

# Fan Ownership or Sham Ownership?

## The Elected Jags Foundation Board's Account

Tuesday 9<sup>th</sup> August 2022

### 1. Introduction

We, the TJF Board, were told yesterday evening that Three Black Cats (3BC) would **not** be taking forward fan ownership with The Jags Foundation. We released an initial statement promptly so that you were informed of that decision and had a sense of what lies ahead. However, we believe you deserve a more thorough explanation, in the interests of transparency, accounting for what we did in your name and to explain why 3BC has chosen a different path.

Back in the summer of 2019, Partick Thistle had an uncertain future ahead of it. This was because completely unknown people were being lined-up to take over the Club. There is a genuine irony in the fact that, three years later, what started as a promise of fan ownership has now delivered an uncertain future... because unknown people are being lined up to take over the Club.

The original Thistle For Ever Board (populated by many well-known and passionate fans) did not achieve the outcome they wished for (perhaps Club Director John Penman aside). Although they prevented the sale of the Club to foreign owners, the process of developing a fan-led ownership vehicle has not been delivered. All passionate fans who have followed, whether initially as part of the Working Group, as part of the inaugural TJF Board, or its current elected Board, have similarly been unable to deliver on that desired outcome. In all cases they have pursued conventional fan ownership models, openly, transparently and in good faith. The common denominator has been those with whom they have had to deal on the other side.

The approach of the current TJF Board was to bring a deal back to our members, whatever it may look like, whether or not it was endorsed by or acceptable to us as individuals. It is hoped that what follows demonstrates this, and the many compromises made on our part show how determined we were to get you a deal.

On 3BC's part, we still do not have a clear idea of what their vision actually is for fan ownership. Their position is that they have 'privileged information' which means they know what Colin Weir wanted, but they cannot disclose that information. It is difficult to understand how any organisation who did not have preferential access to knowledge or people involved could understand what 3BC specifically wished for fan ownership.

## 2. Executive Summary

We know this is a long document, so we have summarised the sections that follow in this summary below:

- We acted constructively, pragmatically, patiently, and flexibly throughout the process.
- We demonstrated to 3BC ‘what good looks like’ and ‘what bad looks like’ in terms of fan ownership, and we endeavoured at all times to aspire to be what good looks like. **This was reflected in our original and our revised vision documents.**
- For each of the reasons given by 3BC to the previous TJF Board for the breaking off negotiations, we justified why these did not apply to the new TJF Board. **We also evidenced how we would meet the SFA’s formal ‘fit and proper’ test.**
- We believe that **fan ownership merits fan representation on the Club Board** and said so. None of the feedback on our proposals for this from 3BC was constructive.
- We favoured a structured approach to the transaction, including legally binding agreements to protect everyone involved when moving forward. 3BC favoured a pure gifting scenario. **We moved to their preference and did so early on in the process.**
- Against our better judgement **we agreed not to pursue formal due diligence** processes with the club after exploring various solutions. We did however do our own diligence exercise on externally available information from various sources.
- We believe we evidenced that we addressed all of the requirements of ‘fit and proper’ that were alleged not to be met against our predecessors. **At no point did 3BC raise any specific concerns about us in this area.**
- A frustrating part of the process for us was the combined impact of confidentiality and fundraising. **3BC went to extraordinary lengths to insist that the Club Board neither required nor wanted the fan ownership vehicle to operate as a proactive fundraising vehicle for the Club.** We were essentially prevented from telling fans about this, as 3BC suggested this would constitute a breach of confidence.
- We were asked, in mid-July, to keep the fact that there were two other interested parties out of the public domain. We felt it was prejudicial to us to have to negotiate in public whilst others did so behind closed doors. Peter Shand requested that we remove this from our public statement and to make the point to Peter and Jacqui privately. **Out of respect for the process, we did so**

**immediately yet received no response from 3BC. Even on the cusp of the share transfer we have not had the courtesy of being told by 3BC who the preferred recipients are, nor have fans been able to scrutinise the alternative.**

- **We have made every effort to meet originally stated timetables set by 3BC. We do not feel that has always been reciprocated.**

### 3. Background

Our Board members do not claim to be experts in fan ownership. We have, however, done research (as did our predecessors) to try to develop the best conventional model of fan ownership for our club.

