A Reflection on the 2023/24 PSR Cases

Where will the Premier League battle settle — a courtroom or a football field?

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Introduction

The 2023/24 Premier League season will be remembered as one influenced not only by football players but also by lawyers and accountants. Three separate point deductions were made during the season due to breaches of the Premier League's Profit and Sustainability Rules (PSR), creating significant uncertainty for clubs and fans. In addition, the outcome of Manchester City's 115 charges remains unknown, with the Premier League confirming that the eagerly anticipated hearing will take place soon.

As several football clubs are now owned by sophisticated global investors seeking a return on their investment, for better or worse the business of football of football is now of central importance to the running of the sport. Though owners with the financial wherewithal are eager to achieve sporting success by injecting capital into football clubs, they must find a balance between financial and sporting success and adhere to the PSR — a challenging endeavor for many. Many clubs are struggling to navigate this difficult balance, resulting in increased instances of PSR breaches. The changing dynamic of the Premier League's commercial aspects has caused an uproar among fans, owners, and regulators. Consequently, the financial regulatory framework for Premier League clubs is being overhauled with proposed changes to the PSR and establishing an Independent Football Regulator (IFR).

As the new season begins, we recap and compare the PSR decisions issued during the 2023/24 season, outline the impact of these decisions on the clubs' transfer strategy during the summer 2024 transfer window, discuss the proposed changes to the PSR for the 2025/26 season, and examine the impact of the looming IFR.

Overview of the PSR and Financial Reporting by Premier League Clubs

The PSR was introduced in the 2013/14 season in response to growing financial imbalances among clubs and to mirror Union of European Football Associations' (UEFA) "*Financial Fair Play*" initiative. In effect, the PSR intends to prevent clubs from spending their way to the top of the Premier League table and to promote sustainable financial decisions.

A Premier League club must comply with the PSR, which limits the maximum losses over a three-year rolling period to £105 million (PSR Threshold). Depending on their finishing position, a Premier League club might also be required to comply with a second set of financial regulations:

- For clubs qualifying for any UEFA competitions (such as the Champions League or the Europa League), the UEFA's Club Licensing and the Financial Sustainability Regulations (FSR), which, in addition to maximum losses, further regulate the squad costs and financial solvency of competing clubs; and,

- For clubs relegated to or promoted from the Championship, compliance with the English Football League's (EFL) PSR. For example, in the case of Nottingham Forest FC, who were promoted to the Premier League in the 2022/23 season, the maximum three-year loss was £61 million as of December 2023. The £61 million maximum is calculated as £13 million each for the 2020/21 and 2021/22 seasons when they played in the Championship, and £35 million for the 2022/23 season when they played in the Premier League (PL).

A comparison of the abovementioned three sets of rules is provided as follows.[1]

Description	PL	EFL[2]	UEFA
Maximum three-year Loss	£15 Million	£15 Million	€5 Million
Maximum owner funding over three years	£90 Million	£24 Million	€55 Million
Maximum three-year loss (including owner funding)	£105 Million	£39 Million	€60 Million
Permitted expenses (i.e., excluded from loss calculation)	Yes	Yes	Yes
Transactions required to represent "fair market value"	Yes	Yes	Yes
Additional financial regulations	No	No	Yes

Clubs must submit to the Premier League their estimated profit and loss account, and balance sheet, for T (the current year) and their annual accounts for T-1 (the year preceding T) by 31 December.[3] If a club's PSR calculation exceeds the threshold, then the club is treated as being in breach of the rules. Under Rule E.17, clubs in breach may be required to agree to a budget and provide further information. In addition, the Premier League and the board will refer the breach to the Premier League Commission (Commission).[4]

Proceedings before the Commission commence with a written complaint from the Premier League, which the club has 14 days to either admit or deny. If admitted, the club's response may include mitigating factors. If denied, it must set out its reasons and annex copies of any documents it relies on. The burden of proof rests with the league to show fault.

If found to be in breach, the Commission has the discretion to impose measures including: an unlimited fine; deducting points; a match replay; and any other such order it thinks fit. The club then has 14 days from the decision to appeal.

