

REPORT TO THE EFL BOARD, 20.02.20**1. INTRODUCTION**

- 1.1 In late 2019, the Board of Directors of the English Football League (EFL) asked me to conduct an independent review to establish the circumstances leading to the expulsion of Bury Football Club Company Limited (**Bury FC**, or **the club**) from membership of the EFL in August 2019 (including ownership, management decisions, and funding arrangements), and in particular the manner in which the EFL applied its regulations, policies and procedures (including its Owners' and Directors' Test, and its Insolvency Policy) to Bury FC, and to what effect (the **Bury FC Review**).
- 1.2 The Terms of Reference for the Bury FC Review, dated 5 December 2019, are published on the EFL's website.¹ Initially it was proposed that if I identified any shortcomings in the EFL regulations, policies or procedures that were applied to Bury FC, I should also recommend changes to address those shortcomings. Subsequently, however, the EFL Board and the member clubs of the EFL (the **Clubs**) commenced their own review of the EFL's financial fair play rules (in the Championship, the Profit & Sustainability Rules; in Leagues One and Two, the Salary Cost Management Protocols), and ultimately it was determined that as part of that review they will also consider whether changes should be made to other parts of the rulebook (such as the regulations relating to change in control of a Club) to improve the financial sustainability of Clubs. Therefore, in the Terms of Reference I am not asked to recommend any changes to the EFL's rulebook. However, my understanding is that the EFL Board and the Clubs will take my findings in respect of the Bury FC case into account when considering potential changes to the EFL's rulebook at the 2020 AGM. I have therefore sought in the last section of this report to highlight some potential changes for their consideration.
- 1.3 For the reasons explained below, I respectfully agree with the view of the Football Supporters' Association that this case should act as 'a real wake-up call for football authorities generally'.² Anyone who values the crucial role that Clubs play in their local communities will deplore the financial collapse of Bury FC and its consequent loss of membership of the EFL. They will ask how a club with a great heritage and a loyal fan-base of circa 3,000 supporters could fail so dramatically. Some argue that Bury FC's fate demonstrates the tension between two competing visions of a football club: (i) as a business that seeks to generate a return for its owner's investment; and (ii) as a community asset of which the owner is just a custodian. However, I think that misses the real point. There are certainly grounds to criticise the owners who presided over Bury FC's financial ruin. With the benefit of hindsight, it can also be argued that the EFL could and should have intervened sooner and more forcefully. However, I do not see anything that the EFL could have done that would have made any difference, because the real cause of Bury FC's collapse is the fact that Clubs are able to fund player wages not just from normal operating income but by means of cash injections from their owners. This can make Clubs completely reliant on owner funding to remain competitive on the pitch. If such an owner becomes no longer ready, willing and/or able (for whatever reason) to provide such funding, the Club is inevitably plunged into deep financial crisis. In such cases, unless a new owner comes along with sufficient funding to meet the Club's commitments, there is nothing that the EFL can do to save the Club. The real question the Bury FC case raises, therefore, is whether the SCMP rules need to be revised to remove, or at least limit, the risks attendant on reliance on owner funding to underwrite player expenditure.
- 1.4 The Terms of Reference for the Bury FC Review specify that this report will be published on the EFL website (less any confidential and/or sensitive information that the EFL Board decides should be redacted prior to publication).

¹ efl.com/contentassets/5cb17bab939d4225935a00442b383a85/terms-of-reference---bury-fc-review.pdf

² Tom Greatrex, transcript of evidence given to DCMS Select Committee on 21 October 2019 (data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/administration-of-football-clubs/oral/106503.html) [Select Committee Transcript], answer to Q8.

2. PROCESS

- 2.1 The EFL gave me unrestricted access to its personnel and its files for purposes of this review, and free rein to obtain information from any other sources I saw fit. Further, Clubs and other EFL stakeholders (including supporter groups) were invited to provide comments and submissions to me by way of dedicated email address (BuryReview@twobirds.com) (although only limited information was received by this route).
- 2.2 In total, I and/or my team have reviewed more than 2,000 documents relating to Bury FC and its expulsion from membership of the EFL. They have come mainly from the EFL's files but also from public sources, such as Companies House records and evidence that was provided to the recent Digital, Culture, Media and Sport Committee inquiry on the administration of football clubs.³ I have also been provided with several (high quality) documents prepared by the Football Supporters' Association that seek to identify the root causes of financial weaknesses and failures at Clubs.
- 2.3 In addition, we interviewed Shaun Harvey (EFL CEO until 31 May 2019), Debbie Jevans CBE (EFL independent director, and interim EFL CEO from 1 June to 30 November 2019), Nick Craig (EFL Governance and Legal Director), Tad Detko (EFL Finance Director), Barry Roth (Forever Bury), and David Conn (Guardian journalist). We also had a very constructive meeting with Roger Ellis and Ashley Brown of the Football Supporters' Association, in which we discussed both Bury FC and the separate EFL governance review.⁴ I am very grateful to all of these individuals for contributing to the review in an open and constructive manner.
- 2.4 Given that the focus of the review is on what the EFL knew about the situation at Bury FC, how it reacted, and to what effect, I did not consider it necessary to contact either the current owner of Bury FC (Steve Dale) or the previous owner (Stewart Day) for comment. Having considered all of the other material, I do not believe that any information that they might provide would be likely to have a material impact on what I say below.

3. FOOTBALL FINANCES

- 3.1 Everyone is aware of the enormous disparity between central revenue distributions made by the Premier League to its clubs and central revenue distributions made by the EFL to Clubs in the Championship. According to Deloitte's Annual Review of Football Finance 2019 (assessing the situation as at the end of the 2017/18 season):⁵
- 3.1.1 The total revenue of Premier League clubs in season 2017/18 was £4,819 million.
- 3.1.2 The total revenue of Championship clubs was £749 million.
- 3.1.3 Promotion to the Premier League generates a revenue uplift of at least £170 million, rising to £300 million if a club survives more than one season (although note that these figures include parachute payments that would be made following relegation).
- 3.1.4 There is a strong correlation between player expenditure and the likelihood of promotion or relegation.

³ parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/inquiries/parliament-2017/buryfc/

⁴ efl.com/siteassets/governance-review-june-2019/governance-review-terms-of-reference.pdf

⁵ Deloitte Sports Business Group, 'Football Money League', January 2020, available at <https://www2.deloitte.com/uk/en/pages/sports-business-group/articles/deloitte-football-money-league.html>.

- 3.2 However, such disparities in central distributions also exist within the three divisions of the EFL. The majority of EFL central revenues are distributed to Championship Clubs (59.6% of the first tranche, rising to 80% of the second tranche), with a far smaller percentage going to League One Clubs (23.9%, decreasing to 12%) and to League Two Clubs (16.5%, decreasing to 8%).
- 3.3 Therefore, Clubs in all three divisions are under pressure to increase expenditure on player wages, in order to be more competitive on the field of play and so climb the ladder to greater riches.
- 3.4 This can encourage significant financial risk-taking. Between 1982 and 2010, there were 67 insolvency proceedings among English clubs participating in the second, third, and fourth tiers of English football.⁶ It was partly in reaction to this alarming trend that the League One and League Two Clubs formally adopted their respective Salary Cost Management Protocols (**SCMP**) in 2011,⁷ and it must be acknowledged that the financial discipline the SCMP rules have imposed – introducing limits on expenditure on player wages, backed by detailed reporting requirements and monitoring by the EFL Finance Department – has had a significant positive impact, with only seven clubs going into administration since 2010.⁸
- 3.5 However, because the SCMP rules permit Clubs to use extraordinary income from owners to fund spending on player wages that would not be sustainable out of normal operating income alone, the Clubs are entirely dependent on that owner funding continuing in order to be able to meet their commitments:
- 3.5.1 Going back to Deloitte's Annual Review of Football Finance 2019, addressing the position at the end of the 2017/18 season:
- 3.5.1.1 The total revenue of League One Clubs and League Two Clubs for that season was £146 million and £91 million respectively.
- 3.5.1.2 Average revenues in League One and League Two remained static, with wages costs increasing. Average operating and pre-tax losses of League One Clubs had worsened (skewed by significant losses of Clubs relegated from the Championship), while average losses of League Two clubs were relatively stable.
- 3.5.1.3 The majority of League One and League Two Clubs continued to rely on owner contributions to break even.
- 3.5.2 Meanwhile, the BDO Annual Survey of Football Club Finance Directors 2019⁹ reports that as of August 2019:
- 3.5.2.1 83% of responding Championship finance directors, 88% of responding League One finance directors, and 86% of responding League Two finance directors said their Clubs traded at a deficit before taking into account income from player transfers.

⁶ Syzmanski, 'Entry into exit: Insolvency in English professional football', January 2017, available at <https://www.soccernomics-agency.com/wordpress/wp-content/uploads/2019/01/English-football-insolvency-SJPE.pdf>.

⁷ They had been in operation in League Two on an informal basis since June 2004.

⁸ January 2010 - Crystal Palace (Championship); March 2011 - Plymouth Argyle (League One); February 2012 - Portsmouth (Championship); March 2012 - Port Vale (League Two); March 2013 - Coventry City (League One); May 2013 - Aldershot Town (this immediately followed their relegation out of the Football League); and May 2019 - Bolton Wanderers (League One).

⁹ BDO, 'The Annual Survey of Football Club Finance Directors 2019', available at <https://www.bdo.co.uk/getmedia/c1013b0a-4586-4e97-b842-a5c29404958a/Football-FD-Report-2019.aspx>.

- 3.5.2.2 80% of responding Championship finance directors, 71% of responding League One finance directors, and 100% of responding League Two finance directors said that their Clubs depended on the principal shareholder(s) to fund annual revenue shortfalls.
- 3.5.2.3 56% of responding League Two finance directors stated that their Club's financial position was 'in need of attention', with 11% stating it was a 'cause for grave concern'.
- 3.5.2.4 19% of responding League One finance directors and 56% of responding League Two finance directors indicated that the current owners of the Club were considering a full or partial exit within 12-18 months.

3.6 These numbers speak for themselves.

4. RELEVANT EFL REGULATIONS

4.1 The following table summarises the key provisions of the EFL Articles of Association, Regulations, and policies that are relevant to the Bury FC Review, starting with the SCMP rules. Direct reference should be made to the provisions themselves to determine their full force and effect.

KEY EFL ARTICLES, REGULATIONS, AND POLICIES	
Controlling Club spending	
Reg. 18.1	<p>Regulation 18.1 sets out the EFL's 'Financial Fair Play Objectives', namely:</p> <ul style="list-style-type: none"> • improving the economic and financial capability of Clubs; • increasing the transparency and credibility of Clubs; • placing the necessary importance on the protection of creditors by ensuring that Clubs settle their liabilities with players, HMRC, and other football clubs punctually; • introducing more discipline and rationality in Club football finances; • encouraging Clubs to operate on the basis of their own revenues; • encouraging responsible spending for the long-term benefit of football; and • protecting the long-term viability and sustainability of League football. <p>Regulation 18.2 states that each Division may propose and introduce 'Divisional Fair Play Rules' aimed at achieving the above objectives.</p>
App. 5	<p>Further to this power, while the Championship has adopted Profit & Sustainability Rules that mirror the financial fair play rules applicable in the Premier League, League One and League Two have each adopted (slightly different) Salary Cost Management Protocols (SCMP) that require their Clubs to limit their spending on player wages and bonuses each year to a specified maximum.</p> <p>The spending limit is:</p> <ul style="list-style-type: none"> • a specified percentage (currently 60% in League One and 50% in League Two¹⁰) of the Club's Relevant Turnover (which includes normal operating income, such as gate

¹⁰ It was 55% prior to the 2018/19 season. By implication, the remaining Relevant Turnover is reserved to be used to cover other operating expenses, including the wages of non-playing staff.

	<p>receipts and other match revenues, net commercial revenues, as well as distributions from the EFL and Premier League¹¹); <u>plus</u></p> <ul style="list-style-type: none"> • 100% of extraordinary income, referred to as Football Fortune Income (which includes cup prize money/facility fees, net transfer income, donations, cash and equity injections, and accumulated profit). <p>So the SCMP rules do <u>not</u> require Clubs to fund player wages entirely out of normal operating income. Instead they can use cash infusions by owners to fund any shortfall.¹²</p> <p>To police compliance with the SCMP rules, in June of each year Clubs have to submit to the EFL details of their player expenditure commitments and their estimated Relevant Turnover and Football Fortune Income for the forthcoming season.¹³ They then have to update those forecasts in December.</p> <p>The EFL Finance Department reviews SCMP submissions against information held in the EFL's files, performance of comparable Clubs, and past performance of the Club in question (as verified by its accounts filed at Companies House). It may require further information to support the figures submitted (e.g., any significant year-on-year increase in forecasted revenue), and will disallow any items of income that it considers to lack sufficient support.</p> <p>The Regulations state that the EFL's prior written approval is required before any item may be treated as Football Fortune Income. In practice, if any material Football Fortune Income is not evidenced to the EFL Finance Department's satisfaction as (a) realistic income that (b) qualifies as Football Fortune Income, it will be excluded from calculation of the spending limit:</p> <ul style="list-style-type: none"> • Any income that has to be repaid does not qualify as Football Fortune Income. • For League One Clubs, significant donations or cash injections must be received in the Club's bank account before the end of the reporting period, and must be accompanied by a 'Letter of Guarantee' from the source confirming there is no interest payable and no requirement for repayment. For League Two Clubs, significant donations or cash injections are only counted if already received. • For League One Clubs, owner loans can only be counted as Football Fortune Income if the cash has been received and the owner commits to convert the loans into equity by year-end. For League Two Clubs, in contrast, owner loans can only be counted as Football Fortune Income if the cash has been received during the financial year and has already been converted into equity. • Similarly, for League One Clubs, owner equity injections may be included in 'Football Fortune Income' in an SCMP filing if the owner provides a 'Letter of Guarantee' that he or she will inject the equity before the end of the reporting period; whereas for League Two Clubs, owner equity injections may only be included in the SCMP filing once the
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¹¹ Each year, each Club is entitled to a basic award from the EFL's central funds, which is predominantly distributed in monthly instalments. For example, in 2018/19 the basic award to League One Clubs was £708,000 and the basic award to League Two Clubs was £492,000. In addition, relegated Clubs receive parachute payments from the Premier League and/or the EFL.