Supporters Direct, on the other hand, *are* experts in this field. In 2020, they published a useful summary in respect of fan ownership. We reproduce it below:

#### 3.1 What does “good” look like?

*Successful supporter owned clubs will:*

- *Have a healthy, vibrant and engaged membership which is representative of the fan base.*
- *Ensure that there is clarity on who makes decisions at all levels of the club from the executive and board to how members can be involved in the governance and in particular the big decisions that might come up. This can be captured in a side policy if the rules don't go far enough.*
- *Manage expectations of supporters, encouraging active participation and growing trust by demonstrating accountability to the members.*
- *Widen the understanding of the membership and wider community of how the club operates, hence the phrase 'making the running of a club a spectator sport'.*
- *Have developed policies and procedures that ensure that appropriate controls are put in place to authorise expenditure and that financial controls are put in place to ensure that income, especially cash, is not inappropriately diverted.*
- *Have contested elections for places on the club board.*
- *Deliver community benefit outside the club.*
- *Have a strong varied network of volunteer support.*

### 3.2 What does “bad” look like?

- *Having a stagnant membership with people unenthused and unengaged with trust/club governance*
- *Not addressing an ‘us’ and ‘them’ culture between the board and the supporters.*
- *Not consulting or involving supporters in the big decisions the club faces.*
- *Poor communication to members and neglecting to tell the wider community about the social value you bring (you need people to measure you on more than just the senior men’s team league table)*

Throughout this process, the elected TJF Board have tried to live by ‘what good looks like’ and avoid ‘what bad looks like’.

## 4. Documents provided to Three Black Cats

At various points in this process, we provided a range of documents to Three Black Cats in support of our pitch to become the majority shareholder in Partick Thistle Football Club Ltd (the Football Club).

We were elected as a Board on Thursday 26<sup>th</sup> May, and acted quickly, given the statement previously made by 3BC regarding this being settled before the new football season.

### 4.1 The initial documents ahead of the first face-to-face meeting

On Thursday 16<sup>th</sup> June 2022, we provided them with:

1. a draft Head of Terms for a Share Purchase Agreement
2. a vision statement (setting out the Foundation’s mission both as majority shareholder and as a hub of fan engagement and outreach)
3. a who’s-who summary of the new TJF directors, complete with a statement that, to the best of our awareness, each of us individually satisfies the SFA’s “fit and proper persons” test
4. a summary and breakdown of membership numbers and revenue of the Foundation
5. a draft of our proposed amended Articles of Association for review and comment.

## 4.2 Documents provided following the first face-to-face meeting

On Friday 24<sup>th</sup> June 2022, we provided them with an updated document (as requested), reflecting some of the feedback we had received at the Monday 20<sup>th</sup> June 2022 face-to-face meeting.

On Monday 30<sup>th</sup> June 2022, we provided 3BC with a further membership numbers update.

## 4.3 Further documents provided on request

On Wednesday 6<sup>th</sup> July 2022, we provided 3BC with a revised “offer” document and a draft Working Together Protocols document, to form the basis of further discussion as to our proposed legal relationship between the Foundation and Club Board. This made clear we were accepting of the gifting approach favoured by 3BC rather than an approach more akin to a transaction which we had favoured. This was requested of us on Tuesday 5<sup>th</sup> July.

On Monday 18<sup>th</sup> July 2022, we provided a further update on membership numbers. Another update was also given on Monday 8<sup>th</sup> August 2022.

# 5. Club Board representation

One of the core fundamentals of fan ownership at other football clubs is that there is fan-representation on the Club Board. The purpose of those representatives is to ensure that the priorities and views of fans are taken into account when the Club Board takes important decisions about the future. It also fosters a culture where fans are consulted and listened to.

## 5.1 The current Club Board

The current Club Board consists of Jacqui Low (the Chair), Duncan Smillie, Douglas Noble, Michael Robertson, Alan Rough, John Penman, Andrew Byron and Alan Caldwell. It is supported by a Chief Executive, Gerry Britton.

This board is one of the largest in Scottish football. Three of those board members joined the Club Board having previously had a role in fan-representation. Andrew Byron and Alan Caldwell were elected “Supporters Trustees” of the PTFC Trust while John Penman was involved with Thistle For Ever, the group that had worked closely with Colin Weir and Jacqui Low to develop proposals to buy-out Thistle in 2019, with a view to delivering fan ownership.