Summary of the Premier League PSR Decisions in the 2023/24 Season

Three separate point deductions affected the 2023/24 Premier League season. A summary of each breach and the sanctions is provided in the following figure:

Description	Ref.	Everton 1	Nottingham Forest	Everton 2
Total Losses	[A]	£124.5 Million	£95.5 Million	£121.6 Million
Permitted Losses	[B]	£105 Million	£61 Million	£105 Million
Absolute Amount of Breach	[C] = [A] - [B]	£19.5 Million	£34.5 Million	£16.6 Million
Relative Amount of Breach	[D] = [C] / [B]	18.6%	56.6%	15.8%
Points Deducted	[E]	6	4	2
Amount Breached per Point Deducted	[F] = [C] / [E]	£3.3 Million	£8.6 Million	£8.3 Million

Notable across the cases is a focus on process and guidelines for determining what sanction should be applied; much commentary has bemoaned the lack of consistency across cases on this question, particularly as discussed below.

I. EVERTON 1

In November 2023, Everton FC was the first club to be found in breach of the PSR for the 2021/22 season. While Everton claimed their adjusted loss was £87.1 million, the Premier League calculated PSR losses for the club at £124.5 million, which exceeded the PSR threshold of £105 million[5] by £19.5 million. The key issues related to the inclusion of certain expenses — £17.4 million interest on stadium financing; £5.8 million relating to the Transfer Levy; £10 million relating to loss from not suing Player X, who was in breach of his contract; £61 million relating to player trading losses attributable to Covid-19 in addition to other Covid-19 permitted losses.[6]

The Commission concluded Everton's PSR difficulties were not attributable to any mitigating factors. Rather it overspent (primarily on buying new players and being unable to sell others) and finished lower in the league than it projected (16th as opposed to the projected 6th), causing a loss of expected income of £21 million in the Premier League prize money. The troubles, in other words, were of their own making; Everton failed to manage its finances within the "*generous*" PSR Threshold.

The Commission concluded that this was a serious breach and ordered a sanction deducting ten points, which the Appeal Board subsequently reduced to six points. Everton appealed the sanction imposed, relying on nine grounds of appeal, most of which related to various mitigating and aggravating factors. Of the nine grounds, 1 and 7 were upheld: the findings of (i) "*less than frank*" and (ii) a breach of rule B:15 (utmost good faith) as aggravating factors; the failure to impose a sanction consistent with existing and relevant benchmarks.

It was common ground between the parties that the rules governing appeals by way of review in the court system can be applied to an appeal such as this, with appropriate recognition of the sport regulatory context. Civil Procedure Rules, r. 52.21(3) allows an appeal where the lower court's decision was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court.[7] The Appeal Board noted they were entitled to set aside the decision on sanction if the Commission made a material error of law or acted in a way that was unfair procedurally. It identified errors of law to include: "*(i) an error in approach, (ii) taking into account something which, as a matter of law, should not have been taken into account, and (iii) failing to take into account something which, as a matter of law, should have been taken into account*". The Appeal Board further noted that "*rules governing appeals by way of review in the court system can be applied to an appeal such as this, with appropriate recognition of the sport regulatory context*".

II. NOTTINGHAM FOREST

In March 2024, Nottingham Forest was found to be in breach of the PSR for the 2022/23 season. The Premier League calculated the club's losses at £95.5 million, which exceeded their PSR Threshold of £61 million[8] by £34.5 million. Forest admitted the charge against it but presented six mitigating factors — (i) the uniqueness of Forest's circumstances, as the only club not previously in the Premier League in any of the accounting years; (ii) a "*Near Miss*", in that it sold Player A to Tottenham for £47.5 million at the end of the summer 2023 transfer window that was not considered in the relevant accounts; (iii) money forecast errors, namely the price of promotion to the Premier League, reliance on an add-back for costs related to COVID-19, and the failure to position 12th in the league (and attain the award money tied to that position); (iv) "*sporting advantage*"; (v) Forest came with clean hands; and, (vi) cooperation with the Premier League.

The Commission ordered a sanction deducting four points, leaving Forest in 18th place in the standings (i.e., the relegation zone) at that time. The Commission considered that the four-point deduction was fair and proportionate to the breaches, given that it was a significant breach, the circumstances and scale of the breach, and the mitigation factors. The decision is notable for a clearer delineation of the *process* of sanctioning clubs, building on the above Everton appeal. The Commission provided, in particular, the following guidance:[10]

- The Commission considers that it would assist in banding breaches into "*minor*", "*significant*" or "*major*", to remove the focus on the absolute number, especially when different PSR Thresholds can apply. However, that approach can be adopted/disregarded as other Commissions see fit — what is clear to the Commission here is, just like Everton, that Forest's losses are "*significant*", as are its excesses over its PSR Threshold so that it should face a points sanction. As such, and as the Appeal Board in the Everton Appeal determined at [201 to 204], other available sanctions, such as warnings, fines, embargos, and the like, are not appropriate in the case at hand.

