided the player attained a minimum of 30% of available minutes in one or more following competitions: UEFA Youth League, CONMEBOL U20 Libertadores, Domestic Youth competition minutes, B Team minutes.

Club's Final League	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6
Position						
Title winner	3 points	3 points	2 points	2 points	1 point	1 point
Qualification for Group Stages of Band 1 Continental competition	3 points	2 points	2 points	1 point	1 point	0 Points
Qualification for Qualifiers of Band 1 Continental Competition	2 points	2 points	1 point	1 point	0 points	0 points
Qualification for Group Stages of Band 2 Continental Competition	2 points	1 point	1 point	0 points	0 points	0 points
Mid-table Finish	1 point	0 points	0 points	0 points	0 points	0 points
Relegation to a Lower Division	0 points	0 points	0 points	0 points	0 points	0 points
Promotion to a higher division	-----	1 point	1 point	1 point	1 point	1 point

Table 12 - GBE Youth Criteria - Club's Final League Position

Continental progression: A youth player may still qualify for points under on the basis of the clubs' continental progression, provided he had played 30% of the available minutes in one or more of the

competitions available (i.e. UEFA Youth League, CONMEBOL U20 Libertadores, Domestic Youth League, and B Team Competitions).

<u>Continental Progression</u>	<u>Band 1</u>	<u>Band 2</u>	<u>Band</u>
Final	5 points	4 points	1 point
Semi-final	5 points	3 points	1 point
Quarter-final	4 points	3 points	0 points
Round of 16	4 points	2 points	0 points
Round of 32	3 points	2 points	0 points
Group stage	0 points	1 point	0 points
Other	0 points	0 points	0 points

Table 13 - GBE Youth Criteria - Continental Progression

League quality of Player’s current club: A youth player is still able to score points based on the league quality of his new club provided he had played 30% of the available minutes in one or more of the following competitions: UEFA Youth League, CONMEBOL U20 Libertadores and B Team Competitions. Playing for a band 1 club will award the player 11 points. This is the highest tally of points under this category when compared to Band 2 clubs (9 points), Band 3 clubs (7 points), Band 4 clubs (5 points), Band 5 clubs (4 points) and Band 6 clubs (6 points).

It should also be noted that in a situation where the youth player is unable to attain points for failing to satisfy the minimum 30% of minutes under any of the youth criteria mentioned above, he may still attain points provided the value of his youth competition minutes (e.g. the U-23 Premier League) is at least 30%. In this case, the player will be awarded 9, 8, 6, 5, 3 and 2 points for Bands 1-6 clubs respectively.

Following the review of the January 2021 GBE, the above requirements for a youth player under the age of 21 was amended in the updated version released in June 2021. Youth players assessment was then integrated into the senior players assessment. However, the FA in its integration of these assessment criteria, still consider both the youth and senior men differently as the youth players are awarded points for their debut appearance under the 'Player's Domestic minutes' category.

3.4.5. The Exceptions Panel process:

Under the 2021 GBE rules, the exceptions panel will operate and only be available in limited circumstances. In the initial regulations released following the Brexit, the Exceptions Panel would only operate in the January 2021 transfer window and as such, it was noted that recourse to the panel will not be available to clubs in the summer transfer window.

A player will be able to appeal to the Exceptions Panel if there are 'exceptional circumstances' surrounding the inability to achieve the requisite 15 points who has attained 10-14 points in the objective criteria. However, the FA have opted to keep access to keep the Exception Panel open in all of the windows (Participant 2; FA, 2022).

Additionally, it should be noted that in a situation when an U-21 player does attain between 10-14 points under the senior player's category and then over 15 points in the youth criteria, The FA can progress his application to Relevant Interested Parties (RIP). According to the GBE rules, the RIP are the Professional Footballers' Association and the league into which the player is transferring into. The Rip and the FA will then apply their joint discretion to deliberate on awarding the GBE to the

player. Hence, in order to have his GBE application granted without referral to the RIP, an U-21 player must attain between 10-14 points under the senior criteria, regardless of the points attained under the youth criteria (FA, 2021). However, in the GBE effective June 2022, youth players no longer need to meet a point criterion to apply to the Exception Panel; the onus is on the club to provide “evidence that the Youth Player shows significant potential and is of sufficient quality to enhance the development of the game in England.” (FA 2022, para 24.).

3.4.6. *The Scottish GBE difference*

“Scottish clubs aren't on the same level as Premier League clubs. So to me, it's absolutely mad that the same rules would apply to Celtic as they were to Manchester United. It's just doesn't make sense. I think the home office and the FA and the SFA know that. And there's a slight difference in the requirements for the Scottish Premier League. Basically, they're able to sponsor workers, essentially their workers, to come and play in Scotland in a way that English clubs can't...We've got one immigration system for the UK; it's unusual that a part of the UK, Scotland, is essentially able to sponsor lower skilled migrants than in England. That's not how the immigration system works. It's a system that's applicable across the United Kingdom.”

(Participant 6)

The focus of this article is the English Leagues. However, the purpose of this section is to highlight the fact that England is only one country included in the UK which is affected by Brexit. Furthermore, it also highlights the fact that the UK operates with one Home Office albeit having such a variation to the GBE in Scotland. Therefore, this section briefly assesses how the GBE is implemented in another part of the UK.

In the GBE League rankings, the top Scottish League (The Scottish Premiership) is placed in band 3. Conversely, the English Premier League is ranked in Band 1 and the English Champions (2nd tiered league in the country) is ranked in Band 2. This highlights a huge gulf in perceived quality between the English Leagues and the Scottish League. This also means that there is a difference in what is deemed as an elite player that will be able to make a significant contribution to the development of football in their respective countries. Furthermore, the amount of revenue generated by the Premier league alone is stood at £4.9billion at the end of the 2020/2021 season (Deloitte Sports Business

Group, 2022). This is another difference which sets the two countries apart as the Scottish Premiership announced a record turnover of £39.5 million in the 2021/2022 season (BBC, 2022), projecting a revenue target of £50 million by 2029 (Grant, 2022).

Thus, it follows that a different GBE policy should be utilized in Scotland. However, Scotland is part of the UK and the GBE policy form part of the immigration system, and it should not operate with a uniform immigration system (Participant 6). An alternative argument is that the immigration rules do allow the governing bodies to set their own GBE criteria and as the Scottish FA and the Football FA are separate governing bodies. Hence, both governing bodies release their own GBE Criteria, albeit being very similar. Under both GBE system, a player is awarded a GBE by getting an auto pass under the International playing minutes assessment, or by achieving a total minimum of 15 points. However, there are some nuanced differences that will be highlighted in this section.

DOMESTIC LEAGUE MINUTES

Player's Domestic Minutes	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6
90-100%	12 points	12 points	12 points	6 points	4 points	2 points
80-89%	11 points	11 points	11 points	5 points	3 points	1 point
70-79%	10 points	10 points	10 points	10 points	2 points	0 points
60-69%	9 points	9 points	9 points	3 points	1 point	0 points
50-59%	8 points	8 points	8 points	2 points	0 points	0 points
40-49%	7 points	7 points	7 points	1 point	0 points	0 points
30-39%	6 points	6 points	6 points	0 points	0 points	0 points
20-29%	0 points	0 points	0 points	0 points	0 points	0 points
10-19%	0 points	0 points	0 points	0 points	0 points	0 points
1-9%	0 points	0 points	0 points	0 points	0 points	0 points

Table 14 - GBE - Scottish Player's Domestic Minutes

LAST CLUB'S FINAL LEAGUE POSITION

Last Club's Final League Position	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6
Title Winner	6 points	6 points	6 points	3 points	2 points	1 point
Qualified for Group Stages of Band 1 Continental Competition	5 points	5 points	5 points	2 points	1 point	0 points
Qualified for Qualifiers of Band 1 Continental Competition	4 points	4 points	4 points	1 point	0 points	0 points
Qualified for Group Stages of Band 2 Continental Competition	3 points	3 points	3 points	0 points	0 points	0 points
Qualified for Qualifiers of Band 2 Continental Competition	2 points	2 points	2 points	0 points	0 points	0 points
Mid-table	1 point	1 point	1 point	0 point	0 points	0 points
Relegated to lower division	0 points	0 points	0 points	0 points	0 points	0 points
Promoted to higher division	N/A	1 point	1 point	1 point	1 point	1 point

Table 15 - GBE - Scottish - Last Club's Final League Position

QUALITY OF THE CLUB THE PLAYER IS TRANSFERRING FROM.

Band of Player's Current Club	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6
Points	12	12	12	6	4	2

Table 16 - GBE - Scottish - Band of Player's Current club

POINTS ALLOCATED FOR INVESTMENT

Salary Percentage	Points
50% above the median salary for the relevant league	1
60% above the median salary for the relevant league	2
70% above the median salary for the relevant league	3

Table 17 - GBE - Scottish - Points Allocated for Investment

In the above assessment criterion, the Band 2 and Band 3 categories are awarded more points than the English GBE where players' domestic playing minutes range from 30% to 100%. This means that players are awarded more points towards the minimum 15 points needed for a GBE to be awarded.

Furthermore, in the English GBE, there are no points allocated for investment. This criteria in the Scottish GBE provides another avenue for players to achieve more points towards the required minimum of 15 points and therefore, making it easier for a international, particularly European players to transfer to. "We've seen recently three Japanese players go to Celtic; We've seen an Australian go to Hearts and Hibs have signed a Norwegian." (Participant 1)

However, as mentioned earlier, Scotland is part of the UK and should have the same immigration entry requirements as England. It is rather strange that these rules are albeit both countries operating under the same Home Office (Participant 6).

THE SCOTTISH EXCEPTIONS PANEL

“The differences between Scotland and England and the way that they are interpreting the same document basically very differently. The rules have been written at 15 points for anyone wanting to come in and play football. But anyone between 10 and 14 points is allowed to go to an exceptions panel in England, but they have to prove that they would have got 15 points if not for exceptional circumstances. So that's a very stringent set of criteria to try and prove and that could be a long term injury or something that might have happened in that country that would have prevented them from playing the amount of football required. Whereas in Scotland, it's very different...If you can prove that this player has got something to contribute to the game in Scotland and you can prove that they're a very good player, then you can get to an exceptions panel” (Participant 1).

The Exceptions Panel in the Scottish GBE is also rather different. In the English GBE, a player must attain 10-14 points and there must be ‘exceptional circumstances’ regarding why the player is unable to achieve these points before the case can be brought to the exceptions panel. This was one of the reasons a case like Justin Kluivert transfer to Fulham in 2021 was not able to go through as he was unable to achieve the minimum of 10 points that allow an exceptions panel application. However, the wording in the Scottish GBE states that a player can appeal to the exception panel where he “does not meet the published criteria [i.e.15 points]”. The difference between both regulations here is that in England, you can only appeal to the exceptions panel if there were exceptional circumstances that led to the player attaining 10-14 points, while in Scotland, there is no minimum threshold set and the player merely does not achieve 15 points. For example, a player can achieve 4 points under the Scottish GBE criteria and have his case reviewed by the exceptions panel, whereas that player applying in England would not be denied a GBE, with no recourse available to appeal to the exceptions panel.

3.4.7. *An Assessment of the early impact of the GBE - The main changes in the GBE requirements Post Brexit*

“Pre Brexit, you had the kind of pre 2014 system, which was FIFA ranked top 70 in the previous two years, 75% of international caps or more, or else it was an exceptions panel. Now, obviously, those exceptions panels were open ended appeals, it was basically an in person hearing at the FA, where you presented your case, and the panel was like yes or no, and it was very much based on football. You know, is he a good enough player? Where does he fit into your system? It was a lot of like, showing the panel videos of scouting and somebody from the club, being a manager, or technical director, or somebody who's speaking to the panel, talking them through the process going 'this is why we think this player is an exceptional talent'. And that would have been the criteria... So, the system was kind of revised in 2014, to this sliding scale system that you had, where it was top 50 FIFA, but it was 1 to 10, 11 to 20, 20 to 30, 30 to 50 and that changed.”

(Participant 5)

The new GBE requirements set out a point-based system by which EU players and other foreign national can obtain a work permit to play in the English Premier League. In order to be automatically granted the GBE, the player will need to have earned a total of 15 points under this system. Before Brexit, a similar point-based system was applied in awarding the GBE to foreign nationals and in a general sense, the framework was retained in the new rules. However, the criteria and their metrics have evolved over the years.

There was a major change in the in 2014, whereby previously the GBE was assessed on the ranking of the player's international team (ranked 70th or above in the FIFA World Rankings) the previous two years from the application date and playing 75% of the available international minutes (FA, 2012).

In 2014, the FA began its effort to reduce the number of non-EU players playing in the English Leagues by about 50% through introducing a sliding scale to the criteria considering the percentage of matches played, as well as reducing the list of the FIFA ranking from the top 70 to the top 50 (BBC, 2014). The FA Chairman, Greg Dykes, in conjunction with an FA Commission, released a report that identified the ineffective regulation of the transfer system as a key problem area within football in England as the desired balance of British, EU and non- EU players had not been achieved (FA, 2014).

Following the report, England adopted a GBE system intended to address the concerns of imbalance by limiting the number of Non-UK players, in a push to ensure the development of more homegrown UK talent. A sliding scale system was then introduced in 2015 and this was the system used just before Brexit.

In assessing the GBE criteria released for the 2019/2020 football season preceding the Brexit, the criteria used for assessment of a player's eligibility was rather different to the post Brexit system released for the January 2021 transfer window. Although it was centred around a points-based system, under the Pre- Brexit system, a player would automatically be granted a GBE if he participated in a "Required Percentage of senior Competitive International matches played by that players National Association during the Reference Period" (FA, 2019, p.7). This criterion has remained unchanged in the post Brexit GBE and the Reference Period here is the same as the post Brexit criteria, where it considers the 24-month period before the application of the GBE (12-month period for an under 21 player). However, once the automatic criterion was not met, the applicant club would need to apply for an Exceptions Panel. The Exceptions Panel would then conduct an objective and subjective review of the application submitted (FA, 2019, p.15).