¹² In October 2019, Damian Collins MP (then Select Committee chair) asked: 'How can clubs such as Bolton or Bury get to the point of bankruptcy if, as you confidently believe, they like everyone else are keeping within the rules that the league has set in terms of the percentage of their turnover that they spend on player salaries?' [Select Committee Transcript, Q.106]. The answer is that the SCMP rules allow Clubs to use not just a percentage of their turnover but also cash injections from the owner to cover player wages, and therefore they depend on owner funding to keep them solvent.

¹³ But not for any subsequent seasons, even though the current average length of player contracts for Leagues One and Two is approximately 21-25 months. In other words, Clubs do not have to show that they will have sufficient qualifying income to cover the entire costs of their player contracts, but only those costs that are due to be paid in the forthcoming season.

	<p>funds are received in the Club’s bank account, and the owner has provided a letter confirming there is no interest payable and no requirement for repayment.</p> <p>In their SCMP submissions, Clubs must also provide actual figures for previous seasons (first in December of the following season, and then the following June, after the Club has filed its accounts for the previous financial year at Companies House), and any variances from previous forecasts have to be explained where they would have resulted in the Club breaching the SCMP requirement.</p> <p>Any breach of the SCMP spending limit triggers a registration embargo that prevents the Club signing new players until the breach is rectified.¹⁴</p> <p>The EFL Regulations also require Clubs to keep their SCMP submissions updated at all times and to report any variances to the EFL. I am advised that in practice the EFL Finance Department works with each Club to keep its SCMP submission up to date, with new player registrations being approved if there is available headroom for the cost. The EFL will block any player registrations that it considers will trigger a breach of the SCMP spending limits.¹⁵</p> <p>In addition, a Club must behave with utmost good faith in relation to the SCMP requirements, or else face disciplinary action for misconduct (as to which, see below).</p>
<p>Change in ownership of a Club</p>	
<p>Reg 112 requires a Club to notify the EFL if anyone acquires a ‘Significant Interest’ in the Club, meaning an interest in shares in the Club that gives them 10% or more of the total share voting rights.</p>	
<p>(1) The Owners' and Directors' Test (OAD Test)</p>	
<p>Reg. 22.1, App. 3</p>	<p>Regulation 22.1 requires all Clubs to ensure that they and their relevant officials comply with the obligations of the OAD Test.</p> <p>The stated objectives of the OAD Test are 'to protect the image and integrity of The League and its competitions, the well-being of the Clubs, and the interests of all of the stakeholders in those Clubs, by preventing anyone who is subject to a "Disqualifying Condition" being involved in or influencing the management or administration of a Club'. However, it has been questioned whether the current OAD Test goes far enough to achieve those objectives.</p>

¹⁴ In accordance with the EFL Registration Embargoes Guidance, whenever a registration embargo is imposed (whether under this or another regulation), the EFL may permit the Club to sign players as required in order to maintain a 23-strong playing squad. (This exception became necessary following the demise of the ‘emergency loan’ system in 2016). Additionally, embargoed Clubs may be permitted to extend or renew contracts with younger players where they might otherwise lose compensation rights (the right to a future transfer fee or compensation fee) for that player.

In any event, a Club can only sign new players during one of the two annual transfer windows, meaning that a registration embargo only has an impact on a Club in transfer windows (the close season in the summer, and the month of January) each year. Therefore, the Club could leave the debt that triggered the embargo unpaid for several months, and only pay it (e.g., out of the December or July basic award) just before the transfer window opens. The downside of doing so is that if it means the debt becomes more than 30 days overdue, a lengthy ban on paying for player registrations applies (see discussion of Regulation 51.6, above).

¹⁵ If a Club is found to be within 5% of the limit, additional monitoring is applied, and the Club is required to provide SCMP certification forms for any further player registrations (App 5, Part 3, Reg 9.1 and Reg 11).

Prior to January 2019, all contracts were submitted to the EFL by email for approval prior to being registered, would be reviewed by the EFL Finance Department where the Club was close to the spending limit, and would not be approved if it would take the Club over the limit. In January 2019 this process was automated with the introduction of a new online system that requires Clubs to upload details of any new registrations, all of which require EFL approval prior to formal acceptance, which again enables the EFL Finance Department to confirm that the new registration will not trigger non-compliance with the SCMP requirements.

	<p>Under the OAD Test, no one can become (or remain) an owner or a director (in title or fact) of a Club unless he or she has disclosed all relevant facts to the EFL, and the EFL has confirmed (based on that disclosure and its own background checks) that he or she is not subject to any of the following Disqualifying Conditions: (1) ownership or involvement in the management or administration of another Club or PL club (because of the potential conflict of interest); (2) a ban by a football body or other professional body, or previous failure to comply with the OAD Test disclosure obligations or the football betting regulations; (3) an unspent conviction for one of a list of specified offences, or for any offence that results in a prison sentence of at least 12 months, or is subject to a football banning order, or he or she is a registered sex offender; (4) disqualification from acting as a company director; or (5) personal insolvency or prior involvement in two football club insolvencies (whether with two different clubs or with the same club twice). A Club may be expelled from membership of the EFL if it fails to remove a person who fails the OAD Test.</p> <p>The OAD Test therefore applies a limited set of objective criteria. If those criteria are met, the test is passed. The OAD Test does <u>not</u> seek to make any further judgment as to suitability (financial or otherwise) to own or manage a Club. For example, it does not require proof of availability of funds, or experience of running a football club, or a track record of rescuing distressed companies or of running a business as a going concern.</p> <p>Furthermore, the objective criteria that are applied do not include various criteria that might be considered relevant to financial suitability. For example, the OAD Test does not disqualify where there is a track record of company insolvencies (other than of football clubs), of stripping assets from distressed companies, of failing to ensure payment of creditors, or of failing to file company accounts.</p> <p>I am advised that the EFL Board and Executive have raised these issues with Clubs (during the Owner Conduct Review mentioned below) and with the Premier League (which has conditioned solidarity payments on alignment of EFL and PL rules in a number of areas, including this one), but there has been little support for changes to date.</p>
<p>(2) Future Financial Information</p>	
<p>Reg. 16.21, Reg. 16.22, and 16.16</p>	<p>Where there is a proposed change in Control,¹⁶ the Club must submit 'up to date Future Financial Information' (meaning projected profit and loss accounts, cash flow data, balance sheets, and relevant explanatory notes), for the period covering the current season (or what remains of it) and all of the following season, that 'take[s] into account the consequences of the change of Control on the Club's future financial position'. The EFL's practice is also to require sight of the Club's up-to-date management accounts, commencing from the date of the last available set of audited accounts.</p> <p>The EFL distributes a detailed and helpful guidance note for Clubs on the impact of these requirements in respect of a change in Control, together with template financial documents to fill in. They are also available online for Clubs to consult at any time.</p> <p>Following receipt of the Future Financial Information, the EFL may require the person who proposes to take or has taken control of the Club to provide evidence of the source and sufficiency of funds that the person plans to invest in or otherwise make available to the Club (Reg 16.21.2). In short, the new owner must prove that he or she has access to sufficient cash to fund the operations of the Club in accordance with a disclosed business plan for the current and following season. As a starting point, the EFL looks for unrestricted funds in a UK bank account or a solicitors' account. Where the funds are held elsewhere, the EFL may ask for a 'Letter of Support' that commits the owner to provide the funding to the Club as and when required, and confirms that the funding is not repayable by the Club.</p>

¹⁶ 'Control' is defined as 'the power of a person to exercise, or to be able to exercise or acquire direct or indirect control over the policies, affairs and/or management of a Club [...]' (Reg 1.1).

	<p>Crucially, however, the Future Financial Information must be provided 'as far in advance of the change of Control as reasonably possible or, if such submission is not reasonably practicable prior to the change of Control, no later than 10 Normal Working Days thereafter' (Reg 16.21.1, emphasis added). In other words, the EFL Regulations do <u>not</u> prevent a person acquiring control of a Club <u>before</u> he or she has provided the Future Financial Information or proof of access to sufficient cash to finance the Club's operations.</p> <p>If not satisfied with the evidence provided as to proof of funds, the EFL may take one or more of the following steps (Reg 16.22):</p> <ul style="list-style-type: none"> (i) require the Club to submit, agree, and adhere to a budget (Reg 16.20.1); (ii) require the Club to provide such further information as the EFL determines (Reg 16.20.2); (iii) bar the Club from signing new players or renewing contracts with existing players, where the EFL deems this necessary to ensure that the Club (a) pays its football creditors, (b) fulfils its obligations to play fixtures, and/or (c) provides the rights, facilities, and services the EFL requires to fulfil its commercial and broadcasting contracts) (Reg 16.20.3); and/or (iv) 'impose such other conditions as in each case it may determine' are necessary to ensure compliance with specified EFL Regulations, including Reg 16, the SCMP rules, and the OAD Test (Reg 16.22). <p>In May 2018, during the Owner Conduct Review discussed below, the EFL noted: 'where the circumstances merit it, the EFL has begun utilising "consent agreements" which set out conditions imposed by the EFL following a takeover, and requiring the ultimate owners to be a party to those agreements. Those agreements would give the EFL power to take further action should default occur'. To date, the conditions the EFL has imposed on a takeover have included a requirement to provide and adhere to a budget (Reg 16.20.1), and a requirement to provide other information on source and sufficiency of funding to underpin the business plan, including letters of support and commitments to abide by them (Reg 16.20.2).</p> <p>The EFL's Reg 16.22 power to 'impose such other conditions as in each case it may determine' is broadly worded, and could also be read to include, for example: (a) requiring a new owner to post a cash bond covering the amounts required to underwrite the business plan for the current and following season; and/or (b) withholding central distributions until the required information is provided; and/or (c) (in case of persistent failure to provide the information) charging the Club with misconduct and asking the Disciplinary Commission to suspend fixtures, or deduct points, or recommend expulsion. Query whether it could also be read to include (d) requiring an owner who fails to provide the required information to sell his or her shares (which would be much more controversial).</p> <p>What is clear, however, is that it would be much easier to impose and enforce effective conditions if they are pre-conditions to approval of the change of Control.</p>
<p>Ongoing submission of financial information</p>	
<p>Regs 16.2, 16.7</p>	<p>Championship Clubs have to produce updated Future Financial Information (i.e., updated business plans, together with evidence of source and sufficiency of funds to sustain their projected spending) each season, to cover that season and the next (Reg 16.16). However, this requirement does not extend to League One and League Two Clubs (Reg 16.8). Instead, they only have to submit the SCMP filings described above.</p> <p>In addition, League One and League Two Clubs do not have to submit any half-year accounts or interim management accounts to the EFL. They only have to submit their annual accounts within nine months of year-end (Reg 16.2). If they fail to do so, the EFL can require them to produce appropriate information, and will impose a registration embargo until the accounts are filed (Reg 16.7).</p>

Non-payment of debts as they become due	
Reg 17	<p>Any non-payment of taxes or national insurance contributions due to HMRC must be disclosed by the Club to the EFL within two days of default (Reg 17.1). A registration embargo is automatically triggered until the Club cures the default (Reg 17.3).</p> <p>Clubs also have to sign a declaration authorising HMRC to disclose information to the EFL about non-payment of taxes. Failure to do so gives the EFL the right to suspend the Club's fixtures (Reg 17.6).</p>
Article 48; Reg 34.2.13; Reg 51; Reg 53	<p>Where a Club fails to pay a debt owed to a 'football creditor' (including other Clubs, players, and other Club employees), e.g. in relation to ticket sales (Reg 34.2.13), transfer/compensation fees (Reg 51.2.3; Reg 51.2.4; Reg 51.6), or player wages (Reg 53):</p> <ol style="list-style-type: none"> 1. The EFL may withhold central distributions that would otherwise be payable to the Club and apply them to pay the debt owed to the football creditor (Art 48). 2. Alternatively, the Club may be required to pay interest on the debt at a set rate till paid (unpaid ticket revenues: Reg 34.2.13; non-payment of transfer fees, Reg 51.2.4); it may be placed under a registration embargo until the debt is paid (transfer fees and compensation payments: Reg 51.2.3; payments to players: Reg 53.1) and/or have transfer fees due to it diverted to pay the debt (Reg 51.2.4); and/or it may be fined (non-payment of transfer fees: Reg 51.2.6) and/or charged with misconduct (non-payment of transfer fees: Reg 51.2.6). 3. Where debts to players, other Clubs, and/or employees remain unpaid for more than 30 days after payment is demanded, the Club is barred from paying a registration fee for any new player for the remainder of the season and for the whole of the following season (Reg 51.6). There is no escalation of sanctions beyond that if the debt remains unpaid, e.g. after 50 or 100 days.
Sanctions for breach of the Regulations	
Reg 82	<p>As noted above, certain Regulations specify the sanctions imposed for breach (e.g., registration embargo/fine). In addition, any breach of the Regulations also constitutes misconduct, which triggers a power on the part of the Disciplinary Commission to impose such sanctions as it sees fit, including registration embargos and fines, but also points deductions, compensation payments, or even a recommendation of expulsion.</p> <p>Historically, however, the EFL has tended to limit itself to applying the specified sanctions for payment defaults, and has not charged those defaults as misconduct warranting further sanctions.</p>
Reg 63.7	<p>For example, Reg 63.7 states that '[t]he terms of a Standard Contract between a Club and Player shall be strictly adhered to'. Therefore, any failure to pay a player in full for the whole of the term of that contract is a breach of the Regulations, and so constitutes misconduct that could be charged and sanctioned as noted above.</p> <p>The EFL has recently taken disciplinary action against three Clubs for breach of this Regulation based on their non-payment of players (Bolton Wanderers, Macclesfield Town and Southend United).</p>
EFL Policy on Taking Action Against Individuals	<p>From September 2017 to May 2018, the EFL conducted a review of the regulations it had in place to deal with unacceptable conduct by owners of Clubs. There was no support among Clubs for making any changes to the OAD Test, or for creating an offence of bringing the EFL into disrepute, or for introducing a power to intervene in the operations of a Club whose financial difficulties were having an adverse impact on the EFL (e.g., sending in external consultants to review financial records and/or restructure debt).</p>