The Commission also stated that "*having a starting point (as the EFL have in its Guidelines and as the Appeal Board used) assists clubs and the regulator*":

- The Commission agrees with the Appeal Board in the Everton Appeal that the entry point for a significant breach should be a deduction of 3 points, which will give the added advantage of achieving consistency with that decision. The Commission will then consider Forest's particular circumstances and the quantum of the breach, which might slide it up or down the points scale to find its starting point before mitigation (and aggravation, if there was any) is considered and finally dealing with such matters as suspension. The Commission also noted that, generally, in business decisions, the consequences of a points deduction and previous compliance will not amount to mitigating factors.

While a good notion in principle, the Appeal Board in the Everton Appeal did not rely upon any such entry point — or a starting point — of a three-point deduction for a significant breach of the PSR, or generally. The only reference to a three-point deduction was the minimum three-point deduction imposed on breach of the upper loss threshold in the EFL's Championship PSR, applying the EFL's Sanction Guidelines. However, the Appeal Board was also explicit that EFL guidelines "*cannot be automatically translated across in a linear way*" to a breach of the Premier League's PSR.

Forest appealed this decision, but unlike Everton, it was unsuccessful. The Appeal Board concluded that "*we are unanimous that the Commission was entitled (and right) to impose the sanction of a deduction of four points*."

III. EVERTON 2

Everton was found to have breached the PSR for the 2022/23 season in April 2024, incurring losses of £121.6 million, which exceeded the PSR Threshold by £16.6 million. This breach covered two seasons (i.e., 2020/21 and 2021/22) that also contributed to the first Everton breach, which resulted in a six-point deduction. Everton admitted the charge but invocated "*double jeopardy*" as a defence, arguing they should not be penalised further as they had already received a penalty of six points within the current season following the determination of *Everton 1*. Everton further stated that it admitted to its breach at an early stage, had cooperated exceptionally with the Premier League, and lost £20 million in sponsorship income due to the conflict between Russia and Ukraine. This, like the Forest decision, was, again, an instance whereby wrong was not contested, and the only matter to be determined was the appropriate level of sanction.

The Commission reached the following conclusions: (i) first, any breach of the PSR is significant and justifies a deduction of three points, and (ii) thereafter, the penalty should be increased to reflect the extent of the breach.[11]

Everton had breached the PSR by £16.6m, which justified a deduction of a further two points. The "*starting point*" for Everton's penalty was, therefore, a deduction of five points. In relation to the mitigation relied upon by Everton:

- The Commission accepted that Everton had been penalised in the 2022 proceedings for losses in years which overlapped with the years at issue in the 2023 proceedings; Everton's penalty should therefore be reduced by two points to take into account the overlapping assessment periods.

- The Commission also accepted that Everton had lost £20 million of sponsorship revenue, which was sufficiently exceptional to amount to mitigation, and that Everton admitted its breach at an early stage of the proceedings, which was deserving of recognition. For those two heads of mitigation, the penalty was reduced by a further point.

Taking into account mitigation, the Commission concluded that Everton should receive an immediate penalty of two points. The Commission determined that, in the interests of fairness to all other clubs, it was inappropriate to postpone that penalty until next season.

Everton initially stated its intention to appeal the two-point sanction but subsequently withdrew its appeal of the decision after confirming its place in the Premier League for next season.

Regarding the appropriate starting point for sanction, the commission accepted "*the PL's suggestion that the Appeal Board in the Everton FY22 Appeal started from an initial sanction of three points, which was increased by a further three points to reflect the £19.5 million [excess over the PSR upper loss threshold]*".

However, as noted above, this approach is questionable and urgently needs clarification. The Commission also did not support the suggestion in Nottingham Forrest of a "*minor*," "*significant*," and "*major*" loss threshold as such banding undercut the inherent seriousness of loss above £105m. That said, the basic process of assessing sanctions was affirmed.