Criteria	Points
Player transfer Fee falls above 75th percentile	3 points
Player's transfer Fee falls between 50th and 75th percentile	2 points
Player's wages above 75th percentile	3 points
Player's wages between 50th and 75th percentile	2 points
Player's current club plays in the top League and player played 30% or more of Available Minutes	1 point
Player's current club played in Continental Competition group stages or onwards within the last 12 months, and player played 30% or more of Available Minutes	1 point

Table 18 - GBE - Pre-Brexit - Objective Criteria A

Criteria	Points
Player Transfer Fee within 20% of the 50th percentile of Qualifying Transfers	1 point
Players with no transfer fee (free agents); a virtual transfer value above 20% below the 50th percentile of Qualifying Transfers	1 point
Player Wages within 20% of the 50th percentile of Qualifying Wages	1 point

Player's current club in Secondary League (list published by the FA) and player played at least 30% of Available Minutes	1 point
Player's current club played in final qualification rounds of a Continental Competition within the last 12 months, and player played at least 30% of Available Minutes	1 point

Table 19 - GBE - Pre-Brexit - Objective Criteria B

The above tables show the objective criteria that was considered by the Exceptions Panel. It highlights the use of a player's transfer fee and wages as a barometer in establishing the player's potential contribution to football in the country. A player was not able to achieve duplicate points in criteria A and then in criteria B. Taking the player wages as an example, a player who achieves points under this category in criteria A was not allowed to attain points regarding player's wages in category B. (FA, 2019). If a player achieved a total of 5 points or more under both objective criteria, the application goes on to a subjective review where the Exceptions Panel would then consider the submissions brought forward by the applicant before awarding the GBE.

One key retention in the Post Brexit GBE is the 'Auto-Pass' criteria whereby a GBE is automatically granted in accordance to meeting a certain percentage of appearances for one of the ranked national teams in FIFA's top 50 teams. Some of the notable changes are the other five objective criteria which players will be assessed against. A separate objective criteria for under 21 players has also been implemented an a maximum allowance of three under 21 players in the January 2021 transfer window when the regulations were introduced (and increased to six players in the season after) (FA, 2021). The rules on the Exceptions Panel set out that the panel will only be available in the January 2021 window and is only available in exceptional circumstances. However, this was later revised to be available in all the transfer windows that followed (Mace & Smith, 2022). Lastly, the

post-Brexit GBE regulations also includes the involvement of Relevant Interested Parties to deliberate on GBE applications. The FA note in their publication that the GBE criteria undergoes constant review and is subject to change in the next transfer window (FA 2021).

3.4.8. An Assessment of the GBE Banding of the Leagues.

“So they've just got the big five leagues, which is to say the Bundesliga, Serie A's, Liga 1 and Laliga and then obviously the Premier League as well. So they all count as Band one and then band two is Portugal, Holland, Belgium and Turkey. And then on three you've got Brazil, Argentina, Mexico and Russia. So. Yeah. How have they decided that those leagues are going to be in those bands?”

(Participant 1)

The FA did not publish any public information on how the banding of the Leagues are decided. The Band 1 leagues are the top leagues in UEFA (Premier League, Bundesliga, Seria A, La Liga, Ligue 1). It would be difficult to argue against placing these leagues in this band as they sit at the top of the football pyramid in their respective countries. Furthermore, it is possible that the leagues contained in bands 1-3 can be deemed to be the more 'established' leagues in the world, at least from the perspective of the UK, and as such players transferring from these leagues are awarded more points towards the GBE than the lower bands. A further point of note is that all the leagues included in bands 1 – 3 (except the English Championship) are their respective countries top leagues.

Pre- Brexit, clubs were able to deploy scouting networks to numerous leagues and countries in the EU, without having to consider in too much depth, difficulties players could face regarding their ability to work. The new GBE criteria has impacted this, particularly regarding the bandings of the leagues. This is because some of the banded leagues will now be more difficult for clubs to recruit

from, particularly bands 4 -6, because it will be harder for the player to receive the required points to qualify for a GBE (Participant 1). This further highlights the point that the banding of the leagues has meant there is a smaller pool of international players eligible to play football in the country and in turn, a smaller pool for clubs to recruit from.

Furthermore, the continuous review of the GBE before the transfer windows means that the criteria is subject to change in any given transfer window. Since Brexit, there have been four versions of the GBE released and an amendment was made to the banding of the leagues in the GBE released for the 2022/2023 season (FA, 2022). The first change was the promotion of the Danish Superliga from band 5 to band 4. Secondly, the GBE criteria for the 2022/2023 season also saw the inclusion of the Swedish Allsvenskan division and the Norwegian Elitserien division into Band 5. It should be noted that these two leagues were not listed by name in the GBE in the preceding the GBE criteria and as such were included in Band 6. (FA, 2022)

Therefore, players coming from all three leagues who had will now be able to achieve more points than they would have under the preceding criteria in the previous football season. It also highlights that fact that the FA can choose to promote clubs, means that they can also demote clubs as they see fit.

3.5. Social and Practical Implications of Brexit and the GBE on Player Recruitment

3.5.1. *Impact of the GBE on Premier league and championship clubs.*

“I think it has not impacted Premier League clubs, in any negative way. And there's reasons for that. Premier League clubs are insanely rich and are able to purchase top tier talent...I don't think we have the Premier League clubs have suffered because of the GBE process or have not been able to attract the type of talent they want to because of the GBE process. I think, lower down the league, then that's more of an issue because the rules apply to championship clubs in the same way they apply to Premier League clubs.” (Participant 6)

The findings highlight that clubs in both the English Premier League and the EFL Championship division will not be significantly impacted by the new GBE system. The reasoning behind this is that such clubs, particularly those in the premier league will be looking to recruit an ‘elite’ calibre of players. As such, a player considered in such a category is expected to have made numerous appearances for their national team and will have no problem achieving points under the international appearances category. Furthermore, as the category is linked with the FIFA rankings of the national teams, it follows that such a player who is selected for such a highly ranked national team can be deemed to of a high enough calibre to contribute to the league. However, issues arise for such players whereby there are discrepancies at their previous clubs where they are unable to achieve the points required to attain enough point for the GBE. An example of this when a player falls out of favour with the club or sustains an injury and as such, does not play for his club for a lengthy period of time.

The effect of this is that the GBE assessment reference period is the preceding two years of the application date, hence, a player can fall below the required percentage needed for to achieve points when assessing the player's domestic and international playing minutes (Participant 5). On an initial viewing, one might consider such a case to be deemed as an exceptional circumstance that should be considered by the exceptions panel. However, "it's not exceptional to think that a player wouldn't be selected and would fall out of favor, as most players during their career will go through something like that." This highlights the fact that clubs should consider when assessing a player's viability for recruitment; if it is deemed that the player should go through the exceptions panel, then the clubs must be able to prove that the circumstance were indeed exceptional (for example, Covid 19 pandemic or the Ukrainian war where fixtures were cancelled), as opposed to 'unfortunate' footballing reasons. As more applications go through the exceptions panel, clubs and their representatives will be able to garner clearly what constitutes and exceptional circumstance.

On the other hand, the GBE system has made it so the English clubs will pay a premium on transfer fees for certain players. Participant 1 used an example of Erling Haaland, who came into prominence when he was at the Norwegian club Molde. If a player of his ilk was still at a Norwegian club and an English club were to try and sign him up under the criteria as a promising talent without international experience, it is highly unlikely he will be granted a GBE as the Norwegian league is a Band 5 league and will not earn him enough points. He will have to go to another league, possibly another European league like the La Liga or the Bundesliga, where he would develop his skills and an English club wanting to recruit him after that will have to pay a substantial premium on his transfer fee than they otherwise would have if the GBE criteria. The example also highlights a competition for promising talent between the European leagues and how the Premiership clubs loose out to the European counterparts. This highlights a problem with in the problem stream that Premiership clubs will face, as well as selling clubs having the knowledge that there is no longer freedom of movement rules applicable in the country and as such, increase the transfer fees for purchasing Premier League

clubs. Richard Masters, the CEO of the Premier League, also notes that the GBE has had a 'contributing factor' to the huge amounts of money spent on football transfers into the Premier League and record fees been paid for players coming into the league (Aarons, 2023). As such, this is an area that can be reassessed in the next policy window. During this window, policy entrepreneurs such as the Premier League will need to work with the FA and the Home Office to develop a policy that ensures the English leagues are not at left at a disadvantage against their European competitors.

3.5.2. Impact of the GBE on Lower League clubs

"When we're talking about clubs who will get governing body endorsements, we're really talking about Premier League and Championship; much lower than that and it's difficult. They could get a sponsors license, yes. Are they going to be able to show that a player is playing at the highest level of football when you're playing in League One which is clearly not the highest level of football in this country. I think it'd be very difficult to sort of argue that this was sort of the cream of the crop coming in, if you're coming into play at League one" (Participant 2).

The GBE Criteria post-Brexit has been developed to allow clubs "access to the best players and future talents" (FA, 2020). It follows then that if a player is considered as such, that player will be playing in the elite leagues in the country. Therefore, foreign players (EU players included) can only play professional players if they are granted a GBE and in order to be granted a GBE, they have to be assessed to be of a high calibre or a future talent. This would mean that the lower leagues such as League One and Two, will not be able to sign these foreign players as it would be rather difficult to

put a case forward that a player who is considered one of the 'best talents', would be playing in these leagues, as opposed to the Premier League or the Championship.

For example, Oldham Athletic, who have recently been relegated from the EFL League two to the National League, would recruit players from the European Leagues such as Dylan Bahamboula (transferred from the Bulgarian efbet Liga League) and Andrea Badan (transferred from the Italian Seria A League) (Participant 1). Both of these players transferred to Oldham in 2020, before the end of the transition period, and could rely of the free movement of workers to play in the league. This meant the clubs did not have to concern themselves with calculation of the points demanded by the post-Brexit GBE where the players could struggle to accumulate the requisite points.

Alternatively, based on the reasoning behind the GBE criteria, the attitude of the Home Office and the FA would be to reiterate that the regulations are in place to bring the 'best talents' alone and ensuring more opportunities for homegrown players. Therefore, if homegrown players are getting more of an opportunity in the championship, League One and League Two, rather than purchasing talent that is on par with the numerous homegrown players in the country, then it can be deemed that the regulations are working in delivering that Brexit message (Participant 6).

3.5.3. *Implication of Brexit on European Players*

“So I'm an immigration lawyer. I focus on people migrating to the UK, whether that's an investor and entrepreneur or sports person... from an immigration point of view, there's been significant changes, I think around 60% of transfers in the Premier League or around that mark, came from Europe. Obviously, before Brexit, a European Footballer, did not need a visa or any work authorization to come and play at any club in the UK, any professional club. They would just show their passport because of freedom of movement, they would be able to work and play for that club, post Brexit. That's changed, there's no longer freedom of movement; a French citizen is treated pretty much in the same way as someone from India or the United States, wherever so that there's no longer that preferential treatment.” (Participant 6)

In previous years, the English professional football leagues had utilized the freedom of movement principle afforded the UK as being a member of the EU to recruit players. The extract above highlights the high utilization of this rule by the top football clubs in the country. The UK leaving the EU means clubs are unable to take advantage of this principle which facilitated a less arduous recruitment process. This is not to say that the English football clubs will no longer recruit players from the EU, but rather, acknowledging a change in process that the football clubs will have to acclimatise to. Players from countries in the EU are now regarded in the same pool as other international players and in order to play their football in the UK, they will need to apply for a work permit, following the GBE and International sportsperson visa process detailed above. It will also provide an additional process within the football clubs when assessing a player as viable transfer target to a club.

It must be noted that the GBE does not operate solely on the nationality of the player and following Bosman till date, England abolished the nationality quotas involved in football (Participant 8). As such, under the GBE, although the category of international appearances is used in assessing the player's level and potential contribution to the English leagues, the player is still subject to the other five categories in the GBE. However, regarding players of EU nationality, the regulations mean that there will be "fewer EU players in this country, or at least less 'average' EU players in this country, because it was pretty easy for EU players to move to England pre-Brexit" (Participant 3). Hence, although European players looking to move to the English leagues no longer have the benefit of the EU principle of Free movement of workers to rely on, they are still able to play football in the country, provided they can achieve the required points on the GBE.

3.5.4. A Change in the Recruitment Horizon

“The clubs that have really engaged with the Governing Body endorsement system, are the clubs that have done the best transfer work in the last couple of years... In the Premier League, somebody like Brighton have done this brilliantly in the last couple of seasons. And then in the last two seasons, somebody like Sunderland have done really well picking off some really good talent using this information and using the Governing Body endorsement criteria to good effect.” (Participant 5)

The GBE criteria is deemed to have reduced the talent pool of players available to clubs, particularly with players of EU nationality having to adhere to the criteria as well (Participant 1). The fact is that the immigration system in England is based on restricting immigration as opposed to expanding, and as such complete freedom of movement for workers Post-Brexit was an unthinkable incompatible concept (Participant 5) However, from an analyst and recruitment perspective, the GBE Post Brexit GBE system opens up new markets that would have been considered rather inaccessible to clubs in the past (Participant 1; Participant 5).

One such market is the South American talent market. The South American talent pool is now deemed more accessible is because the continental competition (Copa Libertadores) is ranked on par with the UEFA Champions League, awarding significant points towards the total points required in achieving the GBE. One Premier League club that has seen this opening and have taken full advantage of it is Brighton recruiting key players such as Moises Caicedo from the Ecuadorian club, Independiente del Valle and Julio Enciso from Julio Enciso from the Paraguayan side, Libertad Asuncion. Furthermore, players can achieve more points towards the GBE as their former club’s standings are considered, as well as the percentage of the player’s playing time. When compared to the previous GBE pre -Brexit, the criteria did not consider these metrics in the same way and awarded less points towards a player which made it more difficult to accumulate the requisite points

for the GBE. A key understanding of the GBE system will allow clubs and recruitment specialists to find valuable players by assessing the accessible talent pool in countries just outside the FIFA top 50 aggregated rankings, assessing the leagues just outside the top bands (bands 4 - 6) to scout their top players, tracking players total GBE points during or in advance of the reference period, so as to know the right time to purchase the player (Participant 5).