	<p>The Clubs were split on whether the requirement to submit fully underwritten budgets each season should be extended beyond the Championship Clubs to League One and League Two Clubs. Historically League One and League Two Clubs have resisted on the basis that the majority of them operate effectively based on the regulations as currently written, and they have insufficient internal resources to support any additional reporting obligations.</p> <p>In contrast, there was clear support for the EFL developing a policy to bring action against individuals rather than the Club in appropriate circumstances, and for including debts owed to other Clubs and to players in the 30-day arrears rule (which was done – see above).</p> <p>In particular, a number of Clubs were in favour of the EFL taking action if a new owner failed to abide by commitments given on takeover of the Club.</p> <p>The EFL Policy on Taking Action Against Individuals was adopted on 26 July 2018. It states that the EFL will consider taking disciplinary action not (only) against a Club but (also) against individuals involved in the misconduct at issue, where (for example) the individual’s conduct involves a very serious act or acts relating to the operation of a Club, and is clearly damaging to the standing and reputation of the wider profession and the game of football.</p> <p>One specific example set out in the policy reads as follows: ‘An individual acquires a controlling stake in a member club. In accordance with the powers set out in Regulation 16, the EFL imposes conditions, one of which is to require the individual to provide funding support to the Club for the period through until the end of the next following season. The conditions will include an obligation on the Club to procure that the individual complies with those commitments. Where the individual defaults on payment of funding, the individual, rather than the Club, should be subject to disciplinary proceedings for “breach of an order, requirement, direction or instruction of the EFL”’. Once again, however, this only has teeth if the owner has already given the commitment as a condition of acquisition of ownership.</p>
<p>Expulsion absent breach of the Regulations</p>	
<p>Reg 5.3 and EFL Policy on Expulsion of Members</p>	<p>Under Reg 5.3, a Club may be expelled from the EFL by resolution supported by 75% of Clubs at a general meeting, without needing to show a breach of the Regulations (see above) or an insolvency event triggering a right of withdrawal of membership under Art. 4.8 (as to which, see below). This power was introduced in February 2019, and is intended to reflect the fact that ‘no one should be bound to continue to contract with another where there are justified reasons for not wishing to be so bound’.</p> <p>Under the policy, expulsion might be considered where the conduct of a Club (1) is likely to have an adverse effect on the EFL or bring it or the Clubs into disrepute; or (2) is so serious that the EFL and other Clubs lose confidence in the offending Club's willingness or ability to meet its other membership obligations; or (3) constitutes a breach of an agreement between the Club and the EFL that triggers an express right to expel in accordance with Reg 5.3.</p> <p>Since Regulation 5.3 was adopted, the EFL has considered using it twice. First the EFL called a meeting of Clubs to consider the expulsion of Coventry City FC pursuant to Regulation 5.3 for failure to secure a home venue in Coventry, but cancelled the meeting after reaching agreement with Coventry to play at St Andrews while it pursues a permanent home in Coventry. In addition, as noted below, in the event of Bury FC's CVA not being approved, the EFL would have called a meeting of Clubs to vote on the expulsion of Bury FC due to doubts over its ability to complete the 2019/20 season.</p>
<p>Insolvency</p>	
<p>The relevant Regulations and the EFL Insolvency Policy are designed to encourage Clubs to manage their finances responsibly, to deter them from risking insolvency, and to prevent them from gaining an unfair advantage by entering an insolvency process.</p>	

Reg 12.3	A Club that suffers an insolvency event will have 12 points deducted automatically. It may appeal against the points deduction to an independent tribunal (the League Arbitration Panel), but the grounds on which it may appeal are limited.
Article 4	<p>Article 4 of the EFL Articles of Association provides that when a Club enters into any form of insolvency proceedings, the EFL Board shall withdraw the Club's membership of the EFL (without needing the approval of the other Clubs). However, it also gives the EFL Board discretion to suspend the withdrawal of membership to give the Club time to re-organise its affairs and so to retain its membership, if it satisfies certain conditions.</p> <p>Upon receiving notice of the insolvency event, the EFL Board will serve on the Club a notice of withdrawal of its EFL share. From that point, the EFL imposes a registration embargo that prevents the Club entering into any player transaction, loan or transfer to or from the Club without the prior approval of the EFL, and withholds all central distributions payable to the Club, to be applied to pay football creditors. The EFL Board may then suspend the notice of withdrawal subject to certain conditions, and it may withdraw the notice if those conditions are met. Alternatively, if they are not met, the EFL can reinstate the notice of withdrawal of the Club's membership of the EFL, leading to its eventual expulsion.</p> <p>An insolvency event therefore gives the EFL much more leverage than it would otherwise have to force a Club and its owners to address its requirements.</p>
EFL Insolvency Policy	<p>The starting point of the Insolvency Policy is that ‘no Club should gain (or seek to gain) any advantage within the context of professional football over other Clubs by not paying all its creditors in full at all times’, but the policy also recognises that insolvencies can and do happen, and that immediate expulsion in each case would have a significant impact on the integrity and continuity of the EFL’s competitions.</p> <p>The Insolvency Policy therefore explains what the insolvent Club needs to do in order to avoid losing its membership of the EFL. Reflecting the EFL’s longstanding ‘rescue culture’, it provides that the notice of withdrawal will be suspended to give the insolvent Club a chance to re-establish its finances and continue in membership, and will be withdrawn (i.e., the Club's membership of the EFL will be maintained) if the Club pays or secures all football creditors in full (to safeguard the integrity of the EFL competitions), reaches agreement with secured creditors, pays unsecured creditors a minimum dividend of an immediate 25 pence in the pound or a deferred 35 pence in the pound,¹⁷ and provides a fully underwritten business plan that demonstrates there is sufficient funding in place to enable the Club to complete its scheduled fixtures that season (and for the next one or two seasons, if the EFL deems appropriate).</p> <p>Where a notice of withdrawal of membership has been suspended, the Board may decide: (1) to withdraw the notice (i.e. confirm the Club has satisfied its requirements and may continue in membership of the EFL, despite the insolvency event); or (2) to continue the suspension of the notice (to give the Club more time to get its affairs in order); or (3) to terminate the suspension (i.e., expel the Club from membership, ‘where the circumstances are such that it is no longer tenable to retain the Club as a member of the League’).</p>

4.2 I consider below the extent to which these various provisions were or were not applied in the case of Bury FC, and (to the extent they were applied) whether they were effective in achieving their objectives.

¹⁷ A failure to pay the minimum dividend to unsecured creditors might not lead to expulsion but it would lead to an additional 15 point deduction on top of the 12 point deduction pursuant to Regulation 12.3 (see above).

5. BURY FC PRIOR TO MAY 2013

- 5.1 Bury FC has a long and proud footballing history. Founded in 1885, it became a member of the Football League in 1894, and won The FA Cup in 1900 and 1903. Since 1999, it has played in the third or fourth tiers of English football, i.e., in what are now Leagues One and Two of the EFL.
- 5.2 Competing as it does with several other clubs in its Lancashire catchment area, Bury FC has always had a small but loyal fan-base, generally attracting crowds of no more than 2,500-4,500, even when playing in the Championship (in seasons 1997/98 and 1998/99). As a result, its normal operating income (gate money, central distributions, etc.) (in SCMP terms, **Relevant Turnover**) has always been limited, and 50% or even 60% of that income would not come close to covering the costs of a competitive playing squad. Instead, Bury FC has been reliant on cash and equity injections from its owners (in SCMP terms, **Football Fortune Income**) to fund its player wage bill.
- 5.3 Bury FC went into administration in March 2002, due to a cash shortfall caused by the High Court freezing the assets of its owner, Hugh Eaves, following claims that he had lost investor funds through speculative trading on the stock market. In May 2002, the club exited administration via a Company Voluntary Arrangement (**CVA**) that paid unsecured creditors 10 pence in the pound.
- 5.4 The Save Our Shakers Trust owned Bury FC up to the end of season 2012/13. That year, however, the club was relegated from League One and sustained a reported operating loss of £720,688. It also had debts of approximately £1.6 million to service. As a result, the Supporters Trust was struggling to find the necessary funds to stay afloat. The club had twice been placed under a registration embargo after taking short-term loans from the Professional Footballers' Association (the **PFA**), and HMRC had filed a winding up petition on account of unpaid taxes. Five of the club's directors resigned. In short, the club was insolvent and was facing administration and, absent arrival of a saviour, likely liquidation.

6. STEWART DAY'S OWNERSHIP OF BURY FC (MAY 2013 – DECEMBER 2018)

6A. Stewart Day takes over Bury FC, May 2013

- 6.1 Stewart Day bought Bury FC in May 2013. He immediately paid off the PFA loans and the HMRC debt, thereby removing the threat of the club being wound up. Mr Day's business background was in property development, operating through the 'Mederco' group of companies. He became a director of Bury FC, along with Glenn Thomas, who acted as the club's CEO. They both passed the OAD Test, and at that time there were no other change in control requirements (whether in relation to the provision of Future Financial Information or otherwise).
- 6.2 Mr Day's long-term plan¹⁸ was to make Bury FC a self-sufficient and sustainable football club (i.e., not dependent on owner funding). He proposed to achieve this by (1) developing the stadium into a '365 days a year' business that generated significant non-football income (including from hotel/conference facilities and housing); (2) investing in the youth structure to increase the number of players developed to play in the first team and to generate future transfer fee income; and (3) investing in training facilities in order to help make the first team more competitive and so move up the ladder. That plan obviously needed significant funding.
- 6.3 Mr Day also had a short-term ('five-year') plan to get the club up from League Two into the Championship.¹⁹ However, the normal operating income that the club was generating was not sufficient

¹⁸ As described in the strategic report included with the club's annual accounts for the year ending 31 May 2016, available at beta.companieshouse.gov.uk/company/00053268/filing-history.

¹⁹ BBC Sport, 'Stewart Day: Bury still aiming for the Championship', 17 March 2015, available at bbc.co.uk/sport/football/31921657. The Club was in fact promoted to League One in season 2014/15, but it was relegated back to League Two at the end of season 2017/18.

to cover the player expenditure required to build a squad capable of achieving such success. Mr Day therefore appears to have decided that he or his companies would fund the shortfall.

6B. Bury FC's SCMP filings

6.4 In June each year, in accordance with the SCMP regulations, Bury FC provided the EFL Finance Department with details of its committed player expenditure for the forthcoming season, together with its estimated Relevant Turnover and Football Fortune Income for the same period. In December, it filed updated forecasts for that season, and then in the June after the audited accounts covering that season were filed with Companies House it filed 'actual' information for that season based on those accounts.

6.5 The table at [Figure 1](#) sets out the information that Bury FC supplied to the EFL in this way for seasons 2013/14 to 2017/18 (save for the rows shaded orange, which show actual figures as re-checked by the EFL in February 2020):

Figure 1: Figures taken from Bury FC's SCMP filings, 2013/14 to 2017/18 (save for rows shaded orange)

Year	Submission	Total Relevant Turnover	Relevant Turnover % for Headroom calculation	Football Fortune	Player Expenditure	'Headroom'
2013/14 (Lge 2)	June 2013 forecast	2,393,247	1,316,286 (55%)	655,000	1,529,732	441,554
	Dec 2013 forecast	1,969,246	1,083,086 (55%)	841,000	1,642,721	281,365
	June 2015 actuals	2,129,577	1,171,267 (55%)	225,716	1,872,276	-475,293 ²⁰
	Feb 20 EFL actuals	2,129,577	1,171,267 (55%)	720,866	1,872,276	19,857
2014/15 (Lge 2)	June 2014 forecast	2,701,234	1,485,679 (55%)	307,500	1,666,164	127,015
	Dec 2014 forecast	2,839,952	1,561,974 (55%)	539,500	1,839,706	261,768
	June 2016 actuals	2,614,614	1,438,038 (55%)	1,055,718	2,239,663	254,093
	Feb 20 EFL actuals	2,614,614	1,438,038 (55%)	1,055,718	2,239,663	254,093
2015/16 (Lge 1)	June 2015 forecast	3,512,646	2,107,588 (60%)	524,000	2,562,588	68,999
	Dec 2015 forecast	3,346,450	2,007,870 (60%)	921,500	2,640,987	288,383
	June 2017 actuals	2,949,000	1,769,000 (60%)	3,532,000	2,763,000	2,538,000
	Feb 20 EFL actuals	2,949,000	1,769,000 (60%)	1,042,000	2,763,000	48,000
2016/17 (Lge 1)	June 2016 forecast	3,184,186	1,910,512 (60%)	1,000,000	2,853,106	57,405
	Dec 2016 forecast	3,756,000	2,254,000 (60%)	1,273,000	3,269,000	257,000
	June 2018 actuals	2,950,000	1,623,000 (60%)	3,533,000	3,188,000	1,968,000
	Feb 20 EFL actuals	3,756,317	2,253,790 (60%)	1,272,575	3,269,047	257,319
2017/18 (Lge 2)	June 2017 forecast	3,249,000	1,949,000 (60%)	2,375,000	4,050,000	275,000
	Dec 2017 forecast	3,241,000	1,945,000 (60%)	2,653,000	4,454,000	144,000

6.6 What is noticeable is that player expenditure increased very significantly over the period (from £1.9 million in 2013/14 to £4.5 million in 2017/18). Operating income (Relevant Turnover) increased as well over the same period, but only from £2.1 million to £3.2 million, and therefore the 55/60% of that income that the club was permitted to spend on player costs did not come close to covering those costs. As a result, Bury FC was completely reliant on 'Football Fortune Income', of which a large proportion was owner funding, which increased from £721,000 in 2013/14 to £1-1.3 million in 2014/15, 2015/16 and 2016/17, and to £2.65 million in 2017/18), i.e., £6.65m in total.

