

# How B Corp status might revolutionise football

*“Some people think football is a matter of life and death. I don't like that attitude. I can assure them it is much more serious than that.”*

Bill Shankly

# Contents

1	<u>Introduction</u>	3
2	<u>The Crouch Review</u>	4
3	<u>The qualities and vices of football</u>	5
4	<u>Revolutionising football</u>	7
5	<u>How would this work?</u>	10
6	<u>Conclusion</u>	11

# Introduction

**Football occupies a special place in our nation's heart. It is our national sport; so much more than a pastime; the one unifying thread between classes, political views and other divides.**

Perhaps because of these factors, there are seemingly endless debates about how best to protect football. The approach to date has been largely hands-off, letting the quasi-regulators of football "get on with it". But increasingly there is agreement by stakeholders in the footballing world that something needs to change.

**"Football is a phenomenon; one of our country's greatest exports and most proudly held treasures."**

**Benjamin Thomas,**  
Associate in the Charity and  
Social Enterprise team

# The Crouch Review

**The government's announcement on 25 April that it would seek to implement the recommendations of the Crouch Review – a “Fan-led Review of Football Governance” ([see here](#)) - means that some changes are likely to become reality.**

This is welcome news. Football is in need of reform and finally there is momentum. However, at this time, there is no firm plan for the implementation of the recommendations, so it remains to be seen when they might come into force. There is, at this stage, still room to tweak the model, and we believe it can be improved.

The issue with the various reviews into football, including the Crouch Review (but also other reviews such as Fair Game's “solutions for the National Game”) is that they fail to distinguish between those problems which are truly unique to football and those which are endemic throughout our society and economy.

We would argue that many, but not all, of the problems plaguing the sport are merely symptoms of the kind of free market capitalism which currently applies to our society. And by failing to acknowledge this distinction between the true idiosyncrasies of football and endemic issues, the reviews are missing a trick.

We need not overcomplicate the revolutionisation of football regulation when there are already ways in which to address those issues which are not truly unique to the game.

In our view, by incorporating the idea of B Corp certification into a revolutionised football governance landscape, football can borrow a tried and tested framework, a model for responsible capitalism, rather than trying to create its own bespoke solution for a universal problem.

# The qualities and vices of football

**In the Crouch Review, Tracey Crouch MP seeks to set out some reasons why football occupies such a special place in our national psyche. She says that “*football clubs also sit at the heart of their communities and are more than just a business*”; football clubs have a “*rich history*”; they are “*invaluable to their fans*”; and they are a “*crucial part of the local economy*”.**

These statements are all true, but they also apply to many companies (think Woolworths ([see here](#)); P&O Ferries ([see here](#)); and John Lewis ([see here](#))). And not only are some of football’s qualities shared among other companies, but some of its problems are, too.

The Crouch Review lists various issues that football is experiencing, but again these are not unique. It discusses financial fragility, whereby short-termism creates perverse incentives, and many clubs operate at a loss. But that is also true

of other companies (for example, Uber has never run a profit) and it can hardly be said that all companies operate with the long-term implications of their actions in mind (the decisions made by banks which led to the financial crisis of 2008, for example).

The Review discusses poor governance which has led to a disconnect between clubs and their fans; “*The long-term health of football relies on clubs being run sensibly, making rational decisions and planning for a long-term sustainable future.*” Again, these problems are endemic, not unique.

It criticises the substandard regulation and oversight of clubs, forgetting, perhaps, that most companies are regulated only by Companies House, a notoriously laissez-faire regulator.

# The qualities and vices of football

The Owners and Directors Test, which allows “offshore hedge funds with unclear ownership” and those with “serious criminal convictions” to acquire clubs, offers at least some protection which is not afforded to other areas of the economy. These problems are endemic in a legal system which embraces the principle of shareholder primacy, which states that the most important factor in running a company is to promote the interests of the shareholders.

On the other hand, football does have some genuine idiosyncrasies. As the Crouch Review says, football’s governance is inherently conflicted (the company law members of the Premier League are the clubs, i.e. those organisations which are subject to its own regulation).

The Review is also right that the financial health of clubs is all too often dependent on the whims of their owners in a way which is unique to sports, with clubs being seen as playthings. There is also something intangible about football which is impossible to put one’s finger on which separates it from all other companies.

In this respect, the Review is right when it says that *“Football clubs are not ordinary businesses. They play a critical social, civic and cultural role in their local communities. They need to be protected – sometimes from their owners who are, after all, simply the current custodians of a community asset.”*

It is interesting that this language was mirrored in Roman Abramovich’s statement that he was giving control of Chelsea FC to the trustees of its charitable foundation: *“I have always viewed my role as a custodian of the Club.”* Fortunately for Chelsea, Mr Abramovich was willing to write off £1.5bn in loans from Chelsea’s holding company, but he could just as easily have brought down the club, which was at his mercy.

The point is this: football is unique, but not as unique as we like to think it is; and this needs to be reflected in how we both protect its qualities and address its problems.