Furthermore, it must be noted that clubs are not restricted from purchasing players who do not attain the requisite point for GBE. Therefore, clubs are able to buy players ineligible to play for them. The solution here, which circumvents the GBE on the initial purchase of such a player, is to send the player out on loan to a club in a banded league where he is able to achieve the required points to be eligible to receive a GBE. An example of this is seen in Brighton's purchase of Kaoru Mitoma from the Japanese club Kawasaki Frontale in August 2021 (BBC, 2021b). In the 22/23 season, Mitoma was one of Brighton's key first team players and was very influential in the team finishing 6th in the Premier League, the clubs best ever finishing position in their history. However, Mitoma was deemed ineligible when he was purchased in August 2021 and as such, could not play for Brighton that season. The team immediately loaned him out to the Belgian side, Royale Union Saint Gilloise, where he was able to garner more playing minutes and points towards attaining a GBE(BBC, 2021b). The following season, Mitoma was able to attain a GBE and became eligible to be integrated into the first team.

3.5.5. Implication for under 18's

“There is a massive impact on the recruitment of players between the ages of 16 and 18 because we can no longer rely on the exception under the FIFA regulations for the transfer of minors, for the movement of players between the ages of 16 and 18 within the EU. That exception has gone. And so our academies, and I don't have figures in this respect, but I'm sure if you looked back over, say the last 10 years or so, at scholarship level at the age of 16, you would see young players from other European countries coming in and supplementing the domestic talent that was already there...That route has gone.” (Participant 2)

Article 19 RSTP sets out the general prohibition of the international transfer of players under the age of 18. However, in the latest version of the RSTP, there are 7 exceptions to the article. The key exception pertinent to this study is article 19.2 which states that players between the ages of 16 and 18 could transfer within the territory of the EU/EEA. This exception was incorporated in order to comply with the EU's principle of free movement of people (De Marco, 2022). For this exception to be applied, the club the minor is transferring to must meet three requirements. Firstly, the club must prove that the player will receive training that meets the highest national standards, and this will be determined by FIFA's yearly training categorization of clubs. Secondly, guarantee that the player will receive proper education. Each case with regards to what falls within the bracket of 'proper education' is considered on its own merits albeit jurisprudence establishing a minimum timeframe of 8 hours a week (FIFA, 2020). Lastly, that the minors must be given proper accommodation. Furthermore, documents needed to facilitate the transfer are the player's contract (if such is involved), proof of academic education, proof of accommodation, proof of a football education, and documentation of parental authorization.

Brexit means the UK are no longer part of the EU/EEA and as such will lose benefit of the exemption in Article 19.2 RSTP. In 2019/2020, there were 5,245 applications to register a minor from an international transfer. Out of those applications, a total of 414 applications were made using the exemption in Article 19.2 RSTP. In the same year, there were 246 applications for the registration of international minors from English clubs, some of which are applications made under the exemption (FIFA, 2020). While this means football clubs in the UK will not be able to recruit and sign 16–18-year-old European players, it should be noted that a ‘Brexit exemption’ was recently invoked by FIFA in Article 19.2(b)(ii) RSTP. This amendment to the article states that minors aged between 16 and 18 are allowed to transfer “between two associations within the same country” (FIFA, 2022b, Art. 19.2). Under FIFA regulations, the transfer of a player between England, Wales, Scotland and Northern Ireland, is considered an international transfer (albeit all 4 countries being considered as one sovereign country under the same political union). As such, the new exemption in Article 19.2(b)(ii) will enable the transfer of players between 4 different Football associations in the four countries that make up the UK. Furthermore, it should be highlighted that the Republic of Ireland does not fall within the exception as it is still a member of the EU.

However, although these players are available from England, Wales, Scotland and Northern Ireland, the above highlights a loss of a huge European talent pool that numerous clubs in England have relied on over the years. Richard Master, the CEO of the Premier League, reiterates this point noting that the Premier League has “generated an earned advantage over our European competitors and a lot of that earned advantage goes to those European competitors in transfer fees for players that we can no longer buy at a younger age. It’s partially to do with the GBE system” (Aarons, 2023). An example of this is Arsenal who have brought the like of Hector Bellerin and Cesc Fabregas who joined the club when he was 16 years old (Participant 8).

The implications are that such players were developed by clubs to be either crucial players for their football team as they gained experience or were developed to be sold on for profit. One interview participant noted that “Premier League clubs would love to have access to that talent pool; clubs scout players from the age of 12...and with the new rules, the GBE rules, there id just no getting around that. You cannot sponsor someone on an international sports person visa if they're not 18.” (Participant 6)

However, one of the key focus of the new GBE criteria is to further the development of homegrown talent. During consultations with the English Leagues, the FA chief executive office, Mark Bullingham, highlighted that discussions were held on “improvements to the player pathway for the mutual benefit of football clubs and homegrown talent in this country” (FA, 2020). Therefore, one can deduce that it is the intention of the FA and the regulations will create more opportunities for homegrown minors in the academy system. With limited spaced in the academy teams, it is possible that it will “give more ability to young domestic players to have that chance to come through and not be competing against European counterparts at that age” (Participant 2). Furthermore, if the above is realised. there will be a trickledown effect whereby clubs in the lower leagues, who the findings of this study highlight will lose access to the European player talent pool, will have access to more homegrown talent. However, an argument can be made that these young homegrown talents developed effectively when playing with the European elite young players, and losing this will hinder their development (Participant 6).

3.5.6. *The future of the GBE*

The GBE is periodically reviewed before every transfer window and the GBE criteria published in each window (Mace & Smith, 2022). The study examines the Post Brexit GBE and its implementation between January 2021 to the end of the January 2023 Transfer window. One significant change during this period was the decision to utilise the Exceptions Panel. In the January 2021 regulations, the Exceptions Panel was only meant to be operating in that window and was set to be abolished after that. However, upon review and the release of the regulations applicable from the 4th June 2021, the Exceptions Panel would remain as part of the system and would consider applications in all the transfer windows. Such tweaks can be expected to be made as the new system is further utilised and assessed against the Post Brexit landscape.

One possible change to the system is the banding of the leagues whereby leagues move up and down the bands. Furthermore, the reasoning behind the bandings of the leagues are not clear. One example of this is “Why is it, for instance, you've got in band four, the second division of Spain, second Division of France and the second division of Germany, but there's no sign of the second division of Italy, not even in Band five?” (Participant 1)

Most of the participants in the study do not expect major changes to be made to the system. However, minor tweaks such as assigning more points to some of the categories to increase the size of the available talent pool (Participant 1) or lowering the threshold for access to the Exceptions Panel (Participant 4; Participant 7) were suggested. As the regulations are continuously being assessed and reviewed, it can be expected that such minor changes will be made over the years to effectively adjust to the context in which it operates in.

3.6. Conclusion

Brexit presented a policy problem in the football transfer system in the UK. This was as a result of the restriction on the freedom of movement of workers due to the UK's Withdrawal from the EU. It also meant that EU nationals were now considered in the same category as all other foreign nationals. However, Brexit also created a policy window whereby there was a shift in the nations governing laws and as such, all operating governing entities within the country had to follow suit. The football transfer system is governed by the FIFA RSTP and is also subject to national laws at policies. On the national level, the Home Office and the FA set regulations that facilitate international footballers working in the country. Post Brexit, there were major amendments to the Laws in the UK and this saw a change in policies set by the Home Office and the FA as they released a new GBE to address the restrictions on freedom of movement for workers as it pertains to professional football.

The Post Brexit GBE offers a points-based system where by players accumulate points under various categories of assessment, aiming to score a minimum of 15 points. The Home Office and the FA have developed a set of assessment categories to only attract the best talents who can make significant contributions to the sport in the country.

Pre Brexit, football clubs had access to players between the age of 16-18 years old due to an exception laid down in Article 19.2 RSTP. In line with the freedom of movement principle of the EU, the exception allowed for players within that age group to move between clubs in the EU/EEA, and that included the clubs in the UK. However, as the UK's Membership in the EU has now ended as a result of Brexit, the clubs in the UK are no longer able to rely on this exception and loose access to this talent pool.

On the other hand, it is intended that the GBE system will create more opportunities for home grown players as it limits international player recruitment to attract only the best international players. This means that homegrown players will not have pathways blocked by mediocre international players. Homegrown players will have more opportunities to play professional football, particularly in the lower leagues such as League One and League Two, where such clubs would be unable to recruit international players because of the stringent GBE Criteria.

The GBE system also implements a banding system to the leagues and continental competitions. An overall assessment of the banding system is that there are now some leagues and players that are completely out of reach for a number of clubs and as such, reducing the available talent pool for player recruitment in the country. On the other hand, the bandings does open up some underexplored markets would have been inaccessible in the past. One example of this is the South American competitions, particularly because a player can achieve significant points towards being awarded the GBE, as it is assessed on par with the UEFA Champions League.

This study has used the football transfer system in England to analyse the implementation of policies as a result of Brexit, utilising the Multiple Streams Framework. The study will add to the growing body of sports governance research, particularly governance research area with a regulatory and policy focus. The study also extends the utility of MSF in sports policy research and provides foundations for a longitudinal study down the line, to further assess the Post Brexit governance landscape in professional football.

Chapter 4: The Fan-Led Review: A Multiple Streams Framework Analysis.

4.1. Introduction

A distinct aspect of professional football as a commercial entity is the nature of football fans as stakeholders. The legitimacy of a stakeholder is key with regards to how they operate within the governance structure of an organisation. According to Garcia and Welford (2015), fans have been continuously disregarded as legitimate stakeholders by the European football governing bodies, though there is a large body of academic literature advocating their legitimacy (Miche & Oughton, 2005; Sekhon, Roy, Chadwick & Devlin, 2016). In the UK, an enquiry by the All-Party Parliamentary Football Group (2009) sought to address the situation. The findings of the enquiry noted that the fans were the most underrepresented group in the governance structure, when in fact, they “should have the most say” (2009, p.14).

In 2014, the UK government’s Department of Digital, Culture, Media and Sport (DCMS), showed further willingness to address this issue of lack of engagement and supporter ownership by setting up the Supporter Ownership and Engagement Expert group to investigate how to improve links and communication between supporter groups and executives of the football clubs (DCMS, 2014). This was in response to the dissatisfaction of an enquiry undertaken in 2011 that criticised the Premier League and the FA for not making sufficient progress in developing a strategy to “remove barriers to supporter ownership and fan consultation at club level” (Garcia & Welford, 2015). More recently, the UK government have evidenced their clear intention to take further action to address the issues with fan engagement and other governance issues by commissioning the Fan-Led Review of football governance in 2019 and published its findings in 2021. This chapter examines the findings of this review using a Multiple Streams Framework analysis to understand the results of work being

conducted in the policy stream, as well as exploring how these recommendations will impact the future of football governance in the UK.

4.2. Literature Review

4.2.1. Fans as stakeholders

Michie and Oughton (2005) offer a different perspective, to suggest that the supporter-club relationship is distinct from the customer-business relationship. This is because unlike the relationship a standard commercial consumer has with a business, there is an incomparable customer loyalty between football club supporters and their clubs (Michie and Oughton, 2005). In 1998, the Football Task Force was formed by the UK government as an effort to bring the various stakeholders (players' unions, fans, club owners, etc.) together to address problems in the sport such as racism, accessibility of disabled groups to football matches, club shirt pricing, and ticket pricing. The Football Task Force findings and recommendations were clear that the commodity of football was distinct from other commercial commodities, hence football clubs need not act like any other commercial service provider (Henry & Lee, 2004, p.35). The nature of football supporters shows a strict loyalty to the clubs they support; football supporters tend not to switch loyalties from club to club due to economic criteria (such as increases to price tickets or the cost of fan merchandise), making the clubs monopoly providers (Henry & Lee, 2004). Fans are also significant stakeholders to the clubs because their support adds value to the club, be it by patronising the club's stores or by adding value to the televised games through fervent live support in the stadiums.

The relationship between stakeholders and governing bodies of sports also needs to be considered due to the continuous commercialisation of the sports industry, which has potential to negatively affect the socio-cultural dimensions of sport (Garcia & Welford, 2015). Ziedan and Frauser (2015)

explore this relationship by examining corporate governance policies of FIFA and the implementation of these policies from the perspective of football fans. Their study was conducted through surveys which highlighted a perceived contradiction to the regulatory framework set by FIFA's code of conduct and violations in areas of ethical behaviour and compliance with laws and regulations.

Sekohn, Roy, Chadwick, and Devlin (2016, p.570) posit that sports governing bodies play a crucial role as "custodians of the sports for which they are responsible", and as such, are duty-bound to implement good governance principles such as good communication, integrity, and responsibility. The findings in their study claim that strong governance standards are very much aligned with regular and transparent communication and as such, there is a need for governing bodies like FIFA to implement values that are akin to the values of the fans. To improve the relationship, they suggest that governing bodies should create efficacious communication channels between governing bodies and the fans, as well as cultivating benevolent actions which demonstrate a consideration of the fans' best interests (Sekohn, Roy, Chadwick, and Devlin, 2016). Such implementations will not only serve to improve the trust levels of the fans but will also improve the clarity and transparency of the governing body's goals. This relationship was also considered in the 2021 Fan-Led Review as we will see later in the study. The Fan-Led Review considers the interconnection between fans and the various organisations in the professional football network.

Football fans are heterogenous in nature with regards to their support of a football club and their level of engagement. Garcia and Welford (2015, p.3) defines fans and supporters as people who have "an interest or an allegiance towards a particular football club". The group is then sub-divided into three categories: customer, shareholder, and stakeholders. Garcia and Welford (2015) define customers as those individuals who follow their team by purchasing merchandise, attending the games, or by following them through media platforms. These customers have no inclination of being

involved in the administration or governance of the club, but they voice their opinions by exhibiting either more or less interest in the matches they attend or the amount of merchandise they purchase.

Conversely, stakeholders have a keen interest in being involved in the management of the club, as well as an involvement in the sport in the “macro and meso-level” (Garcia & Welford, 2015, p.3). Their involvement will vary from country to country due to the various legal structures which club ownership can take. To convey their opinions and have an impact, they form associations that can enter dialogues with the clubs and the governing bodies of the sport. An example of this is prevalent in England in the form of supporters’ trusts.

A supporters’ trust is formed when fans come together with the primary objective of a partial or full acquisition of the club (Miche & Oughton, 2005; Garcia & Welford, 2015)¹⁸. Lastly, the term shareholder is applied to fans who already have total or partial ownership of the club they support. This can come about if they are millionaires, or where the fans pull their resources together, using legal structures such as trusts and cooperatives as vehicles to obtain ownership (that is, either full or partial ownership) of the club. Hence, in Garcia and Welford’s (2015) categorisation of fans, it is possible for a supporter to be both a stakeholder and a shareholder.