²⁰ I am advised that when the EFL Finance Department received Bury FC's June 2015 SCMP filing, purporting to show a £475,293 overspend for 2013/14, it reviewed its records and determined that the club had omitted from the filing most of its actual Football Fortune Income for 2013/14. The club's total Football Fortune Income for 2013/14 was not £225,716 but rather £720,866, so that there was no breach of the spending limit in 2013/14.

- 6.7 The annual accounts and other information filed at Companies House after each year-end confirmed this picture, showing operating losses of £1.5 million in 2013/14, £2-3 million in each of 2014/15 to 2016/17, and of £4.5 million+ thereafter (estimated), with a total increase in share capital across the period of more than £9 million.

Figure 2: Figures taken from Bury FC's annual accounts filed at Companies House

Year	Turnover	Operating profit / loss	Share capital	Revaluation reserve	Retained earnings/ liabilities	Net assets/liabilities
2013/14	2,786,332	1,546,291	3,269,251	188,000	5,460,754	2,003,503
2014/15	2,670,332	2,949,132	4,284,719	4,918,071	8,359,643	843,147
2015/16	4,238,294	2,358,160	7,290,069	4,877,980	10,838,082	1,329,967
2016/17	4,665,030	2,665,642	8,297,644	4,818,418	13,597,861	481,769
2017/18		[4,500,000]*				
2018/19		[5,000,000]*	12,491,779			

* The accounts for the years ending 31 May 2018 and 31 May 2019 have not yet been filed at Companies House. The £4.5 million operating loss figure for 2017/18 and £5 million operating loss figure for 2018/19 are educated estimates by well-informed third parties.

- 6.8 What is clear from both sources is that Bury FC was completely reliant on Stewart Day remaining ready, willing and able to fund the growing shortfall between (i) 55/60% of operating income, and (ii) total player expenditure. Assuming that Mr Day did continue to provide such funding, however, in the form of qualifying cash injections, it was completely compliant with the EFL's financial fair play rules for Leagues One and Two (i.e., the SCMP requirements) to run the club in this way.
- 6.9 What this meant, however, was that if Mr Day's businesses failed, so that he could no longer cover the club's operating shortfall, the club would immediately be plunged into a deep financial crisis (particularly given that the average length of a player contract is approximately 21-25 months, with some being longer than that). And that is exactly what happened in late 2018, prompting the forced sale of the club to Mr Dale.
- 6.10 Whether or not this approach of relying on owner funding is sustainable or sensible is outside the scope of this review, but I would urge the EFL Board and the Clubs to look very closely at this issue. It seems to me that this is the root cause of most of the problems seen in the Bury FC case. If so, dealing with the other regulatory issues exposed by this case, but not this one, will not solve the problem.

7C. Application of the SCMP requirements to Bury FC

- 6.11 As noted above (see [Figure 1](#)), Bury FC made SCMP filings from June 2013 to December 2018 that reported anticipated 'Football Fortune Income' (cash or equity injections from Mr Day totalling almost £6.65 million) that more than covered the shortfall between the 55/60% of Relevant Turnover (operating income) and total player expenditure.
- 6.12 I have noted the criticism levelled by the Digital, Culture, Media and Sport Committee that '[t]he EFL's rules on club financing seem to rely on self-declarations from the clubs on income and loan arrangements and credit facilities provided by owners which are at best opaque and uncertain, and more likely deliberately deceptive',²¹ but I have not found any evidence to substantiate that criticism. The SCMP regulations provide that '[c]laims for any item of income to be treated as Football Fortune Income are subject to the prior written approval of The League'.²² I am advised that in practice, if any

²¹ See letter dated 4 November 2019 from then-Committee chair Damian Collins MP to Debbie Jevans CBE, then-EFL Chair (parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/news/football-administration-correspondence-19-20/).

²² EFL Regulations, App 5 Pt 3 Reg 5.6; Pt 4 Reg 5.6.

material Football Fortune Income included by a Club in its SCMP submission is not evidenced to the EFL Finance Department's satisfaction as (a) realistic income that (b) meets the criteria to be treated as Football Fortune Income, it will be excluded for purposes of determining the Club's spending limit. In particular, income may not be counted as Football Fortune Income if it is a loan that has to be repaid. The EFL Finance Department has confirmed that it checked all of the circa £6.55 million reported by Bury FC as Football Fortune Income in this period, requiring any cash donations to be evidenced by bank statements and any equity injections to be evidenced by Companies House SH01 forms, with supporting letters from Mr Day or his companies confirming that the amounts in question did not have to be paid back and interest was not payable on them.

- 6.13 Publicly available documents confirm that working capital loans advanced by Mr Day's companies to Bury FC in the total amount of approximately £9 million were subsequently converted into equity:
- 6.13.1 Each of Bury FC's annual accounts filed at Companies House in this period contains a statement to the effect that '[t]he company meets its day to day working capital requirements with an overdraft facility and loans from related parties [...] [SG Sports Management Limited/Mederco], a company owned and controlled by the Company directors, who are making available up to £[X]m revolving credit facility'. SG Sports Management provided a revolving credit facility of up to £2 million in 2013, up to £3.6 million in 2014, and up to £7.5 million in 2015, and one Mederco company or other provided a revolving credit facility of up to £3.75 million in 2016 and up to £5 million in 2017.
- 6.13.2 The Mederco accounts for 2017 reflect loans to the club totalling £4.2 million.
- 6.13.3 The annual accounts ending 2016 and 2017 state: 'The loan will be transferred to equity if needed to make sure there is sufficient head room in the facility'.
- 6.13.4 In the period 2013-2017, the share capital that Mr Day held in Bury FC increased from £3,264,101 to £8,297,644, apparently as a result of the conversion of £5.033 million of Mederco loans to the club into equity.²³
- 6.13.5 When Mr Day transferred control of the club to Mr Dale in December 2018, there was said to be circa £6.5 million in 'director loans' outstanding to the club, of which circa £4 million was converted into equity at that point (see [Figure 2](#), showing increase in share capital from £8,297,644 to £12,491,779), and the remaining £2.5 million loan balance was transferred to Mr Dale.
- 6.14 Concerns have been expressed about the owners of Bury FC raising money by granting charges over the club's home venue, Gigg Lane. The current EFL Regulations do not prohibit the use of a Club's stadium as security for loans, or restrict the use of the proceeds of such loans (for example, to fund infrastructure projects). However, the loan proceeds do not qualify as Football Fortune Income, i.e., they cannot be used to fund increased player wages. The position with Bury FC appears to be as follows:
- 6.14.1 Starting in May 2014, a series of loans (in amounts increasing over time from £200,000 to £1 million) were made to SG Sports Management (the company that Mr Day was using to make working capital available to Bury FC) at enormous interest rates, with Bury FC guaranteeing repayment and with charges being granted over Bury FC's stadium, Gigg Lane, to secure repayment. I do not know what the loan proceeds were used for, but all of the loans were repaid and the charges on Gigg Lane were duly released.

²³ Mederco Limited's Joint Administrators' First Progress Report dated 21 August 2019 states (at para 4.5): 'Investigations to date appear to indicate that funds being transferred from a bank account controlled by Mederco to account(s) by Bury FC were in part treated as loans made to the club by Mederco (BFC) Limited with the subsequent conversion of those loans into shares of the club. As can be seen from the filed accounts of Bury FC, during the tenure of Stewart Day as chairman, the share capital of the club increased by approximately £5.033m as at the end of May 2017'.

- 6.14.2 In October 2017, Capital Bridging Finance Solutions Limited (a company that had previously lent money to Mr Day's Mederco businesses) lent £1.6 million to Bury FC,²⁴ taking a charge over Gigg Lane as security for repayment. I have not seen the loan documentation, but it has been suggested that the loan was originally made at a very high interest rate (30%), which was then reduced to 7.5% in exchange for the club paying an upfront fee equal to 40% of the loan principal (meaning that the club only received 60% of the loan proceeds but had to repay the full amount back plus interest on the full amount).²⁵ The interest on the loan was added to the principal (rather than being paid off each month), and as a result the total owed to Capital Bridging as of June 2019 was £3.7 million.²⁶ As noted below, there is reason to believe that the existence of this debt and charge on Gigg Lane was at least one of the reasons why the proposed sale of Bury FC to C&N Sporting Risk in August 2019 fell through.
- 6.14.3 What was the purpose of the loan? There is some indication that the intent was to use the money to finance a bid for a new stadium site that would offer the possibility to generate greater 'non-football' revenues for the club (from hotel/conference facilities and housing). When that bid was unsuccessful, however, the remaining money (after payment of professional fees, e.g. for architects' drawings) was obviously not applied to pay back the Capital Bridging loan. I do not know what it was spent on. The player wage bill went up significantly during this period, with a new manager bringing in players on much higher wages than before (£3,500 per week rather than the previous £2,000 per week). However, the EFL Finance Department has confirmed that all amounts reported by the club as 'Football Fortune Income' in 2017/18 and 2018/19 were equity injections by Mr Day supported by SH01 forms filed at Companies House. In other words, the club did not try to rely on the Capital Bridging loan proceeds to fund player expenditure.

6D. Application of other EFL Regulations

- 6.15 HMRC filed winding up petitions against Bury FC in December 2015, June 2016, and October 2016 for non-payment of taxes, in each case triggering registration embargoes under Regulation 17 that remained in place until the petitions were dismissed.
- 6.16 During Mr Day's tenure, Bury FC also often defaulted on payments due to football creditors. In each case, the EFL promptly applied its rules to address the default, including (a) by deducting sums from basic award instalments due to the club and using them to pay such creditors (starting in April 2013); (b) by fining the club for late payments (starting in August 2014); and (c) by imposing registration embargoes (see [Figure 3](#)).

²⁴ It has been reported that in February 2018 Capital Bridging advanced Bury FC a further £722,800, taking the total loan amount to £2.323 million ([theguardian.com/football/2019/jun/18/bury-inside-story-financial-ruin-winding-up-petition-loans-car-park](https://www.theguardian.com/football/2019/jun/18/bury-inside-story-financial-ruin-winding-up-petition-loans-car-park)). I note that the charge registered at Companies House is security for a loan in the amount of £1.6 million 'and any other sum at any time in the future advanced by the Lender to the Borrower'.

²⁵ See Barry Roth, Forever Bury [Select Committee Transcript], answers to Q24-Q36.

²⁶ This was not the only unusual transaction. In 2015, Bury FC leased 258 parking spaces at Gigg Lane to a Mederco company, which guaranteed investors who bought 5-year debentures for £9,995 that the rental income on the parking spaces would generate a 9% annual return. According to the Mederco administrators, the parking spaces generated no income for Mederco, either to service the interest payments to investors (of £232,000 pa) or otherwise. It is not clear whether Bury FC received any consideration for the leases, or (if so) what it did with the money. There was no requirement under the EFL Regulations to bring this transaction to the attention of the EFL.

Figure 3: EFL interventions in response to Bury FC defaults in payment of football creditors

Basic Award deductions and Regulation fines – 2013-2018

	Basic Award deductions	
	Regulation 34.2.13 fines	
	Regulation 51.2.4 fines	
Date	Amount (£)	Details
April 2013	46,950.00	PFA Loan Repayment
May 2013	5,177.58	██████████ - Loan Wages
	965.58	██████████ - Loan Wages
	8,681.49	██████████ - Loan Wages
	5,030.93	██████████ - Loan Wages
	26,216.42	PFA Loan Repayment
	587.37	21 days late paying Scunthorpe United £2,797 for ticket sales (15 May)
	1,010.10	37 days late paying Northampton Town £2,730 for ticket sales (15 May)
	2,432.94	82 days late paying Mansfield Town £2,967 for ticket sales (28 May)
May 2014	2,797.00	Scunthorpe United - Ticket monies
	2,730.00	Northampton Town - Ticket monies
	3,300.00	Bristol Rovers - Expenses
	1,707.00	Sunderland - Loan Wages
July 2014	32,000.00	Moved to Transfer Fee Account
August 2014	1,500.00	7 days late paying £25,000 transfer instalment to Sheffield Wednesday (17 August)
October 2014	5,600.00	39 days late paying £20,000 transfer instalment to Rotherham United (16 October)
December 2014	1,882.27	██████████ - Loan Wages
	12,044.60	██████████ - Loan Wages
February 2015	3,400.00	17 days late paying £20,000 transfer instalment to Rotherham United (9 February)
	1,250.00	5 days late paying £25,000 transfer instalment to Tranmere Rovers (9 February)
	-	5 days late paying £10,000 transfer instalment to Everton (9 February)
	1,250.00	5 days late paying £25,000 transfer instalment to Barnsley (9 February)
March 2015	10,000.00	██████████ - Transfer Instalment
	21,903.58	██████████ - Loan Wages
	-	12 days late paying £10,000 transfer instalment to Everton (19 March)
April 2015	10,000.00	██████████ - Transfer Instalment
	6,047.65	██████████ - Loan Wages
	-	15 days late paying £10,000 transfer instalment to Everton (16 April)
May 2015	5,000.00	██████████ - Transfer Instalment (balance)
	-	14 days late paying £10,000 transfer instalment to Everton (15 May)
June 2015	10,000.00	██████████ Transfer Instalment
	11,510.05	██████████ - Loan Wages
	-	11 days late paying £10,000 transfer instalment to Everton (12 June)
July 2015	4,450.00	Portsmouth - Ticket monies
	21,340.44	Bolton Wanderers - Loan Wages ██████████
	18,390.08	██████████ - Loan Wages
August 2015	20,377.00	Tranmere Rovers - Ticket Monies
	6,250.00	██████████ - Promotion clause
	18,950.61	93 days late paying Tranmere Rovers £20,377 for ticket sales (18 August)
September 2015	35,000.00	██████████ - Transfer Instalments
	-	29 days late paying £10,000 transfer instalment to Everton (14 September)
	3,000.00	13 days late paying £25,000 transfer instalment to Barnsley (14 September)
October 2015	10,000.00	██████████ - Transfer Instalment
	-	23 days late paying £10,000 transfer instalment to Everton (9 October)
November 2015	10,000.00	██████████ - Transfer Instalment
December 2015	10,000.00	██████████ Transfer Instalment
January 2016	17,500.00	██████████ (West Bromwich Albion)
	11,402.76	██████████ Loan Wages
	195.60	12 days late paying Port Vale £1,630 for ticket sales (21 January)