Impact of 2023/24 PSR Decisions on Summer 2024 Transfer Window

Transfer activity in June 2024 was notably busy for several clubs that recently breached or are at risk of breaching the PSR. This surge in activity is unsurprising, given that the profits from player sales made before 30 June are reported in the club's current accounts. Consequently, clubs are incentivised (or even required) to generate profits from player sales by June 30 to comply with PSR.

We previously discussed how clubs have strategically structured transfers to comply with PSR.[12] These strategies included offering longer player contracts, incorporating performance-based contingent compensation, arranging loans with options or obligations to buy, and selling academy players to generate "*pure profits*". The sale of academy players was particularly prevalent during June 2024. The average age of the 16 players sold by Premier League clubs during June was under 22,[13] reflecting the strategy of selling academy players to generate "*pure profits*".

Another trend in transfer strategies during June 2024 has been "*player swaps*", where players are purchased and sold between two clubs.[14, 15] This approach allows clubs to generate profits on the sale of the player while the cost of purchasing the new player is amortised over the length of their contract (i.e., the cost is deferred over a longer period). The Premier League requires that all transactions are conducted at fair market value, but determining the fair market value of a player, especially younger players, continues to be a grey area. A higher transfer value benefits both clubs by generating additional profits upon their respective player sale, while the increased cost of the acquired player is amortised over the life of the player's contract. Several player swaps involving Premier League clubs in June have raised concerns about the elected transfer value.[16]

Proposed Changes to PSR

After significant scrutiny of the PSR's appropriateness, the Premier League announced in March that "*clubs agreed to prioritise the swift development and implementation of a new League-wide financial system*".[17] As a result, the Premier League is set to replace the PSR for the 2025/26 season with a squad cost ratio and spending cap discussed below.[18]

- **Squad cost ratio**: Clubs will be permitted to spend a percentage of their annual revenue on squad wages and the amortisation of transfer and agent fees.[19] The Premier League has proposed that clubs competing in European competitions will be capped at 70% of revenue, consistent with UEFA, while the remaining clubs will be capped at 85%.[20]
- **Spending cap**: Clubs' maximum spending on squad wages and the amortisation of transfer fees and agent fees will be capped at an amount derived by a multiple of the broadcasting and commercial revenue of the lowest-earning club.[21] Unlike the squad cost ratio, which sets a limit for each club relative to its financial performance, the spending cap will set a fixed monetary amount that all clubs must adhere to.[22] For almost all clubs, the spending cap is expected to be greater than the amount permitted under the squad cost ratio. Thus, this rule is set to function as a backup to the squad cost ratio and is referred to as the "*anchor*" mechanism.[23]

Given that most clubs will be restricted to the amount determined based on their squad cost ratio for each year,[24] clubs may be ncentivised to inflate their revenue to increase the amount they are permitted to spend. Increasing revenue was also a target under the current PSR rules, which resulted in a trend of selling home-grown players for pure profits, selling assets to related parties, and utilising stadiums for non-football events. Similarly, to adhere to the squad cost ratio, clubs may be incentivised to reduce squad costs, which is also an incentive under the current PSR rules.

Interestingly, both the squad cost ratio and spending cap assess a club's spending on squad-related costs. Therefore, under these rules, several of the costs that contributed to Everton and Nottingham Forest's recent breaches (e.g., stadium and interest costs) would not be considered in an assessment, as they fall outside the relevant squad costs. In theory, the proposed rules allow for less subjectivity and creative accounting compared to the current PSR rules. However, under the proposed rules, clubs will have the same incentives as under the PSR rules (i.e., to increase revenues and reduce squad costs). Therefore, a clear definition and treatment of the key metrics is imperative to reduce the likelihood of future breaches.[25]

Proposed Independent Regulator

Initially introduced in March 2024, the Football Governance Bill failed to pass through parliament before the general election was called in May; it was set to establish a new Independent Football Regulator (IFR) for English men's elite football. The IFR was to be set up as a new public body to ensure operational independence and accountability.

The Labour government reintroduced the bill during the King's Speech, and it is now set to become law.

The previous whitepaper set out that IFR would have three primary objectives: (i) club financial soundness, (ii) systemic financial resilience, and (iii) heritage.