4.2.2. Supporters Direct

Supporters Direct was set up in 2000, following recommendations from the Football Task Force reports on improving the modern game and it was established to aid supporters in having a say in

¹⁸ It should be noted that when a fan joins a supporter trust, their status and involvement in the club will change from a customer to a stakeholder (Garcia & Welford, 2015).

the direction and the future of their clubs (Smith, 2000). Its main objective was to help supporters gain ownership (partial or full) of the clubs they support, by navigating the economic and legal processes involved in establishing a supporters' trust (now referred to as a cooperative) (Garcia & Welford, 2015)¹⁹. The initiative was also an attempt to rectify the uneven relationship that existed between the fans and the shareholders who owned the football clubs (Kennedy & Kennedy, 2007). According to Hamil, Miche, Oughton, and Hailer (2004, p.48), supporters' trusts have a positive impact on the governance of football as they ensure "higher levels of transparency and accountability, by promoting links with the local community, by encouraging new support (especially from younger fans), by bringing business, legal and professional skills to the boardroom and by providing finance."

This access to the board will not only aid in democratising the board, but also has the potential to improve accountability, as well as to increase the satisfaction of the fans (Garcia & Welford, 2015). However, the presumption should not be made that a fan being included on the board will mean that the directors will be more accountable merely because a supporter of the club is on the board. This is exemplified in AFC Bournemouth, where Whitehead (2006) notes that the supporter run board at the club was no more accountable than the previous board, especially with regards to financial decisions.

Although the trusts offer fans an avenue to be involved in the decision-making processes of the club, they are often only used by the clubs as a final resort to bail-out clubs in times of financial troubles (Garcia & Welford, 2015). If this is the case, then the motive for having supporters' trusts is not to

¹⁹ After a merger between the Supporters' Federation and Supporters Direct into one organisation called the Football Supporters Association (FSA Annual review, 2019).

improve the governance structures within the club and to enhance fan engagement, but rather to serve merely as an alternate funding stream for the clubs. Furthermore, the issue of supporters' trusts in football at the highest level is that the money required to 'buy in' is likely to be inaccessible to a supporters' trust (Garcia & Welford, 2015). There is also the inherent difficulty of a trust in ensuring inclusivity of all fans. If a trust is set up with the intention of representing the whole supporters' community and requires financial input, Garcia and Welford (2015) argue that the monetary involvement is likely to make the trust somewhat exclusionary. This is an issue that a supporters' trust representing a large club with several fan groups is likely to face. There is also the question of the emotional attachment to the club, as well as management acumen of the supporters' trust (Giulianotti, 2005; Kennedy 2012). When the trusts have bought into the club, it must be considered whether they would be able to emotionally detach themselves from the club in order to make rational economic and managerial decisions for the club itself.

The notion that supporters should be recognised as key stakeholders with an involvement in football governance is constantly gaining merit, highlighted both in policy and practice (Welford, Garcia, & Smith, 2015). A recent example is the Fan-Led review that that was commissioned by the EU government in 2021. There is also a difficulty in conceptualising and defining what 'success' is with regards to a supporter-club relationship and the impact that the relationship has on the club. According to Garcia and Welford (2015, p.21), this calls for more context-specific studies to be undertaken because "every club has its own unique context, history, and financial situation, and within this, fans represent a vast array of individuals and groups with their own identities, experiences, perceptions, and aspirations for the future of their club".

Through an exploration of the financial, physical, and social health of a group of supporters, Welford, Garcia and Smith (2015), use an audio-visual methodology to investigate supporters' concerns and dissatisfaction over football regulations and aspects of governance. Their findings show that a detachment exists between the top level of football and the supporters. However, they remark that there has been an increase in supporter involvement at club level, albeit stagnant at the national level. This sentiment is one that is shared by a number of supporters within football, and it is one of the key reasons that the Fan-Led Review was commissioned by the government in 2021. The Fan-Led Review noted that its primary aim was to "explore ways of improving the governance, ownership and financial sustainability of clubs in English football, building on the strengths of the football pyramid" (DCMS, 2021).

The position of the fan as a key stakeholder has been heavily disregarded over the years and the Fan-Led Review (in part) sets out to remedy this. This is elaborated on further below in this article in the analysis of the Fan-Led review. This article critically assesses the Fan-Led Review and the UK government's response to the same, to analyse the future of football governance using the Multiple Streams Framework. The article extends the applicability of the Multiple Streams Framework by applying it to recommendations for future policy setting in a national context, as opposed to its more popular utilisation in transnational policy settings (Ackril and Kay, 2011; Jones et al., 2016; Parrish 2022).

4.3. Theoretical Framework: Multiple Streams Framework (MSF)

When there is a proposal for a policy change, there is an increased likelihood a policy reform will be implemented (Ackril & Kay, 2011). This is the starting point of Multiple Streams Framework (MSF). Originally developed by Kingdon (1984), the framework of MSF has its foundations based on 'a bounded rational actor' with the assumption that policymakers have imperfect information and

limited time, and as such, they have no choice but to use their impressions within the constraints to pick the best solution (Cairney & Jones, 2016). The framework focuses on three separate streams which operate independently from one another but interact in a coupling when a window of opportunity arises (Houlihan, 2013). These three streams are called the problem, policy, and political streams.

The problem stream is concerned with problems that are regarded as public issues, the need to address these issues, and how these issues reach the attention of policymakers. These issues come to light to the public and to the attention of the policy makers through particular events such as a crisis or a dramatic change which is strong enough to draw out the public's attention. As such, public policies derive from such situations when political entities want solutions to these problems (Jones et al., 2016).

The policy stream is concerned with addressing the issues in the problem stream and the resources (i.e., the analysts and experts) available to examine the problems and suggest remedies. It is in this stream that the various avenues are examined and narrowed down to determine what feasible actions can be taken. Kingdon (1984) explains that the policy stream is a complex collection of ideas whose survival is dependent on meeting certain criteria. This idea of survival is linked to five subcomponents in the policy stream. The first is value acceptability, which means that an idea will survive the policy stream if it conforms to existing constraints on value. Secondly, the idea must be technically feasible in its real-world application. Third, there must be adequate resources available to facilitate the proposal's implementation. Lastly, survival of an idea will be dependent on the "size, capacity and influence" of associated policy communities (networks), as well as the manner and efficacy of the network integration (Jones et al., 2016, p.16).

The political stream involves the motives of the policymakers and the choices in policy to address the problems in the context of the environment they operate in. In making the decision, they take into consideration a variety of beliefs, 'national mood', and feedback and survey results from interested parties (political and interest groups) (Camargo et al., 2020). There are three main sub-components within this stream: national mood, party ideology and balance of interests (Jones et al., 2016). National mood is the proclivity of the public to the concerns and solutions of the policy problem; party ideology refers to the proclivity of the political bodies associated with the policy issue (it is this proclivity that will direct the assessment and decision-making processes involved in addressing the policy problem); and balance of interests is with regards to the collective position of lobbying groups and the variety of parties associated with the problem (Jones et al., 2016).

It should be noted that these three streams operate relatively independently from each other (Kingdon 1984, 2003). However, there will come a time where these streams interact, and this is known as a policy window. The window is when "the separate streams of problems, policies, and politics come together at certain critical times [hence] solutions become joined to problems, and both of them are joined to favourable political forces" (Kingdon 1984, p.21). It is this interaction that allows the problem to be officially acknowledged and that commences the policy process of addressing it (Belend & Howlett, 2016). A policy window can also be triggered by the "presence or absence of certain policy entrepreneurs both within or outside of the governments" (Belend & Howlett, 2016, p. 222).

Policy Entrepreneurs are interested parties who invest their resources towards changing the problem on the agenda, inviting key figures to pay attention to the issues at hand. They play a key role in linking the three streams together to facilitate policy change. They can be described as connected and informed insiders who are essential in providing the knowledge that assists in the

coupling of the streams (Cairney & Jones, 2016). During the policy window, the policy entrepreneurs can work within the multi-streams in a brokering capacity, as opposed to an advocacy role, to facilitate the policymaking process (Ackrill & Kay, 2011).

The Multiple Streams Framework possesses great analytical prowess in exploring policy setting, particularly because of its clarity and flexibility in its application (Belend & Howlett, 2016). Using the components of MSF, the following section will apply the framework to the Fan-Led review to expand on the proposed policy changes within the governance of professional football. It will seek to answer the below research questions:

1. What were the events that led up to the commissioning of the Fan-Led Review?
2. What areas of governance does the Fan-Led Review seek to address in professional football?
3. What are the key proposals suggested by the Fan-Led Review to be addressed?

4.4. Data and Methodology- Policy Documentary analysis and semi-structured interviews

This study utilises documentary analysis as its research method particularly because of its ability to produce rich descriptions of a phenomenon (Bowen, 2009). This article takes advantage of the unobtrusive prowess of documentary analysis, to explore the context of the Fan-Led Review and to garner an understanding of the aims and policies which it intends to deliver (Cardano, 2018).

Cardano (2018) elaborates on three key distinctions that aid in contextualising the study of policy documents: policy context, policy text, and policy consequences.

The study of policy context is in relation to “the socio-political environment” and “requires understanding of the antecedents of the policy” and “the issues and pressures that gave rise to a need for the policy in the first place” (Cardano, 2018, p.628). This is concerned with the historical background of the review and assessing what the context was for when developing the document.

Assessing the policy text is to focus on the documentary analysis on the content of the policy documents. This involves a deep analysis of the text and the purpose of the policy, in order to consider the deeper meaning and interpretations behind the text in the documents (Cardano, 2018).

This is applied to this examination of the Fan-Led Review, as an in-depth analysis was required to effectively assess the document against the Multiple Streams Framework.

Lastly, policy consequences is concerned with assessing the effectiveness of the implementation of the policy in practice. Although the Fan-Led Review is a report commissioned to consider and make policy recommendations, this article assesses the consequences of the recommendations made and considers the process of implementation (if they are indeed to be implemented). Therefore, in

assessing the Fan-Led Review, all three aspects are considered and highlighted in the below analysis. Further information has also been utilised to address the research questions such as academic literature, government documents, and relevant newspaper articles. Semi-structured interviews were also conducted whereby 10 participants were questioned on their views on the Fan-Led Review and its potential implications. The use of the interviews allowed for triangulation in order to enhance the validity of the data gathered (Yin, 2018).

4.5. Discussion and Analysis

4.5.1. The Problem Stream and the Policy Window

In November 2021, there was a Fan-Led Review of the state of football governance in the UK (DCMS, 2021). The review was triggered by three different events which were widely considered to be a result of a crisis in football governance, and in turn, these events triggered the opening of a policy window. The first trigger event was the collapse of a long-standing football club, Bury FC, a club that had been in existence since 1885. Bury FC went into administration in November 2020 following extensive financial difficulties ('Bury Expelled by English Football League', 2019). This in turn led to their expulsion from the EFL, a league which they had been a member of for 125 years.

The second trigger event was the COVID-19 pandemic, which brought about a period of complete cessation of league football, such a cessation not having been seen in the UK since the Second World War. The survival of most football clubs during the COVID-19 pandemic was facilitated by support from the government and several football stakeholders, but the effects of the pandemic highlighted deficiencies in the financial structures and governance processes that exist in football.

The third trigger event was the attempted formation of the European Super League in April 2021. This involved the formation of a completely new league with a novel format in English football which would see its founding members, six of which were English clubs, protected from relegation. The announcement of the European Super League was met with widespread outrage with particular focus on the lack of consultation with other stakeholders in football (particularly the fans). This was the final trigger that launched the commissioning of the Fan-Led Review with the Secretary of State for Digital, Culture, Media and Sport (DCMS) announcing the same to Parliament on 19 April 2021.

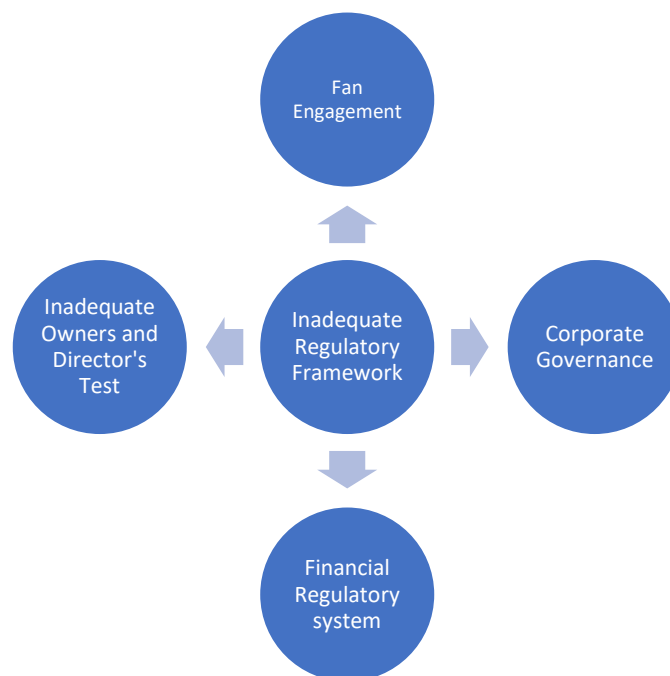


Figure 7 - Fan-Led Review - Inadequate Regulatory Framework

The above diagram highlights the key areas of concern that stem from having an inadequate regulatory framework which the Fan-Led Review expands on. In assessing the main issues presented by the Fan-Led Review, the problems located in the problem stream regarding the governance of football centre around an inadequate regulatory framework.

4.5.2. Policy Stream – Addressing the Problem Stream

The policy stream is concerned with analysts and experts who review the problems and offer up a “myriad of possibilities for policy action and inaction” while assessing the feasibility of implementing the recommendations (Belend & Howlett, 2016, p. 222). In the case of the Fan-Led Review, Tracy Crouch MP and the panel of experts were tasked to conduct an independent review by the government (DCMS, 2021). The Fan-Led Review involved over 100 hours of engagement with a variety of stakeholders in over 130 football clubs, took input from experts in the field, and conducted over 21,000 survey responses from fans (DCMS, 2021).