February 2016	3,218.92	██████████ - Loan Wages
	30,000.00	██████████ - Loan Wages
	6,598.00	Oldham Athletic - Ticket Money
March 2016	24,936.67	██████████ Loan Wages
	4,096.80	██████████ - Loan Wages
	2,469.92	86 days late paying Millwall £2,872 for ticket sales (4 March)
April 2016	9,715.27	Blackburn Rovers ██████████ - Loan Wages
	19,445.00	Rochdale - Ticket Monies
	2,069.10	Burton Albion - Ticket Monies
	11,066.15	Football Association - Gate Levies
	698.88	24 days late paying Coventry City £2,912 for ticket sales (14 April)
	4,472.35	23 days late paying Rochdale £19,445 for ticket sales (14 April)
May 2016	34,576.81	Blackburn Rovers - Loan Wages/Friendly Levy
	20,517.64	Chesterfield - Loan Wages/Ticket Monies
	11,277.71	Southend United - Loan Wages
	6,115.94	Sheffield Wednesday - Loan Wages
	5,487.00	Wigan Athletic - Ticket Monies
	16,182.00	Blackpool - Ticket Monies
	3,890.00	PFA Subscriptions
	2,196.00	Swindon Town - Ticket Monies
	935.00	Scunthorpe United - Ticket monies
July 2016	10,144.45	Port Vale - Loan Wages
July 2016	4,500.00	██████████ Loan Wages on a/c
November 2016	17,926.00	Rochdale - Ticket Monies
	3,585.20	20 days late paying Rochdale £17,926 for ticket sales (14 November)
December 2016	1,609.09	Gate Levies x 2
	3,787.03	██████████ - Loan Wages
January 2017	7,120.72	Season Ticket Levy
April 2017	4,000.00	██████████ - on a/c
	6,000.00	██████████ - on a/c
	6,330.40	Bolton Wanderers ██████████ - Loan Wages
	11,705.38	Wolves ██████████ - Loan Wages
	899.46	38 days late paying Chesterfield £2,367 for ticket sales (19 April)
	663.40	31 days late paying Charlton Athletic £2,140 for ticket sales (19 April)
May 2017	1,473.41	Gate Levies
	1,943.77	Everton - ██████████ (pro-rata)
	2,915.66	Rotherham United - ██████████ (pro-rata)
	16,162.03	Bolton Wanderers - Ticket Monies (pro-rata)
	1,836.72	Bolton Wanderers - ██████████ - Loan Wages (pro-rata)
	15,133.37	Fulham - ██████████ - Loan Wages (pro-rata)
	12,065.28	Man City - Loan Wages (pro-rata)
4,847.76	Sunderland - ██████████ Loan Wages (pro-rata)	
June 2017	5,063.11	Everton - ██████████ - on a/c
	7,594.66	Rotherham United - ██████████ on a/c
	10,920.75	Bolton Wanderers - Ticket Monies on a/c
	4,475.47	Southend United - Ticket Monies on a/c
	6,694.69	Bolton Wanderers - ██████████ - on a/c
	15,834.02	Fulham - ██████████ ess - on a/c
	5,795.30	Sunderland - ██████████ - on a/c
	1,879.85	Late payment to Southend United of £5,371 (14 June)
	9,846.52	Late payment to Bolton Wanderers of £29,268 (14 June)
July 2017	23,735.24	██████████ - Loan Wages
November 2017	58,622.00	Charlton Athletic and Bristol City (Ticket Monies/Loan Wages)
	1,005.90	Late payment to Charlton Athletic of £2,395 (15 November)
December 2017	58,817.00	Southend, Blackpool, Oldham Athletic, Bristol City, Wigan Athletic, Charlton Athletic and Scunthorpe United (Ticket Monies/Loan Wages/Compensation)
January 2018	23,320.00	Premier League Medical Care Scheme and Health Partners Europe
	455.16	Late payment to Southend United of £1,109 (3 January)

	2,042.45	Late payment to Blackpool of £4,436 (3 January)
	2,631.46	Late payment to Oldham Athletic of £6,740 (3 January)
February 2018	78,832.00	Wigan Athletic, Brighton & Hove Albion and Charlton Athletic (Loan Wages)
March 2018	58,832.00	Wigan Athletic, Brighton & Hove Albion and Charlton Athletic (Loan Wages)
April 2018	75,601.00	Wigan Athletic, Brighton & Hove Albion and Charlton Athletic (Loan Wages) and Blackburn Rovers (Ticket Monies)

Bury FC – Transfer embargoes 2018

28 August 2018	Club is placed under transfer embargo as a result of defaulting on loan player payment plans and owing a transfer instalment in respect of another player.
29 August 2018	Club is placed under transfer embargo after defaulting on a separate loan player payment plan.
31 August 2018	Embargo lifted
11 September 2018	Club is placed under transfer embargo after defaulting on a different loan player payment plan.
14 September 2018	Club is placed under transfer embargo after defaulting on a different loan player payment plan.
1 October 2018	Club is placed under transfer embargo after defaulting on a different loan player payment plan.
3 October 2018	Club is placed under a transfer embargo after defaulting in respect of a transfer fee instalment.
19 November 2018	Club is placed under a transfer embargo after defaulting on ticket monies payments.
23 November 2018	Embargo lifted

6.17 After the defaults in June and November 2017 led to fines and withholding of basic award payments, the EFL met with Bury FC representatives to discuss ways the club might alleviate its cash flow problems (including by seeking to negotiate instalment payments to other creditor Clubs). Following that meeting, the situation appeared to stabilise for a time. By 22 October 2018, however, Bury FC was 59 days over the 30-day rule for payment of debts (EFL Reg 51.6), leading to the club being banned from paying transfer or loan fees for new players from that point until the end of season 2019/2020.

6.18 Some have questioned whether the EFL was ‘asleep at the wheel’ during this period, ignoring warning signs that Bury FC was being financially mismanaged. The Select Committee has suggested that ‘the EFL must share the blame for having allowed the situation at the club to have deteriorated for so long’.²⁷ I agree that the regular defaults set out in the table at [Figure 3](#) signalled that the club had significant cash flow issues. However, as the table also shows, each time there was a default the EFL acted. And ultimately the fact remains that (as explained above) the club's SCMP submissions showed that throughout this period the owner was putting in significant funds that were more than adequate to cover the shortfall between operating income and expenditure. If he had been ready, willing and able to continue to do so, there would have been no issue.

6E. The end of the Day tenure

6.19 During 2018, however, Mr Day’s businesses encountered significant financial difficulties, leading to cash flow problems for Bury FC, and (as the table at [Figure 3](#) shows) an increasing inability to pay its debts as they became due. The problems became acute in the last quarter of 2018,²⁸ and on 13 November 2018 HMRC issued a petition to wind up Mederco for non-payment of taxes totalling £605,000.²⁹

²⁷ Letter dated 4 November 2019 from then-Committee chair Damian Collins MP to Debbie Jevans CBE, then-EFL Chair (parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/news/football-administration-correspondence-19-20/).

²⁸ A loan was obtained on 15 November 2018 from David Heywood t/a Express Loan Corporation in the amount of £120,000, secured by a charge against the club's Lounge and Sports Bar at Gigg Lane. I do not know what this money was used for.

²⁹ Mederco Ltd was placed into administration in December 2018.

- 6.20 With no more cash injections from Mr Day, Bury FC was effectively insolvent. Absent a very clear plan for returning it to solvency, it would have had to stop trading. This would have put the EFL into a very difficult position, since a collapse of a club midway through a season raises very difficult questions about the impact on points won from matches already played and the treatment of matches never played.

7. STEVE DALE'S OWNERSHIP OF BURY FC (DECEMBER 2018 - PRESENT)

7A. Mr Dale passes the OAD Test

- 7.1 On 30 November 2018, the EFL was advised that Mr Day was proposing to sell his holding of 93% of the shares of Bury FC to a Mr Steve Dale. The EFL immediately provided the club with another copy of the EFL's guidance note on changes of control, as well as the Future Financial Information template for 2019/20, to remind it of the EFL's requirements on change of control of a Club.
- 7.2 On 1 December 2018, Bury FC filed OAD Test forms with the EFL for Mr Dale to become chairman of the club, and Mr Matt McCarthy to become a director of the club. They did not disclose any Disqualifying Conditions for either Mr Dale or Mr McCarthy. Nor, I understand, did any other information come to the EFL's attention that suggested either of them might be subject to any Disqualifying Conditions. Therefore, in accordance with EFL Regulations, the EFL was required to permit them to take over control of Bury FC.
- 7.3 It appears that prior to his acquisition of Bury FC, Mr Dale had no involvement in any football club or any football-related business. As noted above, however, that is not a Disqualifying Condition under the OAD Test.
- 7.4 It has been reported that as many as 43 of 51 companies that Mr Dale has been linked with have been liquidated.³⁰ Companies House records confirm this in part, indicating that at least 30 companies of which Mr Dale was a director ended up in liquidation. However, that is not a Disqualifying Condition under the OAD Test either.

7B. Mr Dale's failure to provide proof of funds

- 7.5 On 7 December 2018, pursuant to a share purchase agreement consisting of six bullet points (of which the EFL only received a copy on 17 January 2019), Mr Day sold to Mr Dale for £1: (a) all of the shares in Bury FC held by Mr Day and Mederco (BFC) Limited, and (b) the loans that Mr Day or his companies had made to Bury FC. The same day 8.4 million shares were transferred from Mederco (BFC) Ltd to Mr Dale (more than 90% of the share capital of the club). The share purchase agreement noted that that '[the current loan account needs to be readdressed as capital raised on the Ground and also converted to shares re the SCMP](#)'. I understand this latter reference to mean that a loan that had been made by Mr Day or one of his companies to Bury FC (and that was now being assigned to Mr Dale) had to be converted to equity in order to comply with the SCMP requirement. Companies House filings indicate (see [Figure 2](#)) that approximately £4 million of debt was converted to equity at this point, leaving £2.5 million in outstanding director loans that were now owed to Mr Dale. The share purchase agreement also stated that the HMRC debt that had accrued up to 30 November 2018 would be paid by Mr Day in full by mid-December 2018.
- 7.6 As noted above, where a change in control of a Club is proposed, EFL Regulation 16 requires the Club to file '[up to date Future Financial Information](#)', meaning projected profit and loss accounts, cash flow, balance sheets and relevant explanatory notes commencing from its accounting reference date and expiring on the next accounting reference date after the end of the following season that '[take into account the consequences of the change of Control on the Club's future financial position](#)'. Such Future

³⁰ The Guardian, 'Between football's haves and have nots', 24 August 2019, available at [theguardian.com/football/2019/aug/24/bury-parable-modern-football-manchester-city](https://www.theguardian.com/football/2019/aug/24/bury-parable-modern-football-manchester-city)

Financial Information must be provided 'as far in advance of the change of Control as reasonably possible or, if such submission is not reasonably practicable prior to the change of Control, no later than 10 Normal Working Days thereafter'. This means that a new owner can acquire ownership of a Club before he or she has satisfied the Future Financial Information requirement. The EFL cannot hold up the takeover pending satisfaction of that requirement.

- 7.7 This is precisely what happened in the case of Mr Dale's acquisition of Bury FC from Mr Day. Regulation 16 required him to provide a business plan through to June 2020, and a commitment to provide proof of the funding required to underwrite that business plan. On 6 December 2018, the club sent the EFL certain financial forecasts for seasons 2018/19 and 2019/20, but two days later, before the EFL Executive had had a chance to respond, Mr Dale came to see the EFL Governance & Legal Director and the EFL Finance Director, and advised them that the share purchase had been completed the previous day. He justified this on the basis that Mr Day's businesses were failing, and so he had had to take control of the club immediately to save it from being wound up. He claimed to have net assets of £8 million, but did not explain how funds would be made available to the club.³¹ He did say that he intended to deal with the most urgent debts first (in particular, to HMRC³²) and then take steps to reduce player wages and other operating costs, with the ultimate aim being for the club to be run on a break-even basis.³³
- 7.8 The EFL Executive reviewed the financial forecasts provided by Mr Dale, which indicated a funding requirement of £1.7 million for 2019/20. Exercising its powers under Regulation 16.22, the EFL Finance Department sent a list of questions to the club on 10 December 2018, querying various items of projected income and costs savings included in the forecasts provided. Subject to the club's answers to those questions, the EFL Finance Department identified an additional funding requirement of £1.9 million for 2019/20, resulting in a total funding requirement for 2019/20 of £3.6 million. The EFL Finance Department requested that Mr Dale provide a letter of support confirming that he would provide that funding as and when required. On 11 December 2018, the EFL Executive searched the information filed at Companies House relating to companies associated with Mr Dale, and found nothing that would help to support the required funding commitment.
- 7.9 Mr Dale or his representatives provided various answers to the EFL's questions, including after the EFL sent a chaser on 24 December 2018 (noting its right to impose further requirements under Reg 16.21, including requiring the club to submit a budget and imposing a registration embargo). In the event, the EFL left in place existing registration embargoes arising from previous non-payment of creditors, so that the club could not sign any new players in the January 2020 transfer window (save that in accordance with established policy, the EFL allowed the club to sign one player to bring the squad strength up to 23, so that it would have sufficient playing strength to fulfil its remaining 2018/19 fixtures).
- 7.10 The EFL Finance Department reviewed the answers given, and on 17 January 2019 it advised the club that it considered the cash requirement for the remainder of the 2018/19 season to be £340,000, and the cash requirement for the 2019/20 season to be £3.4-4 million. It asked Mr Dale to provide a letter of support to cover those amounts, as well as confirmation that he would not seek to call in the shareholder loans he had inherited from Mr Day.