## 5.2 Our position

It was our understanding that the appointments of Andrew Byron, Alan Caldwell and John Penman were intimately linked to their experience and roles in the fan ownership journey. Given that the Club Board was already quite large, we believed that they were the most obvious candidates to make way for any formal fan-representatives after a share transfer.

In our original Head of Terms letter, we suggested that they step down post-transfer and that the Foundation appoints 3 of the 8 Directors on the Club Board following an agreed nominations and elections process between Foundation and Club Board. Alternatively, we said, we would welcome an explanation why their continued presence on the Club Board was essential, and for 3BC to set out what it thinks a more suitable arrangement for the composition of the future Board would be.

This was not a personal slight on the abilities or contribution of those three individuals. It was simply our understanding that their existing involvement in the Club Board was closely tied-up with their experiences in the fan ownership journey. It would, of course, have been open to them, if they were Foundation members at the relevant point in time, to put themselves forward to be fan-representatives on the board under the more permanent arrangements we had proposed.

For the avoidance of doubt, and despite several of our members telling us unprompted in correspondence that they desire it, we have never asked Jacqui Low to step down as Chair or as a Director of the Football Club, nor have we suggested that any of the other directors, or the Chief Executive, should vacate their roles following the transfer of shares. We were extremely mindful of the need for continuity and stability during the early years of fan ownership, so that relevant expertise could be retained and built-upon to protect and safeguard the business.

It was our view, given the nature and extent of fan-representation at other Clubs is usually *higher* than this, that what we were asking for was not unreasonable. For example, St Mirren has majority fan-representation on its 6-member board, while their Supporters' Association holds only 51% of the shares. By contrast, across the three fan bodies at Thistle (the Foundation, the Jags Trust and the PTFC Trust) over 80% of the shares would be owned or controlled by fan-orientated entities.

It would have been our intention that the Foundation would work closely with the Club Board to identify any skills or experience gaps, and then to identify suitable candidates from the Thistle support and their wider networks to fill those positions. However, before that could happen, we needed a clear steer as to 3BC's view of the nature and extent of fan-representation on the Club Board. We confirmed that none of our Negotiating team wished to sit on the Club Board as a fan representative, to reassure 3BC that no conflict of interest arose in any discussions about that proposal.

### 5.3 3BC's response

At the Monday 20<sup>th</sup> June meeting, we were told that the mere suggestion that any of the existing board should step down was a source of "alarm". It was rejected out hand that the Foundation could expect 3 representatives on the Club Board. We were told that the three directors in question did extremely important work, though their precise roles were not specified in any detail.

It was suggested to us that the shareholdings of the Jags Trust (7%) and the PTFC Trust (19%) were irrelevant to the question of fan representation on the Club Board.

### 5.4 How did we adapt our proposal?

We dropped from our proposals any suggestion that existing Club Board members should vacate office following the transfer of shares. Such a suggestion clearly was not going to advance discussions and we did not want to make the discussion one about personalities.

It was, and remains, our view that the Jags Trust and PTFC Trust shareholdings are relevant to Board representation. Combined, they represent more than one quarter of the Club's ownership and should, at least, be part of the conversation on representation. Even if this were not the case, however, we think that a 55% majority shareholder should be entitled to at least significant minority representation on the Club Board, if not majority representation. We know that some fans believe fan ownership should involve majority representation as a matter of course. That is a view with which we have considerable sympathy, as evidenced by our informational piece about St Mirren.

Despite this, and in the interests of making progress on other important matters about the Foundation-Club relationship, we revised our proposal to request that the Foundation be entitled to at least 2 Club Board directors. Our judgment was that, in the longer term, TJF and the Club could decide to revisit this question once fan ownership had bedded-in.

Additionally, we envisaged that Club Board directors would provide a resume of their activities/experience whenever they were coming up for re-appointment, which would be circulated in advance to the TJF Board. This was a replication of what other fan-owned clubs do.

### 5.5 3BC follow-up

We received no substantive follow-up on these matters, despite specifically requesting 3BC's views on it.