To address the problem of the inadequate regulatory framework, the Fan-Led Review panel recommended that the UK Government establish a new and Independent Regulator for English Football (IREF). In offering such a holistic solution, the role of the IREF would be to concern itself with any matters in the country that concern “whole football solutions to business regulation problems, rather than the current system where problems are thought of in isolation, on a league-by-league or issue-by-issue basis” (DCMS 2021, p. 41). The panel contend that such regulatory oversight from a body placed independent from football would also focus on the long-term interests of football fans and the clubs (DCMS 2021, p.40). Such a regulator is posited to provide invaluable oversight and to be malleable in dealing with the problems in football. Another advantage posited by the panel in proposing an IREF is that the IREF would provide efficiency when seeking regulatory change (DCMS, 2021).

If an IREF is established, there would be no need to secure a mandate from the clubs in the league or the government, allowing regulation to be updated swiftly, particularly when the issues involved are rather contentious. The recommendation from the review panel is that the IREF will have its powers

and objectives established by statute, operating outside political and governmental interference.

The clear statutory objective will set out the purpose of the IREF and will dictate to the board what their objectives and aims are. The primary objective would be “to tackle the problems identified and also dictate what it is aiming to achieve”, and its initial focus would be financial sustainability within the sport (DCMS, 2021, p.42). It will also have the below secondary remit of undertaking work in a timely manner while evaluating, reporting, and acting on the health of finances in football and on distributions and flows of the game.

An IREF would give regulation effect through a licensing system and would require clubs to have a licence in order to operate. This would give the IREF the power and flexibility to enforce its requirements on the clubs and effectively address problem within the industry. There will be licence conditions which will need to be adhered to or else clubs will be sanctioned. According to the Fan-Led Review, the licence system will replace other inferior models such as codes of conduct that are prescribed by statute and obligatory regulations as they tend to be “a one size fits all approach and are highly prescriptive” (DCMS 2021, p. 45). In contrast, the proposed licencing conditions will be more flexible and will be drafted to assign simpler obligations to the smaller clubs to facilitate implementation. The flexibility of the IREF will mean that the regulator will be able to effectively amend licence conditions to meet the constantly changing demands of the football industry.

Were a club suspected of breaching one of the licence conditions, the IREF should be able to intervene to penalise the transgression. It is intended that the IREF will operate a system of advocacy with the clubs in order to comply with the licencing obligations and have investigatory and enforcement powers (DCMS, 2021).

The IREF will also operate with a chair and board that have a wide range of expertise from a variety of sectors. These board members will be appointed by a separate group of experts that are independent from the government, and the FA will have observer status. To promote transparency, the Fan-Led Review recommends that an annual report is published by the IREF which will detail its operational and financial for the previous year and will be held accountable by the UK government in the form of the DCMS Select Committee.

The implementation of an independent regulator is not a new concept and has been implemented in other industries such as finance and communications (Maguire, 2022). However, as these regulators within such industries have had mixed success in addressing their mandated issues, Maguire (2022) notes that an IREF in professional football should not be expected to be a total remedy to the complex nature of the problems faced within the industry.

The proposed implementation of an IREF sparks concern as to who such an independent regulatory body would comprise of:

“The most contentious part of the Fan-Led Review is the proposed implementation of an independent regulator. We’ve already touched on how many regulators football has. It has a load of them. The FA is a quasi-regulator. The EFL is a quasi-regulator. The Premier League is too. UEFA is, FIFA is. They are all regulators in effect. What would an independent regulator do? It’s only going to be as good as the people who are on it, right? It’s going to need experts, lawyers, accountants, and politicians who all know the game, and can effectively regulate it. I have concerns about that. It needs to be properly independent from the FA, as well. If it does get implemented, which looked more certain six months ago than it does now

because of changes in government, but assuming it does go ahead, then the area that I would want it to focus on, is an owners and directors test.” (Participant 3)

The process of establishing the IREF is one of contention. According to interview participant 2, its place within football governance is not clear enough, particularly with regards to how it “sits in line with FIFA and UEFA regulations about governments not being able to interfere in football”.

Participant 2 states:

“Actually, the strict sanctions they place on nations as we've seen recently with India being suspended, and I think Pakistan also not so long ago, are all about governments having too much influence in terms of how their governing bodies align”. (Participant 2)

This is because FIFA controls every aspect possible of association football without the intervention of any public governmental bodies (FIFA Statutes, 2022, Art. 2; Meier & García, 2015). When applied to the case of the IREF, it is rather difficult to envision how an independent regulator with statutory powers will be placed within a governance network predicated on the notion of autonomy from national governments. However, the UK government’s response to the need for an independent regulator is that reform is required to the governance system and in order to carry out this reform, government intervention is needed (DCMS, 2023)

4.5.3. Improving Financial Regulations

To tackle the issue of financial sustainability within professional football located in the problem stream, the IREF will also have the role of overseeing financial regulations. These financial regulations must ensure long term stability, prevent the monopolisation of leagues, ensure the regulations allow for international competitiveness, ensure feasibility with the rules set by other governing bodies, and limit the burden on football clubs to implement the regulations (DCMS 2021, p.56).

With the above in mind, the Fan-Led Review recommends a financial regulatory system that is centred around capital and liquidity requirements. Each club would be individually assessed on cash and capital requirements and would be required to “submit documentation setting out its planned income and expenditure, business plan, as well as the risks considered by the club and its plans for managing such risks” (DCMS 2021, p.59). The IREF would review the documentation and assess the projection handed in. If deemed too optimistic or careless, they would have the power to impose remedial action, one of which could be obliging a club to increase its cash or capital as the IREF see fit. The IREF would have the power to conduct its own analysis and assessments of the process clubs have put in place and if they are deemed inadequate, the IREF would be able to demand improvements to the club’s systems and have the necessary powers to force these changes.

Another policy proposal within setting capital and liquidity requirements is a proposal to allow clubs to make investments using the owner’s funds but to simultaneously reduce the risk attached in reliance on these funds that have led to the collapse of clubs such as Bury FC. In order for this to be feasible, the money will need to be already committed in the club.

The Fan-Led Review recommends that “IREF should have a proportionality mechanism managing the level of owner subsidies based on the size of a club’s existing finances or if owner injections at one or a few clubs is destabilising the long-term sustainability of the wider league” (DCMS 2021, p.61).

The proposed financial system will require clubs to implement business risk planning (creating reports showing the impact of a variety of possible negative scenarios on the business), including providing the IREF with a transition plan. The rationale for the same being that such a practice will ameliorate the cycle of clubs operating with failing business plans that will see them end up in administration. The Review also suggests an implementation of regulation governing agents in the UK through collaboration with key authorities such as the FA and FIFA (DCMS 2021, p.64).

In order for such an elaborate financial regulatory system to be implemented, and for proposed legislation to receive Royal Assent, there should be an interim shadow body in place which will work closely with the necessary football authorities to oversee the financial regulations, to facilitate a seamless transition to the new proposed model (DCMS 2021, p.64). Therefore, to address the problem of inadequate financial regulations, the main policy suggestion from the policy stream is the implementation of stringent financial systems and protocols that will address the current models implemented by clubs which have led to financial instability over the years.

Following recommendations on financial policy implementations such as capital and liquidity requirements on owners, the Fan-Led Review goes on to consider further requirements imposed on owners and directors by making recommendations on the Owners’ and Directors’ test.

4.5.4. Owners and Directors test

“The area I would want [the IREF] to focus on, is an owners and directors test. The Rochdale case that I mentioned earlier was exactly on that point. That was about preventing the takeover of clubs by irresponsible owners. Bury is the perfect example of that. That was about an irresponsible owner who didn't have the funds to be able to run it, or lost interest. It was the same with Macclesfield. Both clubs had owners who either were not the right owners in the first place, or lost heart, and lost the sort of enthusiasm for the club and didn't then want to fund them. All football clubs are dependent on their owners for cash”.

(Participant 3)

The Fan-Led Review views the current Owners’ and Directors’ Test as inadequate as it is an objective test that questionable owners in the past have been able to pass. An example of its inadequacy is highlighted in the purchase of Bury FC from previous owner, Stewart Day, where the new owner, Steve Dale, presented evidence of the financial issues of the club to the EFL, thereafter allowing him to purchase Bury FC for £1 without needing to show evidence of financial funding (Maguire, 2022).

However, following the review of the case by Jonathan Taylor KC, significant inadequacies were highlighted to the test and changes were made to the rules to avoid such loopholes being exploited again (Conn, 2020). This is exemplified in the Rochdale case where an independent disciplinary commission banned Andrew Curran, Darrell Rose, David Bottomley and Faical Safouane from operating as a Relevant Person, following a breach of the modified test prescribed by the League (BBC, 2022).

Therefore, it is arguable that an independent regulator coming in to change the test is rather redundant because a previous policy window has opened up and led to the implementation of a more effective test (Participant 3). However, regardless of this change and ability to continue to review the test, some stakeholders still believe that the test is outdated, and an independent regulator is required to implement a more relevant test (Participant 6). There are, however, concerns over the implementation of the proposed regulator's test as, as well as its remit to apply sanctions, as the EFL and EPL both have their own tests and sanctions (Participant 7).

Within English football, there are three Owners' and Directors' Tests. The Premier League and the EFL are responsible for the administration of the test in their respective leagues. With regards to the remaining leagues (i.e. The Women's Super League, Women's championship, the National League, and the three leagues below), the test is administered by the FA. The following section is primarily concerned with the Premier League and the EFL regulations and as such it details below, the current Owner's and Directors' test that is in place.

Understanding the EPL And EFL Owners' And Directors' Test.

The test is applied to current and prospective directors of football clubs in England to ensure that they are 'fit and proper' for the role. The test applied to the English Premier League (EPL) can be found in Section F of the Premier League Handbook (EFL, 2022, app. 3; Premier League, 2022, sec. F). The test applied by the English Football League (EFL) (i.e. Championship, League One and League Two) can be found in Appendix 3 of the English Football League Regulations. The respective tests in the EPL and EFL rules are similar but have slight variations. These tests were arguably once conceived by the industry as a flippant form filling exercise, but this conception has gradually changed over the years towards a more subjective implementation of the rules. Applications are made by the clubs, as opposed to the directors themselves. When there is a new owner/director, the

club must make the application at least 10 working days prior to the appoint and a response is required from the EPL within 5 working days of application to confirm whether or not the applicant can be made a director/owner. The EFL on the other hand also reply within 5 working days of the application, but they do so to inform the club of the expected timings involved in considering the application.

Furthermore, there is also an imposition on an incoming director to notify the club if there has been any material change that would alter the most recent declaration. This imposition then extends to the club to notify the league as well. Both sets of rules require a declaration of compliance to be made by an owner/director. There are three scenarios where this declaration needs to be made.

The first scenario is at the start of every season where each club must complete a declaration with regards to each director at the club, signed by the director and the authorised signatory of the club. This must be submitted to the EPL/EFL 14 days prior to the season's commencement. Secondly, when relegated/promoted between the EPL and the EFL leagues, a declaration also has to be submitted (EFL, 2022, app. 3; Premier League, 2022, sec. F). The EPL requires the declaration to be made 21 days after the club is promoted while the EFL requires the declaration 14 days after the club is related/promoted. Lastly, a declaration is also required for a proposed director/ owner. This covers both a legally appointed director and a shadow director. With regards to owners, the declaration has to be made when there is a person looking to take control of the club. In this instance, the rules define control to include having the power to appoint or remove a majority of the directors and/or having 30% or more voting rights within the club (this includes indirect voting rights through connected persons, associates or nominees) (EFL, 2022, app. 3; Premier League, 2022, sec. F).

Disqualifying Conditions

Both the EPL and EFL have certain criteria that automatically disqualifies a person from becoming a director/owner of a football club. According to the Fan-Led Review, the current Owner's and Directors test is rather objective (DCMS 2021, p.66). It is the hope of the Review panel that following an introduction of an IREF, there will be a reform of the Owner's and Director's Test to implement a more elaborate test that can facilitate sustainability goals within the industry. These criteria are also applied to any relevant person, which is given a wide definition by the EFL to include club secretaries, chief executive officers, general managers, chief operations officers, and certain authorised signatories. As corporate entities can also be owners of football clubs, these disqualification events are widely drawn to extend to the persons who own that owning corporate group. The rules also state that the EPL and EFL have the power to disqualify if incomplete or inaccurate information is given during the declaration process. This applies to formally appointed directors, acting directors, and shadow directors.

A person would be deemed disqualified to be a director of a football club if they are prohibited by law from being a company director under the Company's Director Disqualification Act 1986. The EPL and EFL both stipulate this in their respective rules, which tends to also extend to director disqualifications outside of the UK as well (EFL, 2022, app. 3; Premier League, 2022, sec. F.16). The sections below highlight the further key disqualification criteria that operate within the Owners' and Directors Test.

Competing Interests

In order to uphold the integrity of the league, the EFL and the EPL have rules regarding ownership of two or more clubs. The rules state that it is prohibited to manage, own, or have a significant interest

in two or more clubs in the EPL or the EFL (EFL, 2022, sec. 10; Premier League, 2022, sec. F.14). This rule is in place due to a concern that it could lead to an owner favouring one of club over the other. The regulations establish that significant ownership is defined as holding at least 10% of the share capital or club voting rights²⁰. The rule also applies to any connected person, associate, or nominee to ensure that the rule is not easily circumvented. However, there is one notable difference between the EPL and the EFL with regards to this rule. The EFL reserves the right to grant dispensation against the application of the provision while the EPL do not have any powers to vary the rule.

Criminal Conviction

EPL Rules	EFL Rules
<p>F.1.7. He/she has a Conviction (which is not a Spent Conviction) imposed by a court of the United Kingdom or a competent court of foreign jurisdiction:</p> <p>F.1.7.1. in respect of which an unsuspended sentence of at least 12 months' imprisonment was imposed;</p>	<p>Having an Unspent Conviction by a court of competent jurisdiction in England and Wales in respect of any offence involving:</p> <ul style="list-style-type: none"> (i) a Dishonest Act; (ii) corruption; (iii) perverting the course of justice;

²⁰ Premier League, 2022, sec. A.1.205: "Significant Interest" means the holding and/or possession of the legal or beneficial interest in, and/or the ability to exercise the voting rights applicable to, Shares in the Club which confer in aggregate on the holder(s) thereof 10% or more of the total voting rights exercisable in respect of any class of Shares of the Club. All or part of any such interest may be held directly or indirectly or by contract including, but not limited to, by way of membership of any Concert Party, and, for the purposes of determining whether an interest or interests amounts to a "Significant Interest": (a) any rights or powers held by any Person shall be attributed to any Connected Person to that Person; and (b) any rights or powers held by an Associate or Nominee of any Person shall be attributed to that Person.