³¹ I do not know whether Mr Dale ever put any funds into the club. A credible source suggests that he did put in £53,000 at one point.

³² In fact, as noted above, pursuant to the share purchase agreement, Mr Day was supposed to pay the amounts owing to HMRC, at least those accruing up to the end of November 2018.

³³ In a Bury FC press statement dated 11 December 2018, Mr Dale said: 'I'm delighted to have taken over this historic club. My initial plan is to establish Bury as a stable and self-sufficient League One side. I want to re-establish the club in the local community by investing time and resources to something that is vitally important to football clubs [sic]' (buryfc.co.uk/news/2018/december/new-owners-announced/).

- 7.11 Mr Dale never provided the proof of funds required by the EFL. In a meeting with fans in January 2019, Mr Dale reportedly said that he was 'not an ATM', but that he would get the club on a sound financial footing and then sell it on to a 'younger custodian'. On 21 January 2019, the EFL met with the club's CEO, Mr Karl Evans, and discussed the information required in order to address the EFL Finance Department's concerns about funding.
- 7.12 It appears that most of the club's debts to non-football creditors (including HMRC) were cleared as of early February 2019, leading to dismissal of HMRC's winding up petition on 6 February 2019. However, other Clubs started calling in the club's debts, and the EFL reacted as follows:
- 7.12.1 On 15 December 2018, the EFL withheld £21,500 of the £40,200 due to Bury FC from the December distribution of central funds, and used it to pay the club's football creditors.
- 7.12.2 In January 2019, the EFL withheld £31,500 of the £40,200 due to Bury FC from the January distribution of central funds, and used it to pay the club's football creditors.
- 7.12.3 In February 2019, the EFL withheld £20,000 of the £40,200 due to Bury FC from the February distribution of central funds, as well as a £20,000 broadcast facility fee due to the club, and used it to pay the club's football creditors.
- 7.12.4 In March 2019, the EFL withheld all of the £40,200 due to Bury FC from the March distribution of central funds, and used it to pay the club's football creditors.
- 7.13 On 3 March 2019, exercising its powers under Regulation 16.2, the EFL placed the club under a further registration embargo for failing to file its annual accounts for the year ending 31 May 2018.
- 7.14 The EFL Executive chased Mr Dale again on 12 March 2019 for the outstanding letters of support committing him to provide the funding required to underwrite the club's operations. The EFL also asked for management accounts to 31 January 2019, including any updated forecast for season 2019/20. Mr Dale responded the next day, complaining about the withholding of the basic award for February 2019 and the £20,000 facility fee, and asking for some leniency in applying the EFL Regulations while he tried to sort out what he said was the enormous mess left by the previous owner. At some point around this time, or perhaps earlier, the club appears to have stopped paying staff, suppliers and other creditors.
- 7.15 The EFL CEO called Mr Dale in for a meeting, which took place on 22 March 2019. Mr Dale said again that he had not had time to conduct proper due diligence when he acquired the club, and various significant financial issues from the previous regime had since come to light. He also complained that he had had to settle the HMRC debt that Mr Day was supposed to pay. He indicated he was disenchanted with football and wanted to exit the club. The EFL CEO suggested ways in which Mr Dale could alleviate the club's short-term cash flow issues, including by reaching agreement to defer payment of the sums owed to other clubs. After the meeting, the EFL CEO warned the EFL Board: 'They are going to need nursing through to the end of the season and all the matters resolving before 2019/20 starts'.
- 7.16 Shortly after the meeting, Mr Dale asked about the 12 point deduction that is imposed pursuant to EFL Regulation 12.3 in the event that a Club has a CVA approved by its creditors. He argued that he should not be punished for the actions of the previous regime. He was told that there were only limited grounds for appealing a points deduction, and that an independent tribunal would hear that appeal, but blaming former owners was unlikely to be seen as good grounds for an appeal, since the EFL Regulations deal with the Club in this context, not the owner of the Club.
- 7.17 On 8 April 2019, the PFA notified the EFL that Bury FC had not paid its players' wages for March 2019. The EFL CEO wrote to Mr Dale the same day, noting that the non-payment of football creditors constituted misconduct under the EFL Regulations, that the club had also breached EFL Regulation 19 by failing to advise the EFL of its assignment to a company called Broadoak Private Finance Ltd of the

right to receive payments from the EFL as security for a loan,³⁴ and that the EFL had still not yet received satisfactory proof that Mr Dale could and would fund the club's operating shortfall. The EFL CEO advised Mr Dale that, as a result, (a) the EFL would withhold all basic award payments until all football creditors had been paid; (b) further to Regulation 16.20 and Regulation 53, a registration embargo was imposed with immediate effect until all outstanding questions were answered; and (c) further to Regulation 16.20, the club was required to provide evidence of the source and sufficiency of the funding required by the club until the end of season 2019/20, as well as a copy of the Broadoak loan agreement. The EFL therefore withheld all of the £40,200 due to the club from the April distribution of central funds, and only released it to the club on 3 May 2019 on confirmation it would be used to clear the previous month's wages.

- 7.18 The EFL Executive briefed the EFL Board on the Bury FC situation at its meeting on 11 April 2019. The EFL Board was concerned that the club might not be able to fulfil its remaining 2018/19 fixtures, and asked the Executive to provide whatever practical assistance it could to resolve the situation.
- 7.19 The EFL CEO spoke at length with Mr Dale on 23 April 2019. Mr Dale repeated that he had discovered that the club was in a much worse financial position than he had thought when he took it over. He said he thought he had no choice but to put the club into administration, but he wanted to know if a CVA outside of administration would definitely trigger a points deduction, or whether the EFL Board could decide to waive the points deduction because the CVA was the fault of the previous owner. He also wanted to know when any points deduction would take effect, given that Bury FC was in the running for promotion. He also said he was about to make some staff redundant, and wanted to know what the EFL Regulations required in terms of minimum staffing levels.
- 7.20 The EFL CEO discussed these points with the EFL Governance & Legal Director, who wrote to Mr Dale on 24 April 2019, providing the information he had requested about the points deduction that would apply if there was an insolvency event, including the limited grounds for appeal against any such deduction. Mr Dale replied that he had done his job of saving the club and now wanted to get it ready for sale, including dealing with legacy debts by means of a CVA (for which he hoped the points deduction could be avoided) and cutting overhead. He asked which football creditors had to be paid in order for the EFL to start releasing central distributions to the club again, and whether the August 2019 distribution could be paid in advance to enable the club to pay what it owed to HMRC. The EFL provided the information requested on 25 April 2019, and reiterated the need for a business plan to take the club through to June 2020, together with a commitment to provide the funding required to underwrite that plan, and evidence of the source and sufficiency of that funding. The EFL declined to pay the August 2019 distribution to the club in advance, as it did not do that for any Club.
- 7.21 On 25 April 2019, Mr Dale issued a statement inviting offers to buy his shares in the club. He said the club needed £1.6 million to pay wages, HMRC and pension contributions to the end of May 2019, and was forecast to receive only £180,000 of income in that period.
- 7.22 Despite the players still not being paid their March and April wages (the PFA loaned them half of the outstanding amounts), Bury FC ended the season on 30 April 2019 by winning automatic promotion to League One. Other Clubs expressed significant frustration that Bury FC had achieved this success while failing to meet its financial obligations, but the EFL did not have power to deduct points or block promotion itself, and there was no precedent for asking a Disciplinary Commission to impose a points deduction based on the club's various breaches of the Regulations.

³⁴ In April 2019, the EFL discovered from documents filed at Companies House that on 12 March 2019 Mr Dale granted Broadoak Private Finance Ltd a charge over future distributions to the club from the EFL, as security for a loan in the amount of £150,000. Such assignment of central distributions is permitted under the EFL Regulations, but it triggers a registration embargo for the period of the assignment. Regulation 19.1 therefore requires the Club to notify the EFL immediately of the assignment, but Bury FC failed to do so in respect of the assignment to Broadoak. My understanding is that in the event the Broadoak loan was never drawn down.

7C. Application of Article 4 and the EFL Insolvency Policy

- 7.23 In May 2019, Mr Dale confirmed to the EFL that he had decided to sell Bury FC, and therefore would not provide the funding commitments the EFL had requested, but before sale he would first propose a CVA to deal with the debts from the Day era. The EFL regarded this as a potentially helpful development, as an approved CVA would be an insolvency event that would trigger a right to withdraw the club's membership of the EFL, thereby giving the EFL more leverage than it had previously had to force Mr Dale either to provide the outstanding proof of funds required or else to sell the club to new owners who could provide that proof.
- 7.24 The EFL sent Mr Dale a copy of the EFL Insolvency Policy on 8 May 2019, as well as details of who qualified as a football creditor. The EFL withheld the entire £42,000 due to the club from the May 2019 distribution of central funds, paying £4,848 into the EFL pension scheme on behalf of the club's staff and using the balance to pay some of the club's football creditors.
- 7.25 The EFL Executive updated the EFL Board on the above at its meeting on 9 May 2019. The EFL Board asked the EFL Executive to continue with its efforts to support the club, and to keep the Board updated.
- 7.26 On 15 May 2019, the High Court heard a winding up petition presented against the club by Chris Brass, a former employee, in respect of unpaid wages. The hearing was adjourned to 19 June 2019, based on representations from the club that discussions were ongoing with three different parties for a sale of the club that would see all debts cleared.
- 7.27 Fairly quickly, however, the EFL became concerned that there was no sign of real engagement by Mr Dale with potential purchasers of his shares in the club. The Select Committee was told that the Supporters Trust (Bury Forever) engaged an insolvency practitioner to help negotiate with potential buyers, who were expressing frustration at what they described as an inability to get basic financial information from Mr Dale.³⁵ There is also a suggestion that the secured creditor, Capital Bridging Finance Solutions, was considering putting the club into administration in order to force a sale.
- 7.28 As a result, as of 13 June 2019 the EFL Executive was still not clear whether Mr Dale intended to sell the club or to stabilise it and continue to run it. Either way, the club had no proof of the secure and committed funding that was required for it to carry on trading. The EFL therefore withheld the entirety of the June 2019 instalment of the basic award, and used it to reduce the club's debts to football creditors.
- 7.29 At a meeting on 14 June 2019, the EFL Executive went through the EFL Insolvency Policy in person with Mr Dale. They offered to review a draft of any proposed CVA to ensure that it met the requirements of the Insolvency Policy, but he did not take them up on that offer. The EFL Executive was also clear that the points deduction would be applied if a CVA was approved, which was not taken well by Mr Dale. It appears that the working relations between the EFL and Mr Dale started to deteriorate from this point.
- 7.30 At some point around this time, HMRC reportedly demanded that Bury FC provide a bond of £1 million as security for payment of its future tax obligations.
- 7.31 The CVA proposal was issued on 19 June 2019, and a meeting of creditors to consider the proposal was fixed for 9 July 2019. The EFL received a copy of the CVA on 24 June 2019. It proposed to pay football creditors in full (a total of £950,662) and unsecured creditors (including HMRC at circa £1 million and others totalling nearly £6 million³⁶) at 25 pence in the pound (i.e., the minimum dividend permitted under the EFL Insolvency Policy), with secured creditors left in place. The CVA stated that Mr Dale had

³⁵ Matthew Dunham, Select Committee Transcript, answer to Q19.

³⁶ Mr Dale was listed as being owed £3 million (most if not all of which appears to have been Day/Medercor director loans assigned to him on sale in December 2018). Medercor was listed as being owed an 'unascertained amount'.

confirmed that he would not receive any dividend on the loans to the club he had inherited from Mr Day, and that he would personally guarantee the introduction of sufficient funds to make the necessary payments to creditors under the CVA.

- 7.32 On 20 June 2019 the EFL published its fixtures for season 2019/20. Bury FC's first fixture would be against MK Dons on 3 August 2019. However, there was now a real concern that if Mr Dale did not decide quickly either to sell the club or to commit funds to it, the club would not be in a position to start the 2019/20 season. Most of its players had terminated their contracts for non-payment and left the club, and it was embargoed from signing any replacements. The EFL therefore made it very clear to Mr Dale from this point on that the registration embargo would only be lifted, and the club's membership of the EFL would only be maintained, (1) if sufficient funding was provided to finance the CVA (and so pay all football creditors in full, as well as the minimum dividend to unsecured creditors); and (2) if a fully underwritten business plan was provided that demonstrated the club was able to complete season 2019/20. Unfortunately, however, as explained below, despite intensive engagement by the EFL Executive with Mr Dale and the club, the required information was never forthcoming, and nor was any sale concluded. Therefore the embargo was never lifted, the club was unable to play its fixtures, and eventually the club's membership of the EFL had to be terminated.