## 6. The nature of the transaction

A share transfer can be delivered in several different ways. Two ways can include:

- a bare minimum stock transfer form; or
- a Share Purchase Agreement

The latter is a legally binding document, which provides structure to any transaction, and legally enforceable guarantees. For example, it can be used to set out clear conditions for the transfer going ahead, and can impose deadlines, confidentiality and exclusivity arrangements. Confidentiality especially can also guarantee certain forms of information sharing and exchange.

### 6.1 Why did TJF argue for an SPA?

The Jags Foundation presented a draft Head of Terms for a Share Purchase Agreement on Thursday 16<sup>th</sup> June 2022. This was accompanied by other documents as noted above, and were provided to facilitate discussion in a meeting scheduled for Monday 20<sup>th</sup> June. That meeting took place between TJF's 4-person Negotiations team, Jacqui Low (director of 3BC) and Peter Shand (a representative of the other director, MBM Board Nominees Ltd).

The reason we did this was simple: we thought that legal guarantees during the negotiations phase would provide better structure, and facilitate more transparency and information-sharing and cooperation, between the Foundation and 3BC. This offer was made subject to 3BC and TJF being able to agree on three things:

- the suitability of TJF as a purchaser of the shares
- TJF being satisfied as to a list of "key assumptions" about the Club's financial position, through a due diligence exercise to be agreed by the parties
- the agreement of a set of "Working Together Protocols" setting out an agreed list of "reserved matters" and the nature and extent of TJF's representation on the Club Board.

While it is possible to agree those things without the formality or structure of an SPA, our view was that it would be significantly to 3BC's advantage for the arrangement to be structured that way. It would give rise to greater expectations of confidentiality on our part and would enable them to set out their own red lines in terms of the legal relationship between Club and Foundation post-share transfer. Moreover, an exclusivity provision would provide the fans some reassurance and peace of mind that there was a clear and preferred fan ownership vehicle, which they should help to succeed.



## 6.2 How did 3BC respond?

It was made clear to us that 3BC would not contemplate a Share Purchase Agreement, and that it was Colin Weir's intention that the shares should be gifted. As far as they were concerned, the only legally binding document necessary to deliver fan ownership was a stock transfer form completed subject to clearance from the SFA and Club Board.

## 6.3 How did we adapt our position?

Mindful that, in theory at least, our objectives and approach could be reached by more informal means, we reluctantly accepted a more legally minimalist transaction. We were prepared to proceed on the basis of the transfer being a pure gift with no prior legal agreement between TJF and 3BC. However, we still considered it desirable that there should be a legally binding agreement between the Foundation and the Club Board, regulating aspects of their relationship.

We took legal advice on this from Morton Fraser, and they had indicated that our proposed SPA approach was a sensible one.

Even in the final meeting when we were advised that we would not receive the shares, 3BC were wishing to argue for certain aspects that would be covered by the SPA approach despite not wanting such an approach. It appeared that they wished to 'cherry pick' aspects of an SPA approach which suited them whilst claiming it was a pure gifting scenario.

# 7. Due diligence

You will have seen, from the various public statements made by 3BC, the Club Board and the previous TJF Board, that the question of "due diligence" became a sticking point in the previous talks.

## 7.1 What is due diligence?

Due diligence is a form of legal and financial disclosure that is common to transactions involving the transfer of the majority stake in businesses. It allows a prospective acquirer, under strict conditions of confidentiality and before any share transfer, to understand more about the company in which they would be taking a major or controlling interest. The sort of things that due diligence can disclose include:

- whether the company has debts or existing liabilities
- how healthy the company's cash reserves are, have recently been, and are expected to be
- whether there are major new sources of income or expenditure anticipated
- what key assumptions have underpinned the company's recent budgets

- how reliably the company has met expectations in terms of its budgets
- whether and to what extent the company has relied on external financial support from existing shareholders

It is not possible to obtain this information in any significant level of detail using documents in the public domain. To take PTFC Ltd as an example, its accounting year ends in May of each year, but those accounts are usually published 5-7 months later (so it is already historic information). The extent of disclosure required for published Annual Accounts is not detailed enough to indicate major sources of revenue, any detailed information about fluctuation in cashflow, or detailed information about budgeting, or any new liabilities incurred since the financial year end.