<p>F.1.7.2. in respect of any offence involving any act which could reasonably be considered to be dishonest (and, for the avoidance of doubt, irrespective of the actual sentence imposed); and/or</p>	<p>(iv) a serious breach of any requirement under the 1985 Act or 2006 Act;</p> <p>(v) dishonestly receiving a programme broadcast from within the UK with intent to avoid payment under Section 297 of the Copyright, Designs and Patents Act 1988;</p>
<p>F.1.7.3. in respect of an offence set out in Appendix 1 (Schedule of Offences) or a directly analogous offence in a foreign jurisdiction (and, for the avoidance of doubt, irrespective of the actual sentence imposed);</p>	<p>(vi) admitting spectators to watch a football match at unlicensed premises under Section 9 of the Football Spectators Act 1989;</p>
<p>F.1.8. in the reasonable opinion of the Board, he/she has engaged in conduct outside the United Kingdom that would constitute an offence of the sort described in Rules F.1.7.2 or F.1.7.3, if such conduct had taken place in the United Kingdom, whether or not such conduct resulted in a Conviction</p>	<p>(vii) ticket touting under Section 166 of the Criminal Justice and Public Order Act 1994;</p> <p>(viii) any attempt or conspiracy to commit any of the above offences;</p> <p>(ix) a Hate Crime; or</p>
<p>...</p>	<p>(h) having an Unspent Conviction for a like offence to any of the above offences by a court of competent jurisdiction outside England and Wales;</p>

F.1.16. he/she is required to notify personal information pursuant to Part 2 of the Sexual Offences Act 2003;”

(i) having an Unspent Conviction by a court of competent jurisdiction anywhere in the world (including any attempt and/or any conspiracy to commit the same) that results in a sentence of at least 12 months’ imprisonment but for the avoidance of doubt, not a suspended jail sentence unless that sentence is subsequently activated for a period of at least 12 months for whatever reason;

(j) being subject to a banning order in accordance with the Football Spectators Act 1989 (or any like sanction pursuant to similar provisions in any other jurisdiction);

(k) in the reasonable opinion of The League, has engaged in conduct outside the United Kingdom that would constitute an offence of the sort described in paragraph (g) of this definition if such conduct had taken place in the United Kingdom, whether or not such conduct resulted in a Conviction;

	(l) being a Registered Offender (as defined in this Appendix 3);
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Table 20 - EPL and EFL Owners and Directors' Test - Criminal Conviction

(EFL, 2022, app. 3; Premier League, 2022, sec. F)

The above provisions set out by both Leagues are rather similar. They give clear general offences as well as specific football related offences. It should be noted that according to the rules, being charged with an offence does not disqualify you from being a direct. In order for it to constitute a disqualifying event, the person must have been convicted before disqualification applies.

Personal Insolvency

EPL Rules	EFL
<p>An individual is disqualified if he/she is subject to:</p> <p>“F.1.9.1. an Individual Voluntary Arrangement (including any fast track voluntary arrangement);</p> <p>F.1.9.2. a debt relief order (in accordance with the provisions of Part 7A of the 1986 Act);</p>	<p>An individual is disqualified if he/she is subject to:</p> <p>“(i) an Individual Voluntary Arrangement (in accordance with the provisions of Part VIII of the Insolvency Act) including any fast track voluntary arrangement;</p>

<p>F.1.9.3. an administration order (in accordance with Part 6 of the County Courts Act 1984);</p>	<p>(ii) a Bankruptcy Order, Interim Bankruptcy Restriction Order or a Bankruptcy Restriction Order;</p>
<p>F.1.9.4. an enforcement restriction order (in accordance with the provisions of Part 6A of the County Courts Act 1984); and/or</p>	<p>(iii) a debt relief order (in accordance with the provisions of Part 7A of the Insolvency Act);</p>
<p>F.1.9.5. a debt management scheme or debt repayment plan (in accordance with provisions of Chapter 4 of Part 5 of the Tribunals, Courts and Enforcement Act 2007), or any equivalent provision in any other jurisdiction which has a substantially similar effect, and in each case as may be amended from time to time;</p>	<p>(iv) an administration order (in accordance with Part 6 of the County Courts Act 1984);</p> <p>(v) an enforcement restriction order, in accordance with the provisions of Part 6A of the County Courts Act 1984; and</p>
<p>F.1.10. he/she becomes the subject of an Interim Bankruptcy Restriction Order, a Bankruptcy Restriction Order or a Bankruptcy Order (or any equivalent provisions in any jurisdiction which has a substantially similar effect)”</p>	<p>(vi) a debt management scheme or debt repayment plan, in accordance with the provisions of Chapter 4 of Part 5 of the Tribunals, Courts and Enforcement Act 2007”</p>

Table 21 - EPL and EFL Owners and Directors' Test - Personal Insolvency

(EFL, 2022, app. 3; Premier League, 2022, sec. F)

If an individual is subject to personal insolvency proceedings under any of the above regulations, both the EFL and the EPL prohibit such an individual from becoming a director connected with the football club.

Corporate Insolvency

EPL Rules	EFL Rules
<p>“F.1.11. he/she is or has been a Director of a Club which, while he/she has been a Director of it, has suffered two or more unconnected Events of Insolvency in respect of each of which a deduction of points was imposed (and for the purposes of this Rule F.1.11 and Rule F.1.12 a Person shall be deemed to have been a Director of a Club which has suffered an Event of Insolvency if such Event of Insolvency occurred in the 30 days immediately following his/her having resigned as a Director of that Club);</p> <p>F.1.12. he/she has been a Director of two or more Clubs (or clubs) each of which, while he/she has been a Director of them, has suffered an Event of Insolvency in respect of</p>	<p>“(o) being a Relevant Person of:</p> <p>(i) at least two Football Clubs that have each been subject to or suffered unconnected Insolvency Events;</p> <p>(ii) one Football Club that has been subject to or suffered two unconnected Insolvency Events,</p> <p>on or after the 11th June 2004) in respect of each of which a sporting sanction was imposed under Regulation 12 (or any equivalent rule of any other league). For the purposes of this definition of Disqualifying Condition:</p>

<p>each of which a deduction of points was imposed;</p>	<p>(A) a Person shall be deemed to have been a Relevant Person of a Football Club that was subject to a sporting sanction if the relevant Insolvency Event occurred in the 30 days immediately following his having resigned as a Relevant Person of that Football Club;</p> <p>(B) the Insolvency Event of a Group Undertaking alone where the Football Club was subjected to a sporting sanction in accordance with Regulation 11.2.3 of The League Regulations (in the case of a Club), or the applicable rules of the league or association of which that Football Club was a member at the relevant time (if any) shall be treated as an Insolvency Event of the Football Club; and</p> <p>(C) by way of example, where any Football Club or Group Undertaking has been subject to more than one Insolvency Event during the process of compromising or entering into a composition with its creditors (for example Administration followed by exit via a Company Voluntary Arrangement), this will only count as one Insolvency Event;”</p>
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Table 22 - EPL and EFL Owners and Directors' Test - Corporate Insolvency

(EFL, 2022, app. 3; Premier League, 2022, sec. F)

It should be noted that the above insolvencies are only in relation to football clubs and this does not take into consideration the other corporate insolvencies that an individual might be associated with. They will also only constitute a disqualification event if there were some points deducted from the club in the league. The rules also operate on a second strike basis. This means that being involved in a single insolvency of a football club does not constitute a disqualification event (EFL, 2022, app. 3). For example, by clearly stating ‘two unconnected insolvency events’, the EFL make it clear that a club going into administration and then signing a company voluntary agreement will count as two unconnected events. The same reasoning can be inferred in the EPL rules albeit not being explicit in the wording.

Sports Ban, Professional Bans and Betting Offences

EPL Rules	EFL Rules
<p>“F.1.13. he/she is subject to a suspension or ban from involvement in the administration of a sport by any ruling body of a sport that is recognised by the International Olympic Committee, UK Sport, or Sport England, another of the home country sports councils, or any other national or international</p>	<p>“(c) being subject to a suspension or ban or other form of disqualification: (i) from involvement in the administration of a sport by a Sports Governing Body; or (ii) by a professional body (including, by way of example and without limitation, The Law Society, Bar Council or the Institute of</p>

<p>sporting association or governing body, whether such suspension or ban is direct or indirect (for example a direction to Persons subject to the jurisdiction of the ruling body that they should not employ, contract with or otherwise engage or retain the services of an individual);</p> <p>F.1.14. he/she is subject to any form of suspension, disqualification or striking-off by a professional body including, without limitation, the Law Society, the Solicitors' Regulation Authority, the Bar Council or the Institute of Chartered Accountants of England and Wales or any equivalent body in any jurisdiction outside England and Wales, whether such suspension, disqualification or striking-off is direct or indirect (for example a direction to Persons subject to the jurisdiction of the professional body that they should not employ, contract with or otherwise engage or retain the services of an individual);</p> <p>F.1.15. he/she has been an Official at a Club (or held an equivalent role at a club) that has been</p>	<p>Chartered Accountants, equivalent bodies in any other jurisdiction, whether directly (for example a sanction against the individual in particular) or indirectly (for example a direction to persons subject to the jurisdiction of the sanctioning body that they should not employ, contract with or otherwise engage or retain the services of the person in question);</p> <p>(d) been an Official (as defined in Regulation 1) at a Football Club (or held an equivalent role at a club) that has been expelled from either the Premier League, the League, the National League (all divisions), Isthmian League, Northern Premier League, Southern Football League, The FA Women's Super League or the FA Women's Championship whilst they were an Official of that Football Club (or held an equivalent role at a club) or in the 30 days immediately following their resignation from their role at that Football Club (or club)</p> <p>...</p>
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<p>expelled from either the [English Premier] League, the EFL, the National League, Isthmian League, Northern Premier League, Southern Football League, the FA Women’s Super League or the FA Women’s Championship whilst he/she was an Official of that Club (or held an equivalent role at a club) or in the 30 days immediately following his/her resignation from the Club (or club)</p> <p>...</p> <p>F.1.17. he/she is found to have breached (irrespective of any sanction actually imposed), or has admitted breaching (irrespective of whether disciplinary proceedings were brought or not):</p> <p>F.1.17.1. Rule J.6 [Rules regarding the receiving and offering of inducements and payments to officials, players, or club, in relation to betting on an event or result of a football match]; or</p> <p>F.1.17.2. any other rules in force from time to time in relation to the prohibition on betting on</p>	<p>(f) being found to have breached (irrespective of any sentence actually imposed), or having admitted breaching (irrespective of whether disciplinary proceedings were brought or not) at any time any rules in force from time to time in relation to the prohibition on betting on football matches in England and Wales;”</p>
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football (whether in England or Wales or elsewhere)”	
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Table 23 - EPL and EFL Owners and Directors’ Test - Sporting Offences

(EFL, 2022, app. 3; Premier League, 2022, sec. F)

Under the regulations set by both the EFL and the EPL, a sporting or professional ban will be considered a disqualifying event in the Directors’ and Owners’ test. It should also be noted that a 30-day cooling off period will be required after holding an official role within the mentioned leagues. If this cooling off period isn’t met, then it will be constituted as a disqualifying event.

UK Entry Restrictions

EPL Rules	EFL Rules
<p>F.23. No Person may acquire any Holding in a Club if, pursuant to the law of the United Kingdom or the European Union:</p> <p>F.23.1. he/she is prohibited from entering the United Kingdom</p>	<p>4.5.1 they are prohibited from entering the United Kingdom;</p>

Table 24 - EPL and EFL Owners and Directors Test - Entry Restrictions

(EFL, 2022, app. 3; Premier League, 2022, sec. F)

Naturally, as a director tends to be a custodian of the football club, it would raise major concerns if there was a ban in place for an individual prohibiting him from entering the country.

4.5.5. Fan-Led Reviews: Owners' and Directors' Test

The Review posits that a new approach needs to be implemented and this will be determined by the IREF, replacing the old test to ensure that only the right custodians and qualified directors are allowed to run football clubs.

The next recommendation is to introduce licence conditions that are split into two parts; one test for Owners (“i.e. those who own a minimum of 25% shares in the club alone or acting in concert with others”) and one test for “directors, shadow directors, executive management and any individuals holding those roles regardless of job titles” (DCMS 2021, p.67). They also recommend that one of the licence conditions should be to identify the Ultimate Beneficial Owner (UBO) of the football club in making a declaration to the IREF.

In addition to the current tests for disqualifying events, the Fan-Led Review recommends that there should also be a test for new Owners involving “the review of a business plan, a check of financial resources and enhanced due diligence on the source of such resources, as well as an integrity test based on existing integrity tests which have already been developed by the Financial Conduct Authority, Prudential Regulation Authority, Ofcom and the Home Office” (DCMS 2021, p.68). The integrity test will be based off best practice in other industries.

The business plan should be submitted to the IREF and should include:

1. The intended strategy for the club.
2. Plan to ensure financial sustainability.
3. Plans for the community and heritage assets of the club.
4. Financial projections.
5. Intended corporate structure upon the acquisition.

6. Intended corporate governance plans and how they will be aligned with the proposed new Football Code.
7. Plans on Equality, Diversity, and Inclusion.
8. Declaration of conflict of interest to the IREF.

In summary, the recommendation is that a prospective owner should be subject to objective disqualifying criteria (such as the current tests), as well as being required to submit a business plan to be assessed by the IREF and to provide evidence of having sufficient financial resource available to implement the business plan (DCMS 2021, p.70). The prospective owner will also be subject to enhanced due diligence checks on the finances available and an integrity test.

The Fan-Led Review also recommends that the IREF conduct and publish results of the Owners and Director's test in 3 instances, that is, on entry, annually, and every three years. The Review also recommends that appropriate sanctions are in place to ensure breaches are effectively dealt with.

4.5.6. Corporate governance

There is a corporate governance code that is aimed at the administration of funds that the public receive for sports in order to maximise how efficient and effective the investments are. In short, any sporting body who receives public funding is required to adopt the sports governance code. This, however, does not extend to the men's professional football leagues as they do not primarily operate with public funds and are privately funded. The Fan-Led Review believes that the implementation of a governance code will significantly increase the standards of corporate

governance and as such, recommended that a new Code of Football Governance centred around the Sports Governance Code and compliance will be enforced through a licensing condition.