7D. Events of July 2019

- 7.33 On 1 July 2019, six players turned up for pre-season training, only to find no one at the club. Shortly thereafter, the Safety Officer started to raise the alarm that none of the safety checks of Gigg Lane that were required for the new season had been completed.
- 7.34 On 2 July 2019, the EFL Executive wrote to Mr Dale in an attempt to increase the pressure on him to make a decision:
- 7.34.1 They asked for full details of all debts to football creditors, and noted that if those debts were not paid in full by 3 July 2019 the 30-day rule (Regulation 51.6) would be breached, meaning that the club would be banned from paying transfer or loan fees for players in season 2019/20.
 - 7.34.2 They noted that the continuing default in payment of players constituted a separate breach of the EFL Regulations, for which they were considering disciplinary action, and invited the club's comments.
 - 7.34.3 They asked once more for details of the Broadoak loan secured on anticipated revenues from the EFL, so that they could determine whether the club had breached Regulation 19.1 by failing to notify that deal to the EFL.
 - 7.34.4 In accordance with the Insolvency Policy (another copy of which was sent to Mr Dale on 4 July 2019), they asked for a business plan for the club for the next two seasons.
 - 7.34.5 They also asked for proof of the funds required to be injected into the club (a) to pay football creditors and unsecured creditors under the proposed CVA, and (b) to support the business plan.
- 7.35 On 4 July 2019, the EFL followed up with the club in relation to its non-payment of players since March 2019, noting that the dispute was being referred to a Player Related Dispute Commission.
- 7.36 The creditors' meeting scheduled for 8 July 2019 on the club's proposed CVA was postponed to 18 July after the Mederco administrators reportedly entered a claim for £7.1 million. The same day, the interim EFL CEO (who had taken over as of 1 June 2019) chased Mr Dale for the information sought on 2 July 2019, noting that the club only had 11 registered players still on its books, and reiterating that it would not be allowed to sign further players without credible plans as to its future trading. In response, Mr Dale assured the interim EFL CEO that the club had all the information required to meet the EFL's

- concerns. However, on 17 July 2019 he asked for a list of all outstanding information requests. In response the EFL repeated the information requests set out in its letter of 2 July 2019.
- 7.37 On 18 July 2019, the CVA was approved by the necessary majority of the club's creditors, due to positive votes cast by Mr Dale (based on the director loans he had inherited from Mr Day) and by RCR Holdings, a company incorporated just two days previously, which asserted claims against Bury FC totalling £7.1 million, which it said it had bought from Mederco (for £70,000).³⁷ The approval started the standard 28 day period to challenge the CVA for material irregularity or unfair prejudice, but in the event no challenge was forthcoming.³⁸
- 7.38 The approval of the CVA amounted to an insolvency event under Article 4 of the EFL's Articles of Association. Therefore, on the same day the EFL notified the club that it was imposing a deduction of 12 points, applicable in season 2019/20, pursuant to Regulation 12.3. Bury FC subsequently sought to appeal that points deduction, but failed to comply with the necessary formalities, so that the appeal was rejected without a hearing.
- 7.39 Following approval of the CVA, Mr Dale immediately got back in touch with the EFL, asking it to release central distributions and lift the registration embargo so that the club could sign players for the forthcoming season. However, he provided only limited information about proposed settlements with certain football creditors, and in relation to the funding of the CVA he simply said that he would cover the costs himself, 'hopefully without outside funding but it is there if required'. He also said that reduced operating costs would reduce the club's funding requirements, and that 'new sponsors and player sales will boost cash flow'. He provided a letter dated 5 February 2020 from a lender offering a line of credit of up to £8 million, 'based on satisfactory security on tangible assets being made available, and subject to necessary financial due diligence'; and a presentation outlining a potential equity/bond issue to raise a projected £1.5-2.5 million. Late the same day, he also provided a cash flow forecast for the club's operations to 31 May 2021. He said the Broadoak facility was no longer being pursued.
- 7.40 Early the next morning, 19 July 2019, the interim EFL CEO went back to Mr Dale, asking again for evidence of immediately available funding in an amount sufficient to pay the football creditors in full and the unsecured creditors' dividend, and noting the EFL Finance Department would review the committed expenditure in the cash flow forecast he had just provided, in order to identify the club's cash requirements to end May 2021. She asked that the source of funds to cover these various items be identified by no later than 25 July 2019.
- 7.41 On 22 July 2019, the EFL wrote to Mr Dale to note that the registration embargo remained in place pending receipt of the outstanding information, and that the Safety Advisory Group (**SAG**) had scheduled a meeting to consider whether Bury FC had appropriate facilities and resources to host its 2019/20 fixtures. The EFL warned that if the club failed to address these points, the EFL would have to consider suspending its fixtures, which could result in penalties under Regulation 31.1. The EFL expressed the hope this would not be required, and said it would continue to work with Mr Dale in his efforts to meet the EFL's requirements.
- 7.42 Also on 22 July 2019, after the EFL Board passed the necessary resolution pursuant to Article 4.5, the EFL issued a formal notice to Bury FC to transfer its share in the EFL to the EFL Company Secretary within the next 14 days, thereby terminating its membership of the EFL (the **Notice of Withdrawal**). However, in accordance with the EFL Insolvency Policy, the EFL immediately suspended that notice until 25 July 2019, on condition that the club provide the outstanding information demonstrating that the club had the funding necessary to pay its creditors in accordance with the EFL Insolvency Policy and to complete its season 2019/20 fixtures. The EFL warned that if the conditions were not met by 25 July

³⁷ It was subsequently reported that the director of RCR Holdings is the partner of Mr Dale's daughter.

³⁸ If there had been a successful challenge, the EFL Board would have considered exercising its power under Article 5.3 to call a general meeting for the Clubs to vote on whether to expel Bury FC, on the grounds that it had not demonstrated it would be able to complete season 2019/20.

- 2019, the suspension of the Notice of Withdrawal would be lifted, and the club would then have 14 days to transfer its share.
- 7.43 Mr Dale responded the same day, insisting that the EFL had to allow the club to sign players immediately. He said the funding sources he had previously identified were still available, but the club could now secure cheaper funding ‘from a multiple of available avenues’ (without specifying any). He said he had provided the CVA supervisor with proof of the funding required for the CVA, and that he was working out a payment plan with the PFA for the amounts owed to the players. He said he would get the further cash flow information requested to the EFL ‘as and when I can’, and that the club was very close to satisfying all of the SAG’s requirements.
- 7.44 The EFL Finance Director responded the same day, noting that Bury FC had still not provided full details of football creditors or satisfactory proof of the funds required to pay the football creditors and the unsecured creditors pursuant to the CVA. He also noted that the financial information provided for the operation of the club over the next two seasons was incomplete. In relation to the limited information that had been provided, he asked for support for various projected income items (including player sales, ticket sales, and commercial income), as well as for the projected costs savings. Based on his analysis of the shortfall between expenditure and (realistic) income, he anticipated an operating loss of £1.3 million, and therefore asked for evidence of committed funding in at least that amount for season 2019/20, noting that upon receipt of the requested information the EFL would anticipate seeking at least the same for season 2020/21.
- 7.45 In exchanges the next day (23 July 2019), Mr Dale reiterated that he had shown the CVA supervisor that he had the money required to finance the CVA. By letter dated 25 July 2019, however, the EFL’s solicitors pointed out that the CVA supervisor had only been given a bare assurance that Mr Dale intended to fund the necessary payments personally (which they calculated to be £1,926,759), without providing any evidence that he had the necessary funds available to do so. They asked him to provide that day evidence of settlement of all debts owed to players, evidence of a bank balance or guaranteed line of credit in the amount of £1.5 million to cover operating costs in season 2019/20, and a certificate from SAG confirming it was satisfied the facilities and resources were in place for the club to fulfil its 2019/20 fixtures. They said if that information was provided, the EFL Board would consider allowing the club to start the season and to sign up to 23 contract players, but if it was not provided there would be a serious risk of expulsion of the club from membership of the EFL. From this point on, Mr Dale’s correspondence with the EFL became increasingly acrimonious, with him accusing the EFL of moving the goalposts and wanting the club to fail. In response, the EFL’s communications with Mr Dale remained professional and consistent.
- 7.46 At its meeting on 25 July 2019, the EFL Board decided to continue the suspension of the Notice of Withdrawal until further notice, to give Mr Dale a further opportunity either to meet its funding requirements or else to find a buyer for his shares in the club.
- 7.47 On 26 July 2019, Mr Dale sent the EFL a letter of intent from Kingsley Asset Finance to provide a £2 million line of credit, to be secured against unspecified property. On 29 July 2019, he provided a personal letter of support, confirming that he would make available sufficient funds to cover the club’s requirements up to end June 2021. However, he did not provide proof of the source and sufficiency of funds that the EFL had requested to support that commitment.
- 7.48 On 29 July 2019, the EFL Board noted the information that remained outstanding, and decided the club’s opening fixture against MK Dons on 3 August 2019 would have to be suspended pursuant to Regulation 28.2.
- 7.49 On 31 July 2019, an HMRC petition to wind up Bury FC was dismissed, and Mr Dale called publicly for the EFL to support the club, including by lifting the transfer embargo.

7E. Events of August 2019

- 7.50 On 1 August 2019, the interim EFL CEO wrote to Mr Dale to reiterate the EFL's desire to have Bury FC start playing its fixtures, but only once the club had demonstrated it had the finances in place to complete the season. She again asked for proof of how the £1,926,759 required to make the CVA payments would be funded, and noted again that debts to football creditors could not be deferred but instead had to be settled before the registration embargo could be lifted.³⁹ She also reminded Mr Dale that the EFL's review of the club's business plan for 2019/20 had identified a funding requirement of £1.5 million, acknowledged receipt of a letter from Mr Dale saying that he would cover that amount, but asked for evidence of the funding that stood behind that commitment. She said she hoped these outstanding points could be addressed by noon on 2 August, so that Bury FC could start its season with its fixture on 10 August 2019 against Accrington Stanley.
- 7.51 In response, Mr Dale provided a letter from Kingsley Asset Finance confirming it would loan the club not £2 million but £1.6 million, again secured against unspecified property. The EFL asked for clarification of what property was being offered as security for the loan.
- 7.52 On 2 August 2019, the EFL Board resolved that it would decide on 7 August whether or not to lift the suspension of the Notice of Withdrawal. It announced that the club had still not shown that it had funds sufficient to settle all debts to football creditors, to pay the dividend to unsecured creditors, and to fund the club's operations through to the end of the 2019/20 season, and therefore it had decided to suspend Bury FC's match against Accrington Stanley fixed for 10 August 2019. It pledged that the EFL would continue to work with the club's owners to resolve the outstanding matters as quickly as possible.
- 7.53 On 3 August 2019, in response to a request from the club's solicitors, the EFL Finance Director sent a lengthy email reiterating the amounts required to pay football creditors and unsecured creditors, as well as the amounts of central distributions potentially available to pay some of those debts. He stated that having updated the figures, the EFL required proof of funds in the amount of £1.6 million to cover the club's operating shortfall for 2019/20, but (in an effort to assist the club) said the EFL would accept a letter confirming the availability of such funding (rather than insisting on cash in the bank), and that it would not at this stage insist on evidence of source and sufficiency of funding for 2020/21 as well.
- 7.54 On 6 August 2019, following a conference call between the EFL Executive and Mr Dale and other club representatives, the interim EFL CEO wrote to Mr Dale, noting that in the absence of evidence demonstrating that Bury FC had the means to pay all football creditors in full, pay the unsecured creditors' CVA dividend, and complete the 2019/20 season, the registration embargo remained in place, and if the outstanding information was not provided that day, the Carabao Cup fixture against Sheffield Wednesday scheduled for 13 August 2019 would have to be called off. Furthermore, if sufficient progress was not made on resolving the outstanding issues, the EFL Board would also consider lifting the suspension of the Notice of Withdrawal.
- 7.55 On 7 August 2019, Mr Dale advised the EFL that the Kingsley Asset Finance loan was secured by a portfolio of (unspecified) shares, and that he would be meeting the cost of the CVA by selling properties in Glasgow. Later that morning, the EFL Board discussed the matter by conference call, following which the EFL CEO advised Mr Dale that the Board had given him until 5 pm that day to explain what shares were being pledged as security for the Kingsley loan, and to provide proof of title to and details of a contract of sale of the Glasgow properties. In response, Mr Dale advised the EFL that the shares securing the Kingsley loan were 4.5 million of his Bury FC shares. He said he did not need to produce evidence that he could repay the Kingsley loan because the club did not need the loan to finance the

³⁹ The EFL decided not to permit the club to sign any players, even up to the 23-man basic squad, because signing any new players was deemed unacceptable while the club continued to owe money to players in wages for the previous season.

CVA or working capital (because the EFL's analysis of the club's cash flow requirements was erroneous). He provided no proof of title to the Glasgow properties, nor any sales contract.

- 7.56 On 8 August 2019, the interim EFL CEO advised Mr Dale that due to the club's failure to provide satisfactory evidence of available funding (its enquiries had established that the proposed funding was an unsecured loan to the club with a guarantee from Mr Dale backed by his shares in the club, with no evidence being provided of Mr Dale's ability to meet his guarantee), the EFL Board had decided to lift the suspension of the Notice of Withdrawal, and therefore the club's membership would terminate in fourteen days (i.e. on 23 August 2019) if there was no satisfactory resolution of the issues in the meantime. She also confirmed the suspension of the Carabao Cup game against Sheffield Wednesday on 13 August 2019. She said the EFL still hoped that the necessary evidence of funding could be provided.
- 7.57 On 12 August 2019, Bury FC issued a statement by 'Bury FC Staff' that said 'a very good offer' had been received to buy the club, and that it 'is the only lifeline for the future of the Club and we implore Steve Dale to accept it, as it has the full backing of all of the senior staff at Bury FC'. The same day, representatives of Bury FC met with the EFL Executive and asked if they could assist in forcing through a sale of the club by Mr Dale.
- 7.58 On 13 August 2019, Mr Dale advised the EFL that he would sell his shares in Bury FC 'to the first people who make a sensible offer with the proviso the CVA is honoured'. Since the required evidence of funding was still not provided, the EFL postponed the club's fixture against Gillingham FC scheduled for 17 August 2019; and on 15 August 2019 it postponed the club's fixture against Rotherham scheduled for 20 August 2019.
- 7.59 On 16 August 2019, new solicitors contacted the EFL on Mr Dale's behalf, seeking details of the outstanding requirements, which the EFL provided on 19 August 2019. That same day, Mr Dale said there was one credible bidder for his shares in the club, but more time was needed to complete the sale, and so the EFL had to extend the 23 August deadline. James Frith, MP for Bury North, also wrote to ask for an extension of the deadline to allow a sale to be completed. In response, the EFL again asked Mr Dale to provide confirmation of £2.78 million of funding to pay past creditors and to cover working capital requirements for season 2019/20, noting that (a) proof was awaited of the facility agreement with Kingsley Asset Finance and of Mr Dale's ability to repay the loan as guarantor; (b) proof was awaited of title to the Glasgow properties and of a contract for sale with an agreed completion date; and (c) proof was also required of the source of £1.6m in cash that Mr Dale had subsequently said he would deposit in a solicitor's account to cover the funding obligations. None of this proof was provided. Instead a letter was received on 22 August 2019 from Kingsley Asset Finance, withdrawing its £1.6 million loan offer.
- 7.60 On 20 August 2019, the EFL suspended Bury FC's match against Tranmere Rovers scheduled for 24 August. This meant the club's first five fixtures of the 2019/20 season had been postponed.
- 7.61 On 20 and 21 August 2019, the EFL started receiving contacts from persons claiming an interest in buying Bury FC, and seeking information as to the EFL's requirements. There were claims that they were having difficulty getting the necessary information from Mr Dale. When the club provided its consent to the sharing of that information, the EFL engaged with the prospective bidders and provided information as appropriate.
- 7.62 On 22 August 2019, Andy Burnham, Mayor of Greater Manchester, wrote to the EFL, supporting Mr Frith's request for an extension of the expulsion deadline.
- 7.63 On 23 August 2019, Mr Dale said in an interview on BBC Radio Five Live: 'I never went to Bury. It's not a place I frequented. So for me to walk away from Bury and never go back is a very easy thing to do. I don't do anything up there. I didn't even know there was a football team called Bury to be honest with you. I'm not a football fan'.