# Revolutionising football

**The Crouch Review makes several recommendations for the future of football, the most important of which is the establishment of an Independent Regulator for English Football (IREF).**

The IREF would issue licences to clubs giving them permission to operate as football clubs on certain conditions surrounding financial stability and ethical governance.

We have argued [elsewhere](#) that shareholder primacy is responsible for many of football's ills (and indeed those of the wider economy). We think that this should be addressed in a wholesale way, applying to all parts of the economy, in the form of the [Better Business Act](#). Indeed, Bates Wells is, together with a coalition of over 1000 businesses, [campaigning for this change](#).

However, a more immediate approach might be for football's governance to embrace the B Corp movement.

The B Corp movement largely replicates the Better Business Act but on a voluntary basis. The core idea is that stakeholder interests (such as the impact of a company's operations on the local community) are put on a par with financial interests so that companies seek to have a material positive impact on society and the environment, as well as creating value for shareholders.

To certify as a B Corp, companies must incorporate this principle into their Articles of Association, after which the directors are legally required to make decisions with financial considerations and other stakeholder interests given the same level of importance. B Lab UK, a not-for-profit organisation, brought the movement of B Corps to the UK in 2015 (it originated in the US) and verifies that they continue to meet the necessary standards.

# Revolutionising football

**Grimsby Town FC is seeking to become the first football club to certify as a B Corp ([see here](#)) and AFC Wimbledon looks set to follow in its footsteps ([see here](#)).**

One might think that this means sacrificing a level of success; surely, if all other clubs are financially focused, they have the upper hand against clubs which try to do things properly and ethically?

That is not the case, according to Jason Stockwood, one of Grimsby Town FC's owners, who has said (in other words) that a properly and ethically run business is not only a morally successful but a financially successful business. Making the right decisions for other interests aligns with, rather than conflicts with, financial interests, and therefore would likely improve results on the pitch.

Indeed, ethically run businesses are growing at a much faster rate than those utilising the traditional profit-focused motive. Put simply, there is no such

thing as a purely financial decision, and it is advantageous to everyone to take into account other stakeholder considerations in every decision that a business – including a football club - takes.

We think that the Crouch Review has missed an opportunity here because it has made the fundamental mistake of treating football clubs as entirely unique from other businesses. Instead of treating football as a special case in all respects, we need to identify those aspects which are truly unique and separate those from the aspects which are shared with other businesses.

That way, we can see that the truly unique characteristics of football must be protected by purpose-built regulatory architecture, while treating the others as mere symptoms of unbridled capitalism which can be addressed in the same way as other businesses should be addressing those issues.



# Revolutionising football

**We would therefore advocate for the incorporation of the B Corp movement into the regulation of football by an independent regulator, and make B Corp certification a condition of the licence to run a football club. There is no need to reinvent the wheel where there is already a ready-made solution.**

# How would this work?

**The Crouch Review recommends that the IREF issues licences based on two conditions: financial sustainability and governance. We would propose that the B Corp model could be adopted into the governance arm of this licensing regime, with supplementary rules governing those parts of football which require special attention.**

The Review suggests that a governance code based on the UK Sport and Sport England Code for Sports Governance be adopted, and the B Corp model could apply as part of this criteria.

Indeed, there are already similarities between those codes and the requirements for B Corp status. For example, requirement 5.2 of Sport England's Code states that *"The Board shall ensure it factors impact on stakeholders, wider society and the environment into the decisions it makes and the actions implemented by the organisation."*

This is remarkably similar to the B Corp legal requirement, which must be inserted in a company's Articles of Association in order to

certify. B Lab UK, the certifier of B Corps, would be much better placed to determine whether clubs were abiding by this requirement than a new regulator with no experience of making such assessments.

The B Corp recertification process requires companies to recertify each year based on their score in the "B Impact Assessment". That assessment asks questions specifically about how stakeholder concerns are taken into account and measured and addresses key issues such as the proportion of employees who are paid the Living Wage; these are surely issues that we want our football clubs to be measured against, too.

Other elements of the requirements for B Corp status would help to supplement the governance code; for example, the code could deal with the specifics as to board size and composition while cross-referring to the B Corp requirements on bigger-picture issues such as having a material positive impact on society and the environment.

# Conclusion

**It is vital that we take this once-in-a-generation opportunity to reform football and get it right. In our view, the best way to do that is to incorporate an already fast-growing and proven movement towards conscious capitalism into a reformed regulatory environment for football.**

# Get in touch



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I co-lead the firm's Purpose & Impact Strategy Group and advise clients seeking to have a positive social impact through their business, investments and other activities.

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I advise all manner of organisations within the charity and social enterprise sectors, ranging from large international grant-giving organisations to sports clubs.

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Making a profit is core to all businesses but our goal is to combine this with a real social purpose. Our values are pivotal to us, they shape our decisions and the way we live and work.

We focus on positive social impact as much as we focus on being a successful law firm. Our top tier legal advice is coupled with a real desire to drive change and we were the first UK law firm to achieve B Corp certification, awarded to businesses that balance purpose and profit.

Today, our clients are diverse – from corporate household names, to public bodies, to start-ups. We're also the firm of choice for thousands of charities and social enterprises. We continue to lead the market we helped to shape.

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