One of these conditions will be a requirement of the club to provide evidence annually to show compliance with the new Code of Football Governance. This evidence will need to be presented publicly in order to promote transparency. The Code of Football Governance will take a proportionate approach and be divided into tiers; Tier A (Premier League and Championship clubs), Tier B (League one and League two clubs), and Tier C (National League clubs). They also propose a ratchet system whereby once a club is operating in one of the higher tiers, it will always have the onus to operate at that tier and will be unable to drop down to a lower tier. Promoted clubs will have a period of settlement to allow them meet the requirements of the higher tier (DCMS 2021, p.79).

The Review proposes that similarly to the Sports Governance Code, the Code of Football Governance should have five main principles that its requirements are based upon. The first is that clubs must have a clear governance structure that is led by a board who are responsible for leading the organisation's long term future. Secondly, ensuring clubs recruit the appropriate people with a diverse range of skills and expertise to set effective organisation goals making effective organisation decisions. Thirdly, ensuring transparent communication and accountability to their stakeholders to deliver effective engagement with them and to ensure internal democracy is upheld. The code will also be responsible for ensuring clubs have a high standard of integrity and are engaging in continuous improvement of standard. Clubs will ensure compliance with applicable laws and regulations and have adequate financial strategic planning and risk management procedures.

The Code will also use an 'apply and explain' model as opposed to the traditional 'comply and explain' model, which is the traditional approach the UK take to corporate governance. The 'apply and explain' model would mean that the key principles of the code will be applied by clubs in a manner they deem most suitable for their club and respective tier, with them then having to then explain how these principles were applied. The Review also recommends the reform of the football authorities' own corporate governance to promote independent decision making away from vested interests in the sport. They also recommend having at least 50% independent directors and removal of historical nuances such as the need for an FA Chair, to promote independence in decision making.

4.5.7. Supporter Engagement

"Fans are a vital part of the culture of the club and also generate a significant portion of the income that helps every club survive and grow. As well as the importance of supporters having a voice in these cultural institutions, it makes business sense for clubs to liaise closely with their most important stakeholder and develop plans with their views at the forefront" (DCMS, 2021, p.90).

In the interview with participant 6, the issue regarding supporter engagement was explored, with participant 6 saying "these clubs means so much to so many people so the fans don't want to see themselves as just a commodity, just an asset...they have significant cultural value to the local community but they haven't been treated like that for many years". This view is further highlighted by the surprise announcement of the intended Super League which outraged the fans as no prior knowledge of the League or consultation process between the fans and the clubs were conducted (Burns & Jollands, 2022).

Supporter engagement varies from club to club and is not universally bad. In response to the publication of the Fan-Led Review, the chairman of the Football Supporter's Association (FSA) noted that it is "potentially a huge step forward for football governance – the Government committed to a Fan-Led Review which has listened to the voice of fans. It's now up to the Government to deliver upon the recommendations" (FSA, 2021).

The Review recommendations note that significant steps have been made to improve engagement over the years, noting that at the time of the Review, 12 clubs had signed Memorandums of Understanding with their respective supporter group on aspects of supporter engagement. The Premier League and the EFL also include sections on supporter engagement within their rules (EFL, 2022, p. 371; Premier League, 2022, sec. R).

4.5.8. Different Methods of Fan Engagement

There are a variety of ways to implement supporter engagement within football clubs.

Fans' Forum: This is a forum usually organised by the club and open to anyone who considers themselves a fan of the club. This congregation of fans are given a platform whereby they can pose questions directly to particular officials of the club. There tends to be a presentation given by the club first and then it is opened up for a question-and-answer session.

Structured Dialogue: This approach is one that was recommended by the report produced by the Government Expert Working Group on Football Supporter Ownership and Engagement (EWG). The supporters' representatives are involved in a formal dialogue with specific senior management personnel such as directors and owners. There were no specific rules or procedures with regards to how this dialogue is conducted and as such the EWG allows for flexibility to its implementation in accordance with the situation of respective clubs. This recommendation saw the Premier League and the EFL adopt the aforementioned rules and regulations on Supporter Engagement.

Fan elected Director: This is a club director appointed by the supporters who has all the same rights and responsibilities as all other directors on the club's board. This would mean that they would need to adhere to a duty of confidentiality and to act in the best interest of the club. Such a position can lead to the director being caught in a conflict of interest between his fiduciary duties to the club and to the fans.

Supporter Advisory/Shadow Board: This involves establishing a board with a range of diverse supporter representatives. In comparison to the other forms of engagement, the shadow board would meet for detailed discussions on the business of the club and the strategies they implement. Although they would by no means be considered a legal board and would not have the same rights as a fan elected director, they would still be able to engage with the club's management and discuss the business of the club.

Supporter Shareholder: This form of engagement requires supporters to acquire shares of the football clubs they support. One example of this is seen in Manchester United's fan share scheme where supporters can purchase a certain class of shares. This is also a model that is adopted by many German football clubs and it often known as '50+1' model. The '50+1' model requires a minimum of 50% plus one shareholding in clubs by law. The Fan-Led Review panel did consider this model and particularly how it is applied in the German League. They reached a conclusion that the model is not realistically applicable to the English Leagues as the German clubs started from a position of 100% supporter ownership while the position of the English clubs, were they to adopt this model now, will be starting from a position of 0% supporter ownership (DCMS 2021, p. 92). As such, the costs involved in making the necessary shift would be disproportionately high.

These various methods of supporter engagement have their strengths and weaknesses and as such, it is the Review panel's view that football clubs should look to adopting multiple methods of engagement and support consultation processes within their organisation. Using the licensing system that IREF would have, the Review Panel recommends that the IREF impose licencing conditions that relate to a minimum level of supporter engagement implementation.

The Review notes that any chosen IREF mandated supporter engagement mechanism must ensure consultations on material issues are conducted with fans “in a manner that allows for open discussion and effective feedback to ensure a fan voice is heard by the club on key issues...” and “clubs should employ an ‘engage and consult’ ethos...providing transparency for the wider fanbase” (DCMS, 2021, p.93). The Review believes the shadow board will be the best approach for the IREF to achieve these objectives. The shadow board will be implemented through a licencing condition of the IREF and must be consulted on all pertinent “on football/off pitch business and financial matters” (DCMS 2021, p.95).

The Review does offer a range of recommendations that would increase the level of supporter engagement between clubs and their fans. However, in acknowledging the value of these recommendations, Buns and Jollands (2022) posit that the Fan-Led Review’s dominant concern is regarding the financial value of football and as such shifts the focus away from the engagement with fans, questioning whether the review was intended to protect fans, or rather the corporations operating within the financial and legal framework of professional football.

4.5.9. Finances and Distributions in Football

The Review implores the FA to be more flexible than it currently is, with regards to the current funding formula and the disbursement of funds that it generates. The Review panel reached a conclusion that the current formula be eradicated to allow the FA to restructure its distribution mechanism to allow for surplus funds to be directed to “grassroots, amateur and women’s game” (DCMS, 2021, p.108).

During the review process, the panel discovered that there are massive disparities between the financial distribution in the premier league and the other leagues in the football pyramid. This is highlighted by Deloitte in their Annual Review of Football (2021), who estimate that the value of being promoted into the Premier League is worth about £170 million. Further disparities are highlighted by the fact that in 2018/2019, Huddersfield Town (who placed last place in the premier league that season and consequently got relegated to the championship), received £98.6 million through central distributions, while Norwich city (who won the championship league title and earned promotion to the premier league), only received £8.5 million from the central distributions (DCMS 2021, p.109).

The premier league projected that, between 2019 and 2022, it will provide funding to the EFL and other leagues below it of about £1.23billion, of which £647 million (52%) will serve as ‘parachute payments’ to relegated clubs and the rest will serve as solidarity payments (DCMS 2021, p.110). Parachute payments are made to clubs that have been relegated from one league to another to ensure ‘soft landing’ financially, after dropping down to the championship, allowing the clubs to invest in their team and adapt to the lower revenues of the leagues below the Premier League.

Under the current structure, an estimate of £40 million per year is paid to clubs that are relegated from the premier league (DCMS 2021, p.110). The payment is made from the national broadcasting revenue generated by the Premier League. The payment is made over three years; in the first year the club receives 55% of the equal share of broadcasting revenue paid to clubs dropping to 45% in the following year, and 20% in the third year (DCMS, 2021). With this in mind, the Premier League state that they provide an aggregate of 47% of their total turnover to the Championship, as well as providing addition support funds to the National League, Women’s football, and grassroots football.

However, the fact that most of the money to the EFL is in the form of parachute payments means that it is only distributed to a few clubs in the league. As such the EFL remarks that the funding that is funnelled down to the leagues is still insufficient. The EFL state that only 16% of the broadcast revenue is paid into the league, with majority apportioned for parachute payments. According to the EFL, the percentage needs to be elevated to 25% to improve the income of the clubs and enhance financial sustainability in the leagues below the premier league (DCMS 2021, p.109).

These parachute payments are made with good intentions in order to help clubs transition into a lower revenue generating league. However, the reality of it is that it creates massive disparities between the newly relegated clubs and the clubs already in the league. According to the Review, the parachute payments lead to wage inflation within the leagues, as well as reducing the competitive balance in the league. The novel work of Wilson et al. (2018; p. 14) examines the impact of parachute payments in the league as it relates to competitive balance in the EFL Championship, and highlights:

“an increase in the number of clubs with parachute payments and the overall value of these payments coincides with a reduction in competition in the league. Furthermore, the competitive balance of the league in general has declined in recent years. [In] relation to comparative performance, Championship clubs with parachute payments are twice as likely to be promoted to the EPL compared to clubs without and considerably less likely to suffer further relegation to League One compared with other clubs in the league” (Wilson et al., 2018, p. 14).

It is the recommendation of the Review panel that if the EPL and the EFL are unable to reach an effective agreement to mitigate the distribution disparities, then they should both commission research to find a solution and include backstop powers for the IREF if a solution is not found. In order to facilitate sustainability for clubs, the Review recommends that the Leagues, FA and the PFA, work to implement an automatic clause in the standard player contracts whereby there is a standard rate of salary adjustment (upwards for promotion; downwards for relegation) (DCMS 2021, p.114).

Solidarity Transfer Levy:

This proposal by the Review is aimed at Premier League buying clubs and suggests that they pay a levy on any player transfer within the league or any international transfer. This will not apply to any of the EFL leagues.

This would be similar to stamp duty tax whereby Premier League buying clubs pay a ‘solidarity transfer levy’ that is distributed among clubs further down the pyramid; and it will be regulated by the IREF. The amount of levy and finer details will be decided upon consultation, but it is intended that it would serve as a significant financial addition to the football pyramid, particularly at grassroots level, to ensure the long term sustainability of the pyramid.

Reporting on financial flows and Distribution

The Review also recommends a publishing of regular “objective evidence of financial flows and distributions in the game” by the IREF and industry regulators, in order to enhance policy debates on finances within the sport (DCMS 2021, p. 116). The Review makes a recommendation to the EFL to consider what available avenues exist to increase the value of the league’s broadcast deal.

4.6. Conclusion

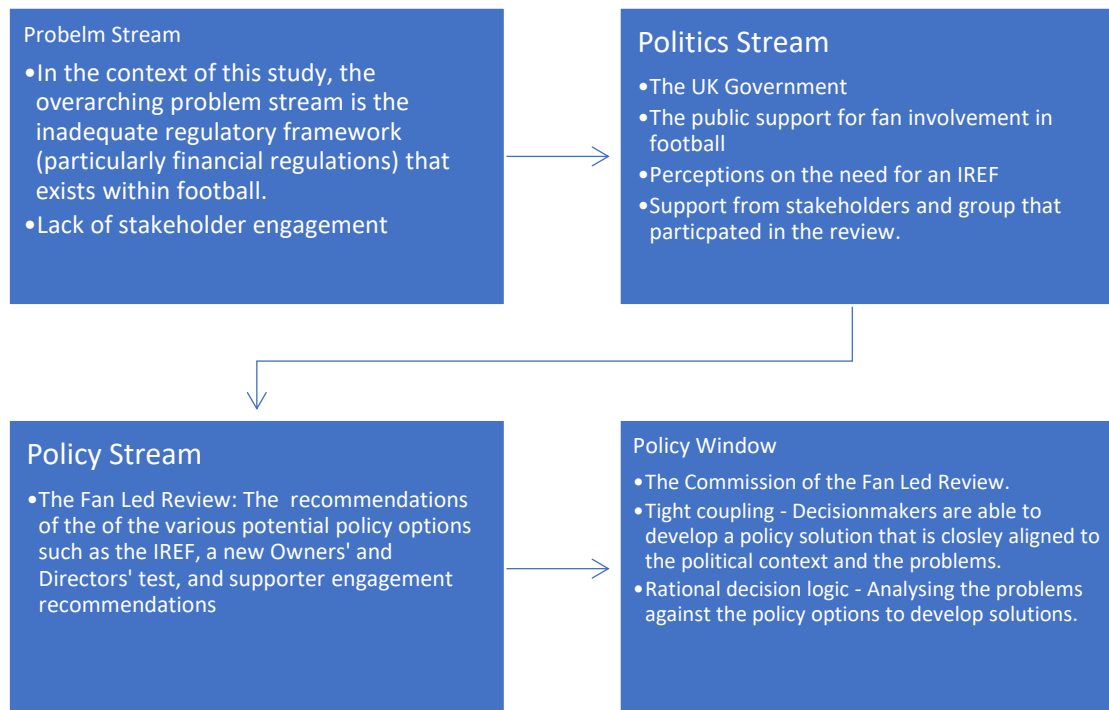


Table 25 - An MSF Assessment of the Fan-Led Review

Sotiriadou & Brouwers (2012, p.321) highlight the utility of MSF as “a strong foundation for understanding policy processes”, and state that “it makes it possible to go beyond mere description of sport policies and historical narratives of how those policies emerged”. Following the collapse of clubs such as Bury FC and the now abandoned plans for the Super League, the Fan-Led Review was commissioned to assess the governance practices within professional football (Woodhouse & Lalic, 2023). In the above assessment of the Fan-Led Review, the article posits that the commission of the Review led to the coupling of all the streams which led to a window of opportunity opening to facilitate policy change.

