

Level Playing Field: SMEs, taxpayers, and the ‘Football Creditors Rule’ *Recommendations for reform*



Since 1992 approximately 46% of clubs in the Football and Premier Leagues have been through a formal insolvency procedure – many on more than one occasion. Not only is 46% significantly higher than insolvencies in almost any other sector of the economy (less than 0.5% of retail companies fail in a typical year), but football is unique in that the ‘closure’ rate is negligible: only one League club has failed to come out of insolvency (Maidstone United).

In League insolvencies, the ‘Football Creditors Rule’ means that ‘football creditors’ are paid all that they are owed, at the expense of ‘unsecured creditors’ – often including HMRC, small local businesses, supporters, local schools and St John’s Ambulance – who usually recover only a tiny amount of what they are owed. In no other industry can an insolvent business ‘ring-fence’ assets in order to make a preferential payment to any of its creditors. Below are two examples of where football creditors - including players and other clubs - were paid in full following insolvency, but unsecured creditors were not:

- **Crystal Palace FC:** Went into administration in 2010. The football creditors were paid in full while the unsecured creditors received 1.95p in the pound.
- **Plymouth Argyle FC:** Went into administration in 2011. The football creditors were paid in full while the unsecured creditors received a dividend of 0.77p in the pound.

R3 recognises that the ‘Football Creditors Rule’ is considered an important part of maintaining a competitive league, but calls on the football authorities to do more to protect, and improve the position of, the unsecured creditor community by redressing the balance of the rule. Redressing the balance of the rule will also encourage League clubs to manage their finances more sustainably.

The ‘Football Creditors Rule’

The ‘Football Creditors Rule’ means clubs and players are paid in full ahead of all other creditors if a League club enters insolvency. Insolvent clubs usually enter a Company Voluntary Arrangement (CVA) to restructure their debts; League approval is needed for a CVA to go ahead and for a club to keep its place in the competition (see page 2 for more details on CVAs and league rules). This approval is dependent on the club complying with the ‘Football Creditors Rule’, which dictates that clubs must make a provision to repay, in full, their football-related debts, including transfer fees and contractual commitments to players. Failure to repay these debts could see a club expelled from the League, and means the repayment of football debts is prioritised over repayments to other creditors.



The Leagues maintain that the ‘Football Creditors Rule’ is an essential part of football’s approach to handling insolvent clubs and ensures the integrity of the competition is maintained. Supposedly, the rule prevents clubs from spending millions on players and facilities they cannot afford.

However this rule can also restrict a club’s ability to return to financial health. For example, Portsmouth Football Club – now owned by fans – still owes approximately £7million to ex-players signed by previous owners.

There has also been much criticism about the impact the rule has on other creditors; politicians have called for the rule to be scrapped, while HMRC unsuccessfully challenged the rule in the High Court in 2012. The Football League claimed that defeat in the High Court would have meant League clubs would be unwilling to compete against rivals that had defaulted on football debts and remained in the League. Barristers have also claimed that legislating to remove the rule would be extremely difficult and may have unintended consequences.

Views from the Premier League

Former Manchester United Chief Executive, David Gill, told the Culture, Media and Sport Select Committee in 2011 that the rule had ‘had its time’. Former Sunderland Chairman, Niall Quinn, also claimed that *“The fan in the street meets the guy who printed the programmes who didn’t get paid and he sees the player driving out in the big car who was paid and I think that’s damaging.”* (2011)

Definition of Company Voluntary Arrangement (CVA):

When a club becomes insolvent it usually starts with an administration, leading to a CVA. A CVA is an insolvency procedure whereby a company (in this case a football club) enters into a binding agreement with its creditors as to how its debts should be paid. It is intended to be a business rescue procedure to give a business some breathing space to restructure back to financial health. A CVA will only be accepted if 75% of creditors agree to the proposed plan put forward by the club to pay a certain amount of its debts back. The 75% rule applies to the value of debts due to those creditors who choose to vote in the CVA. If connected parties vote (in addition to getting 75% in favour) then at least 50% of the unconnected creditors have to vote in favour for the CVA to be approved.

The 'Golden Share'

The Football League is a company limited by shares. Every club in the Football League is entitled to an ownership share – the 'Golden Share'. The share gives clubs the right to play in the league and share in league incomes from TV and other commercial deals (from a pooled account at the end of the season). In return, clubs must honour Football League rules and fixture commitments. When a club becomes insolvent, their share is suspended. The Football League will only approve a club's retention of its league share and status if it either pays, as a priority, all of its football creditors (including players contract obligations and outstanding debts owed to other clubs) or, more likely, the purchaser of the club assumes those obligations. The Football League may use the money owed to the club in the 'pool account' to pay the football creditors; unsecured creditors receive whatever is left over. The Premier League has similar rules. Crucially, to emerge from administration as a 'going concern' through a CVA, a football club has to receive the approval of its proposals to creditors from 75% of creditors (by value) who choose to vote. Despite the small amounts offered to unsecured creditors, many have little choice but to accept the deal on the table: for many local suppliers, financial survival depends on the club.

Recommendations to redress the balance of the 'Football Creditors Rule'

Recommendation	Detail
Notify unsecured creditors through procurement negotiations of their position in the hierarchy.	Small businesses and other local suppliers should be made aware of the 'Football Creditors Rule' and their position in the payment hierarchy so they can make an informed decision before agreeing to supply credit to a football club.
Change the scope of the 'Football Creditors Rule' so that players can only claim future contractual payments for a maximum of 12 months, even if the unexpired contract is for a longer period.	Prevents ex-players from being paid for several years after they have left the club, giving the club more chance of returning to financial health.
Introduce a one point deduction for clubs that have missed payments to HMRC for two consecutive months.	The deduction would notify other creditors that a club is in default and could be redeemed once the club is up-to-date. In practice, this could be monitored by non-adherence to the PAYE Real Time Information system.
A minimum sanction should be imposed for a club which fails to gain approval of its CVA or fails to honour the CVA if approved.	In these situations a commensurate sanction of automatic relegation one division or a 30 point deduction should be imposed by the League at the end of the season or start of the following season.
Introduce a minimum dividend for unsecured creditors to ensure they receive some of what they are owed (over a defined reasonable period of time).	The League should introduce a rule which states that the return of the 'Golden Share' is only allowed in an event that a Company Voluntary Arrangement meets a defined minimum threshold for unsecured creditors e.g. 35p in the pound over three years.
Extension of the 'financial fair play' rules for clubs competing in the Premier League and not just UEFA competitions.	Extending the rules would ensure all clubs in the Premier League are operating under the same financial rules.

About R3

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- Saved 750,000 jobs in the UK
- Advised more than 95,000 UK businesses, with just under 50% (45,000) continuing in some form
- Assisted UK businesses with combined turnover of more than £270billion.

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Contact: Georgina Dowling (Public Affairs and Policy Manager) on 020 7566 4214 georgina.dowling@r3.org.uk