On financial soundness, its stated aim was to protect and promote the financial sustainability of individual clubs, ensuring that clubs make sensible financial decisions and consider the long-term when taking risks. The IFR would further have the power to oversee financial plans and step in where it has concerns: clubs would be required to demonstrate sound basic financial practices; to have appropriate financial resources to enable the club to meet cash flows, including in the event of a financial shock; and, to protect the core assets and value of the club — such as the stadium. If there is a concerning level of financial risk, either at the club or systemic level, the IFR will be able to place bespoke conditions on clubs to mitigate it.

You may be forgiven for thinking that this sounds very close to the aims and methods of the PSR, and there may prove to be an overlap between the two. This will be a matter for close consideration as the IFR is brought into law; clarity in regulation is paramount and regulated parties need to understand both the regulatory case they have to answer and to whom they are reporting.

Concluding Thoughts

It is certainly right that the Premier League seek to monitor club expenditure and debt, given both their significance as cultural institutions and numerous examples of financial imprudence and mismanagement within football clubs.

What's more, where points are on the line, and when one or two points can and often do determine European qualification or survival, clubs will inevitably fight for every inch. Points deductions will inevitably then lead to appeals, which are costly in both money and time. But the imposition of legal proceedings as a backdrop to the sporting spectacle is often an unedifying one. VAR has already reduced the immediacy of on-field decisions; now, positions in the table throughout a given season and beyond are pending the churn of legal and administrative processes. It is important not to lose sight of the sporting spectacle from which the business of football derives its value. If it is that closer and clearer regulation by way of the IFR means fewer appealed decisions and a refocusing on the sport, that much can only be positive.

ENDNOTES

1. Secretariat article, "*Financial Regulation in Football: Caught Offside?*", March 2024.
2. PSR applicable to clubs competing in the English Football League (i.e., leagues beneath the PL in the football pyramid). The regulations are generally the same as PL clubs, with reduced maximum losses. EFL Handbook, 2023/24.
3. Premier League Handbook, 2024/2025, Appendix 1, paragraph 3.
4. Premier League Handbook, 2024/2025, Section E, Rule E.53.
5. Calculated as £35 million per season as Everton were competing in the Premier League for each of the three seasons.
6. Decision of the Commission, Premier League v Everton FC dated November 17, 2023.
7. Decision of the Appeal Board, Premier League v Everton FC dated February 26, 2024.
8. Calculated as £35 million for one season and £13 million per season for two seasons as Nottingham Forest was competing in the Premier League for one season and the Championship for two seasons during the three-season period under review.
9. The Commission considered that three points were the entry point for a significant breach, three points were required for the circumstances and scale of the breach, and a two-point reduction was required for early plea and cooperation. Calculated as 3 + 3 – 2 = 4 points.
10. Decision of the Commission, Premier League v Nottingham Forest dated March 18, 2024.
11. Decision of the Commission, Premier League v Everton FC dated April 8, 2024.
12. Secretariat article, "*Financial Regulation in Football: Caught Offside?*", March 2024.
13. The Athletic article, "*How PSR deadline impacted transfers: £323m of sales, questions marks and young players on the move*", July 2024.
14. That is, whereby a Team A buys a player(s) from Team B, and Team B buys a player(s) from Team A.
15. For example, Aston Villa bought Ian Maatsen from and sold Omari Kellyman to Chelsea, Aston Villa bought Lewis Dobbin from and sold Tim Iroegbunam to Everton, and Newcastle bought Odysseas Vlachodimos from and sold Elliot Anderson to Nottingham Forest.
16. BBC Sport article, "*Premier League writes to clubs over 'swap deal' concerns*", June 2024.
17. Premier League statement, March 2024.
18. The Athletic article, "*Premier League agree new financial fair play rules for next season*", April 2024.
19. UEFA Club Licensing and Financial Sustainability Regulations, Edition 2023, Articles 93.01 and 104.02.
20. The Athletic article, "*Premier League agree new financial fair play rules for next season*", April 2024.
21. For example, if the lowest earning club generated £100 million in such revenue and the multiple is set at 5, each Premier League club's spending must not exceed £100 million.
22. The Athletic article, "*Premier League agree new financial fair play rules for next season*", April 2024.
23. That is, if a club adheres to the squad cost ratio, it is expected that it will also adhere to the spending cost.
24. Unlike the current PSR rules that are assessed on a three-year rolling basis.
25. Similar to how the UEFA Club Licensing and Financial Sustainability Regulations, Edition 2023 sets out how squad costs, and revenue are to be calculated at Annex K "*Elements relating to the calculation of the squad cost ratio*".

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