A variety of issues, located in the problem stream, were expanded on in the Fan-Led Review. These problems include the lack of supporter engagement, inadequate financial regulations, issue with the ownership of clubs, and the competitive imbalances within the football pyramid. The Fan-Led Review, located in the policy stream, provides recommendations that will address the issues in the problem stream, such as the implementation of the IREF and a new Owners' and Directors' test.

The politics stream is concerned with the political context that facilitates policy change. Firstly, the outcry from football fans and the intense media coverage put the issue of the lack of supporter engagement on the agenda (BBC, 2021a). This garnered massive support around the country with key football players, pundits, supporter associations, and football clubs, condemning the 'top 6' clubs for the lack of consultation of the stakeholders involved in football (BBC, 2021a). The support and participation from such key stakeholders within professional football, as well as the political will of the government to commission the Review, enabled the issues to be considered in depth in the Review. The government's response to the Review makes a commitment to the implementation of the IREF to ensure further sustainability of the industry (DCMS, 2022).

However, upon implementation of the recommendations of the Fan-Led Review, considerations will need to be given to the complex stakeholder landscape that operates within professional football in the UK. The varying interests of stakeholders such as clubs, governing bodies, prospective owners, and fans will need to be considered when implementing the recommendation of the policy stream. One such example is the involvement of the national government in football governance matters; a policy which FIFA frowns upon.

As such, it is plausible that there will be trade-offs in the interests of the stakeholders that will be assessed against short term and long-term benefits and practicalities concerned with decision making. The recommendations will also be assessed against the availability of resources such as finances, expertise, and administrative capabilities (Camargo et al., 2020). Further regulatory considerations such as an existing Owners' and Directors' Test will also need to be considered when implementing the recommendations.

The article extends the utility of MSF through its application in the analysis of the Fan-Led Review. This is because it assesses a contemporary sport policy process, with particular focus on football governance. However, MSF has its limitations which centre around an assumed context regarding the policy making processes it assesses (Sabatier, 2007). Although this study utilises semi-structured interview data of stakeholders within the professional football industry to address the problem of assumed context, a suggestion for future research is to utilise more interviews with policy entrepreneurs such as football clubs, the governing bodies, and supporter associations (Camargo et al., 2020). Future research can be undertaken following the implementation of the recommendations from the Fan-Led Review to provide a deeper analysis and comprehensive view of policy setting in football governance.

Chapter 5: Conclusion Chapter

5.1. Summary- Flow of the study



Figure 8: The flow of the study

5.2. Key Findings

In exploring football governance and the development of the transfer system with regards to Brexit, there have been a number of key findings that are detailed below. Firstly, the study explored the role of the ECJ as an avenue to address concerns of stakeholders within the football nexus due to governance failures and pathologies of the sport governing bodies, albeit these bodies inclination to operate with a certain degree of autonomy. This is highlighted in the Dona ruling, the Bosman case, and the FIFPro complaint to the ECJ. Furthermore, the ECJ's categorization of football as an economic activity and the acknowledgement of footballers as workers underlines the necessity to comply with EU regulations. Furthermore, in order to be seen as a legitimate governing body, FIFA and UEFA have no choice but to comply with ECJ rulings and apply EU regulations correctly when setting their governing regulations and policies.

Additionally, there have been two key policy windows in shaping the development of the international player transfer system to date. The first policy window was triggered by the Bosman ruling and the second policy window was triggered by FIFPro's complaint to the ECJ. During the first policy window, negotiations within the policy stream between EU and FIFA/UEFA took place to develop an international transfer system that did not contravene EU regulations, leading to the end of the nationality quota system in place at the time which clubs had to adhere to. The second policy window heavily focused on player welfare as FIFPro went on to argue that the system does not do enough to safeguard players contracts. FIFPro stated that there was a need for stability to ensure that players could not be unilaterally fired without just cause or be required to pay exorbitant amounts to a former club when they breach their contract. Negotiations between FIFPro and FIFA saw the complaint withdrawn from the ECJ, resulting in a task force of policy entrepreneurs to be set up by FIFA in order to address the policy problems brought forward in the complaint.

The UK leaving the EU meant EU nationals were no longer afforded the benefit of the freedom of movement of workers in the UK, and as such they were subject to certain immigration restrictions. This meant that the regulations governing the transfer system on the international and national level, such as the FIFA RSTP and the FA GBE had to be amended. Pre Brexit, football clubs in the UK had access to player market of EU players aged between 16-18 years old due to an exception laid down in Article 19.2 RSTP. In line with the freedom of movement principle of the EU, the exception allowed for players within that age group to move between clubs in the EU/EEA, and that included the clubs in the UK. However, because of Brexit, the clubs in the UK are no longer able to rely on this exception and loose access to this talent pool.

In extending the use of Cardno's (2018) policy documentary analysis to sports governance research, this study examined the GBE developed following Brexit. On a national level, the Home Office and the FA have developed a new GBE which utilises a set of assessment categories a to only attract the best talents who can make significant contributions to the sport in the country. This Post Brexit GBE offers a points-based system whereby players accumulate points under various categories of assessment, aiming to score a minimum of 15 points. Furthermore, this new GBE is deemed to have also further reduced the talent pool of players available to clubs, particularly with players of EU nationality having to adhere to the criteria as they were no longer able to rely on the Eu's freedom of movement principle in the UK. The fact is that the immigration system in England is based on restricting immigration as opposed to expanding, and as such complete freedom of movement for workers post-Brexit was an incompatible concept. However, from an analyst and recruitment perspective, the GBE Post Brexit GBE system opens up new markets that would have been considered rather inaccessible to clubs in the past (Participant 1; Participant 5).

5.3. Practical and Social Implications

The findings from this research will be significant for a number of stakeholders within the football industry such as the UK national government sports policy departments, professional governing bodies, and professionals operating within the football player transfer system, as it will show the roles they play within the nexus and how this has advanced since the reality of Brexit. It will also have implications for future researchers wanting to build on theoretical frameworks available in sports governance research.

The study offers policy guidance to policy makers; it provides insights into the early implementation of the GBE post Brexit, highlighting challenges to be addressed, as well as challenged to be anticipated. The study also provides guidance for administrative strategies that can be utilised when football clubs are formulating player transfer strategies considering the recent regulatory changes, allowing for strategic decision making and resilience planning within the uncertainties of the Post Brexit era. The study also has implications on the dynamics regarding the role of the fan within the nexus of football governance as it explores how the regulatory changes proposed by the Fan-Led Review has the potential to reshape the investment and engagement of fans.

5.4. Limitations and future research proposals

There have been a number of limitations throughout the process of this study. There are questions on the generalizability of the study, particularly due to the low number of participants and the diversity in the sample. However, the phenomenon being studied is rather nuanced with and it is only select group of professionals that have a key understanding of the Immigration and GBE aspects of the transfer system in the UK. There were potential participants for interviews who were contacted but declined to participate after sharing the participant information sheet, due to a lack of in-depth knowledge in the area being investigated. With more resources such as funding and access to relevant parties such as football clubs and the FA, this study can be developed further into a more in-depth investigation. However, the participants interviewed were vastly experienced and prominent within the football industry, having worked with numerous football governing bodies, clubs, players, and a range of stakeholders. Another limitation of the research is regarding the data collection methods. Being a novice researcher utilizing semi-structured interviews, I found it rather difficult to schedule the interviews as participants would reschedule, cancel or require a reduced timeframe for the interview.

Reflexivity is also important when research is being conducted, particularly with regards to the bias of one's own experience of having a legal background. This must be acknowledged as a different researcher with a different contextual setting could have interpreted the data in a different way (Sparkes & Smith, 2014). The bias stimulated the study without entirely interfering with it, hence acknowledging, and understanding the prevalence of the bias itself should not be considered a problem (Hahn & Gawronski, 2019). Therefore, acknowledging the bias and understanding it at the start if the study added a certain meaning to the data collected and facilitated the clear research purpose and focus of the study.

Future research extending this study should facilitate the participation of policy setting bodies and governing bodies in the interview process such as the FA and DCMS. This will allow for further in-depth understanding of the processes within the policy and political stream. The study also has implications for future researchers wanting to build on theoretical frameworks available in sports governance research. The utilization of a theoretical triangulation emphasizes the benefit of using a combination of theories in sports governance research to explore phenomena within the field. In conclusion, in extending this study, researchers can examine how Brexit has impacted the governance of other sports (e.g. professional rugby) and explore how the GBE criteria varies when implemented in other professional sports.

Appendix

SEMI- STRUCTURED INTERVIEW PROTOCOL

Interviewees will be informed about the thesis outline, the research objectives, topics they will be interviewed on and the type of questions that are likely to come up. Participants will be selected from online football directories, professional networks such as LinkedIn, and through links with the University of Salford. After retrieving their email addresses through these avenues, they will be contacted by an email requesting participation in an interview. Upon agreeing to participate, they will be asked to give an hour time slot that is convenient for them, in which I will be able to schedule an interview.

Following the standard ethics practices (Yin 2014; Bryman, 2010) and University of Salford's ethical guidelines, I will ensure interviewees of the following:

- Anonymity in handling of information
- Using direct quotes only when granted permission.
- Information gathered will be used for triangulation purposes.
- The right to withdraw permission to use information gathered from the interview.
- To use the information from the interview for the specified sole purpose of academic research.
- Any information gained and used as part of the research will have been consented to by the interviewee.

Lastly, it is intended that the interview protocol will be further developed and streamlined, following some further reading.

Structure

I will begin by greeting the interviewee and re-introducing myself and then setting out what my research entails. I will then move on to speak on my motivation of doing an exploratory study on the effects of Brexit on the transfer system in football in the UK providing essential information for practitioners and future researchers. The research will also help me gain extensive knowledge of the governance and transfer system and fill research gaps in the field.

Topics to be discussed.

- The Transfer system – its main objectives and functions
- The GBE – Governing Body Endorsement
- BIS Regulations on the Status and Transfer of Players
- The impact of Brexit on sports and free movement of workers
- Future implications of Brexit on policy and regulatory changes
- Incoming policies that might be affected by Brexit.
- Corporate governance and Sports Governance changes e.g. The Fan Led Review
- Sporting Autonomy and the intervention of the national government

Overall Research Objectives

- 1. To examine and understand the variety of stakeholders and their respective roles within the governance of professional football within the context of the EU.**
- 2. To understand the evolution of the international player transfer system operating in professional football within the context of the EU.**
- 3. To identify recent changes in the governance of the football transfer system in the UK since leaving the EU.**
- 4. To understand and assess the future of football governance within professional football in the UK.**

Interview Questions

1. Can you please explain how the football player transfer system in the UK works and any significant changes that have been made to the system over the years?
2. These changes you've mentioned, have they been effective would you say?
3. Are there any other alternatives/changes you can suggest to the system to improve its efficacy?
4. Pre Brexit, players from the European Union were allowed to play professional football in England as part of freedom-of-movement rules, while players from outside the EU needed work permits. How do you think Brexit has affected this policy?
5. How do you think Brexit will affect the player recruitment strategies at football clubs?
6. How do you think Brexit will impact the relationships within the governance of football, for example the relationship between the European institution that is UEFA and the FA?
7. Do you expect further changes in transfer policies and regulations set by the governing bodies?
8. Can you please tell me about the recent Fan Led Review and what implications it has to English football?

<u>Interview Participants</u>	<u>Roles</u>	<u>Experience</u>
Participant - P1	Data Analyst	11 years
Participant - P2	Sports Lawyer Academic Former club executive	21 years
Participant - P3	Sports Lawyer - Partner	16 years
Participant - P4	Sports Lawyer	11 years
Participant - P5	Immigration Lawyer - Partner	14 years
Participant - P6	Immigration Lawyer - Partner	11 years
Participant - P7	Sports Lawyer	11 years
Participant - P8	Academic	15 years
Participant - P9	Lawyer	18 years
Participant - P10	Academic	28 years

**THE CHANGING LANDSCAPE OF SPORTS REGULATIONS: AN EXAMINATION OF
THE IMPACT OF REGULATORY CHANGES ON FOOTBALL GOVERNANCE AND
TRANSFER POLICIES IN POST-BREXIT UK**

INTERVIEW PARTICIPATION CONSENT FORM

- I..... voluntarily agree to participate in this research study.
- I understand that even if I agree to participate now, I can withdraw at any time or refuse to answer any question without any consequences of any kind.
- I understand that I can withdraw permission to use data from my interview within two weeks after the interview, in which case the material will be deleted.
- I have had the purpose and nature of the study explained to me in writing and I have had the opportunity to ask questions about the study.
- I understand that participation involves discussions on the player transfer system in football.
- I understand that I will not benefit directly from participating in this research.
- I agree to my interview being video or audio recorded.
- I understand that all information I provide for this study will be treated confidentially.
- I understand that in any report on the results of this research my identity will remain anonymous unless I request otherwise. This will be done by changing my name and disguising any details of my interview which may reveal my identity or the identity of people I speak about.
- I understand that disguised extracts from my interview may be quoted in a thesis paper, conference presentation, and published papers.
- I understand that if I inform the researcher that myself or someone else is at risk of harm they may have to report this to the relevant authorities - they will discuss this with me first but may be required to report with or without my permission.
- I understand that signed consent forms and original audio recordings will be retained and backed up in a password-protected OneDrive and on a password protected PC. It will also be backed up via the University of Salford's online institutional service.
- I understand that a transcript of my interview in which all identifying information has been removed will be retained for two years from the date of the exam board.

- I understand that under freedom of information legalisation, I am entitled to access the information I have provided at any time while it is in storage as specified above.
- I understand that I am free to contact any of the people involved in the research to seek further clarification and information.

For more information or in the event of withdrawal, please contact the Researcher: Ugochi Paul Ononye, Salford Business School, u.p.o.ononye@edu.salford.ac.uk

Signature of research participant

Signature of participant

Date

Signature of researcher

I believe the participant is giving informed consent to participate in this study

Signature of researcher

Date



Request to Withdraw from the Research Study

Name of Researcher: Ugochi Paul Ononye

Title of Study: *The Changing Landscape Of Sports Regulations: An Examination Of The Impact Of Regulatory Changes On Football Governance And Transfer Policies In Post-Brexit UK.*

I, _____ want to end my participation in this study.

Name of Participant

Ending my participation means:

- I will no longer be contacted about this research study unless I need to be notified of a safety concern.
- Any information or data gathered from my participation will be removed from the research.

Signature of Participant

Date

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