- 7.64 At 8.15 pm on 23 August 2019, C&N Sporting Risk emailed confirmation to the EFL that it had offered to buy Mr Dale's shares in the club, conditional on the Capital Bridging loan being restructured or otherwise addressed. It also provided purported proof of available funds in excess of £5 million.
- 7.65 The EFL Board convened the following morning, Saturday 24 August 2019. It was advised that the EFL Executive understood the C&N Sporting Risk offer had been accepted in principle, but the sale remained subject to due diligence and to provision to the EFL of appropriate evidence that C&N had the funds required to complete the sale and cover all relevant obligations of the club. The EFL Board noted that the situation could not be allowed to drag on indefinitely, because very soon there would not be sufficient time remaining in the season to re-arrange all of the postponed fixtures. It therefore extended the expulsion deadline to 5 pm on Tuesday 27 August 2019, solely to give C&N Sporting Risk a chance to complete its purchase of the club, but making clear that if a sale was not agreed by that deadline the club's membership of the EFL would be withdrawn. The EFL CEO communicated this to Mr Dale and C&N Sporting Risk, and committed the EFL Executive to remain available to work with them over the weekend to provide any further information required.
- 7.66 Thereafter the EFL provided details of Bury FC's football creditors to C&N, along with the OAD Test forms for the club's new owners and directors to fill in. Just after 3 pm on Tuesday 27 August 2019, however, C&N Sporting Risk advised the EFL that, having conducted due diligence, it had decided to withdraw its offer to purchase Mr Dale's shares in Bury FC.
- 7.67 The EFL Board therefore met again on the evening of 27 August 2019. It noted Mr Dale's claim that there were other expressions of interest in purchasing the club, but also noted that these would require more delay, with no certainty of success, and that it was not possible to postpone any more fixtures, because it would not be possible to re-schedule them all. The EFL Board concluded that Bury FC's continued membership was no longer in the interests of the EFL and its member Clubs as a whole. It therefore decided not to suspend the Notice of Withdrawal any further, but instead to effect the transfer of the club's share in the EFL, and thereby withdraw the club's membership of the EFL.
- 7.68 On 26 September 2019, following a meeting of all Clubs, the EFL Board confirmed that Bury FC would not be re-admitted to League Two for the 2020/21 season.
- 7.69 I understand that there have been discussions about the club (or a phoenix version of the club) joining the National League system. At the time of writing, however, the future of Bury FC as a football club at any level of the game is uncertain. It does not have a league to play in, and it continues to face a series of winding-up petitions (the latest of which was reportedly dismissed on 5 February 2020).⁴⁰ It has also been confirmed that the club has defaulted on payments due under the CVA, pushing the club closer to potential liquidation.⁴¹

8. CONCLUSIONS

- 8.1 In my view, Bury FC's demise was caused by the following factors:

- 8.1.1 In the period of Stewart Day's ownership (2013-2018), the club did not limit expenditure on player wages to what it could afford from normal operating income. Instead, it relied on cash infusions by Mr Day to finance a rapid increase in player wages. It was therefore completely exposed at the end of November 2018, when the collapse of his property companies meant that he was no longer able to maintain such funding. It was effectively insolvent, and absent new ownership and funding it would have had to cease trading.

⁴⁰ BBC Sport, 'Bury: Further winding-up petition served to club over unpaid tax dismissed', 5 February 2020, available at <https://www.bbc.co.uk/sport/football/51385634>.

⁴¹ BBC Sport, 'Bury Football Club default on plan to settle outstanding debts', 14 February 2020, available at <https://www.bbc.co.uk/sport/football/51503129>.

- 8.1.2 After Steve Dale took over in December 2018, once he realised the extent of the club's funding needs, and the constraints that the EFL Regulations placed on his ability to shed certain spending commitments, he was not willing (even assuming he was able, which he never demonstrated to the satisfaction of the EFL) to provide that funding himself. Moreover, although he said that he wanted to sell the club, a number of potential bidders found it difficult to engage meaningfully with him, and the one bidder whose offer was accepted pulled out after conducting due diligence.
- 8.1.3 Without funding from its owner, Bury FC could not sustain its level of spending on player wages or service its debts. And the inability to find a new owner who was prepared to commit the necessary funding to support that level of spending meant that it could not start the 2019/20 season. When its first five fixtures had been postponed but there was still no light at the end of the tunnel, its continuing membership of the EFL became untenable.
- 8.2 The EFL did spend significant time and effort monitoring the situation at Bury FC, and applying its Regulations to try to force the club and its owners to meet their commitments:
- 8.2.1 During Mr Day's tenure, the EFL received and reviewed the club's biannual SCMP filings, and confirmed the club was complying with the SCMP requirements. In addition, the EFL reacted to the club's failure to pay its debts during this period by imposing fines and registration embargoes and/or by withholding central distributions, all as per the Regulations.
- 8.2.2 Similarly, when Mr Dale took over and failed to provide adequate proof of funding, the EFL immediately imposed a registration embargo, and when the club stopped paying football creditors, in particular its own players, the EFL withheld central distributions and applied them to reduce those debts.
- 8.2.3 It can always be argued that the EFL could and should have done more than it did, even if that would have meant making far more radical use of its powers than had been done before or had previously been discussed with the Clubs. However, I do not see that anything else that it could have done under the Regulations would ultimately have made any difference, because the ultimate problem was a lack of owner funding, and no Regulations can fix that.
- 8.3 This case has highlighted several issues with the EFL Regulations, in particular in relation to:
- 8.3.1 the OAD Test. There is no doubt that the EFL applied the OAD Test properly in relation to Mr Day and Mr Dale. The question is whether the test as currently written is fit for purpose. In particular, it only looks at a narrow list of objective criteria, and does not take into account various other factors that speak to whether a new owner or director is a fit and proper person to own/run a member Club.
- 8.3.2 the regulations that apply to changes of ownership of a Club. Once again, the EFL applied those regulations when Mr Dale acquired Bury FC from Mr Day. However, the regulations do not prevent a new owner acquiring the Club before he or she has provided a business plan for the Club and proof of the funding required to underwrite that plan. I am aware that the EFL is already considering blocking changes in control until the new owner has provided adequate evidence of source and sufficiency of funding. For example, it could require the new owner to provide irrevocable financial guarantees of payment of any funding requirements for at least two seasons.
- 8.3.3 the regulations relating to ongoing monitoring of a Club's financial health. In particular, the Regulations do not currently require League One and Two clubs to submit annual business plans, underwritten by adequate proof of funding, or half-yearly management accounts, and the SCMP submissions they are required to file were never intended to be and are not an adequate substitute.

- 8.3.4 the lack of regulations preventing Clubs pledging capital assets such as the stadium and training ground as security for loans that are used not for capital improvements but to cover operating costs or other short-term purposes. In this case, it has been suggested that the mortgage placed on Gigg Lane to secure the loan from Capital Bridging was a key factor in C&N Sporting Risk's decision not to buy the club.
- 8.4 To be fair to the EFL Board and the EFL Executive, they have previously raised many of these issues, but found no support from the Clubs for changes to the Regulations to address them. And in any event my view is that many of these issues are somewhat moot, because the real problem is that the EFL's Salary Cost Management Protocols do not require League One and Two Clubs to pay player wages out of normal operating income, but instead permit them to fund much higher spending through cash injections from the Club owner. That means the Club becomes entirely dependent on the owner remaining ready, willing and able to sustain that level of funding, and if the flow of funds is cut off, the Club is immediately plunged into financial crisis. I do not see how this furthers the stated objectives of the EFL's financial fair play rules (*viz.*, to introduce more discipline and rationality in Club football finances; to encourage Clubs to operate on the basis of their own revenues; to encourage responsible spending for the long-term benefit of football; and to protect the long-term viability and sustainability of EFL football).
- 8.5 Ultimately, therefore, while I understand (with respect) why the Digital, Culture, Media and Sport Committee considers that the EFL 'had multiple opportunities to intervene, but did not do so in an effective or timely enough way to prevent the club's problems from escalating',⁴² in my view nothing else that the EFL might have done under its Regulations as they currently stand would have made any difference.⁴³ Because Bury FC had been allowed to live so far beyond its means, the sudden loss of owner funding in late 2018 created an immediate crisis that could only be solved by finding a new owner who was willing to provide the funding required. For example, even if the Regulations had permitted the EFL to block Mr Dale's takeover of Bury FC in December 2018 on account of his failure to prove he had the funds required to support the club, that would not have saved the club. To the contrary, without a new owner who was willing to provide the necessary funding, the club would have gone into administration immediately, and ultimately, if no new owner emerged, it would have had to be liquidated. The same was true eight months later, in August 2019, when a new season was starting and the EFL had to decide whether to allow Bury FC to participate in it. In short, I respectfully agree with the comment of Matthew Dunham, in his evidence to the Select Committee, that the club could still have been saved at that point by means of a CVA, but 'what it needed was a willing seller and a willing investor, and there appears to have been a lack of one or both'.⁴⁴ The EFL gave Mr Dale as much opportunity as it reasonably could to find a willing purchaser/investor. When he was unable to find one, the EFL was powerless to help the club, and ultimately it had no choice but to expel the club from membership in order to protect the integrity of its competition and the interests of its other member Clubs.
- 8.6 The demise of Bury FC therefore highlights the need for a review of the financial ecosystem in which the League One and League Two Clubs operate. The EFL and its Clubs need to consider again what they want to achieve in terms of financial fair play, and whether the Regulations currently in place are fit for that purpose.
- 8.6.1 One solution would be to change the SCMP rules to require Clubs to live within their means, funding player wages and other operating costs out of operating income, and using owner funding to finance improvements to the ground, training facilities, the academy, and other

⁴² Letter dated 4 November 2019 from then-Committee chair Damian Collins MP to Debbie Jevans CBE, then-EFL Chair.

⁴³ I note in this context the comment of Nicholas Igoe, in his written evidence to the Select Committee: 'Whether enforcement of the League's powers under regulation 16.22 could have addressed the losses at Bury is unclear'.

⁴⁴ Select Committee Transcript, Q.6.

infrastructure projects, which would then generate greater income and so boost the Clubs' spending power. Undoubtedly there would be difficult transitional issues, and some Clubs would become less competitive on the field of play and so drop down the pyramid. However, all Clubs would be financially sustainable, and the risk of loss of a Club from membership of the EFL because of a financial crisis would greatly diminish. The tension between the two potentially competing models of club ownership would be resolved, and the EFL could monitor the Clubs' financial affairs and help to prevent any problems from developing, instead of being forced into crisis/rescue mode. Ambitious owners could still put money into their Clubs, but to build academies and other infrastructure that would generate promising young players and sustainable revenue streams to support increased spending on players. Clubs could therefore still strive for promotion up through the divisions, but based on a solid and sustainable financial platform, not dependent on the continuing financial support of a wealthy owner.

- 8.6.2 A less radical alternative, which is less of a constraint on the freedom of Clubs and their owners, would be to extend some of the elements of the Championship's Profit & Sustainability Rules to Leagues One and Two, by requiring League One and League Two Clubs to produce -- both as a condition of any proposed change of Control and each year thereafter -- a business plan that covers the upcoming season but also any subsequent seasons for which the Club already has player expenditure commitments (i.e., the plan should extend at least to the termination date of the Club's longest player contract). The business plan should set out expected operating income and outgoings during the relevant period, and identify any funding requirements (where expected income does not cover expected outgoings). Along with the business plan, the Club should be required to provide evidence satisfactory to the EFL of sufficient committed and secure funding to meet those requirements. The concept of 'Secure Funding' as defined in the Championship Profit & Sustainability Rules could be used, i.e., the Club would have to be able to point to (a) cash deposited into the share capital account to pay for shares; or (b) a legally binding and irrevocable commitment from the owner to make such payments, secured by security satisfactory to the EFL, which might be a personal guarantee from the owner, or a guarantee from a parent company, or a letter of credit, or funds held in escrow, or such other security as the EFL sees fit. This would reduce the risks attendant on permitting Clubs to finance growing wage bills from extraordinary (owner) income rather than normal operating income, by ensuring that committed and secure funding is in place to meet all of the Club's expenditure commitments. The risk would remain, however, that the owner stops being ready, willing and able to provide the further funding (or further funding commitment) required to sustain that spending once the original commitments are discharged. In that event, the Club would have to find a new owner of sufficient means, or else slash its player expenditure and other outgoings dramatically so that they can be covered entirely by normal operating income.

- 8.7 I wish the EFL and its Clubs well in their review of the EFL regulations relating to financial sustainability, and hope that this report assists them in that review.

Jonathan Taylor QC
Bird & Bird LLP
20 February 2020