Due diligence exercises can vary in their intensity, but what is common to them is that they are an agreed and confidential form of disclosure, requiring cooperation between the prospective acquirer, the Board of the company to be acquired, and the shareholder looking to divest themselves of their shares.

## 7.2 What did we propose?

In our original Head of Terms document, we explained that we wanted to be satisfied as to five “key assumptions” about the Club’s financial position. We would be prepared to accept the majority shareholding in the Football Club provided that:

1. We were able to satisfy ourselves that TJJ can be a majority shareholder which can ensure sustainability of the Club
2. We were able to satisfy ourselves that the Club is on track to achieve any budgeted results, and that suitable financial forecasts were shared (including a 12 month forward looking cashflow statement). This would take into account the timing in relation to the season and the elapsed period of the 2022-23 budget.
3. The Club is adequately capitalised and that there are no material costs or capital requirements moving forward over and above those disclosed to TJJ
4. That on completion, the Club would have sufficient initial working capital on its balance sheet; and
5. That TJJ has the opportunity to review any material contracts or conditional options that could have a material impact on the property assets of the Club.

The seeking of confirmation of these key assumptions was rejected by 3BC. Again, we showed flexibility and we proposed a restricted exercise of financial disclosure, which would involve two of our nine elected board members (Sandy Fyfe and Andrew Holloway, both chartered accountants). We proposed that they would sign any Non-Disclosure Agreement (NDA) asked of them by 3BC and/or the Club Board.

Thereafter, SF and AH would be given access (without phones or laptops) in a room with a small number of documents, under supervision. This would take place over a single sitting. The documents in question would be:

- the budget for 2022/23

- the management accounts for the individual months February-May 2022
- a cashflow statement.

It was further proposed that they would have access to a suitable person (or people) to direct sensible questions about those documents and any points of interest arising from them. We described the intention behind this as a “straight forward double check” of the financial position. As members of professional bodies, Sandy and Andrew in particular are mindful of the need to be able to discharge their own professional obligations, over and above those that apply generally to directors of the Foundation.

Based on this disclosure exercise, Sandy and Andrew would then recommend to the full TJF Board, and ultimately to the TJF membership, whether to proceed with the receipt of the shares. We further offered, so as to overcome any presentational difficulties, to use a suggested form of words whereby this exercise would not be described as diligence.

### 7.3 What was 3BC’s response

Peter Shand advised us by email on Friday 24<sup>th</sup> June that:

*“Without wishing to appear to be intransigent, the transfer of shares will be a gift and our advice, now taken from a number of highly regarded legal sources, is that the shares should be handed over with no warranties, guarantees or due diligence. Furthermore, what you propose as a way to get the reassurances TJF requires is not possible for us to deliver. Even as majority shareholders, we cannot compel the Club and its Board to provide the commercially sensitive information you require.*

*We cannot be clearer, due diligence on a gift will not happen and it is non-negotiable. Our position will not change.”*

### 7.4 How did we respond?

Prior to proposing our restricted due diligence exercise, we took advice from our own legal representatives, Morton Fraser. Their view was the same as that of the TJF Board: that there was no obvious legal impediment to due diligence taking place in this situation, but that (as with almost all transactions of this kind) the extent of disclosure ultimately has to be agreed. Their understanding of 3BC’s position is that it is a deliberate choice on the part of 3BC not to allow, or to ask the Club to facilitate, a financial disclosure exercise.

With extreme reluctance, and in the knowledge that it could lead to a deal being reached which meant Sandy and Andrew were professionally bound to stand down from our own Board or to recommend against the transaction, the Foundation Board nevertheless decided to “set aside” the question of due diligence, We did this to

seek to make progress on other aspects of the transfer (in particular the future relationship between ownership vehicle and Club Board). It was felt that some of our members would feel cheated if we had not done our best to establish fully exactly what deal, if any, was on the table. On Monday 27<sup>th</sup> June<sup>1</sup>, Sandy Fyfe replied to Peter Shand by email:

*“You have made your position very clear and I think it is also clear that our own advice differs significantly from yours. As a professional yourself, I am sure you understand we must rely on the advice given to ourselves, not another party. Having said that, whilst we do not necessarily yet understand your explanation around this contained in your last email, you have asserted that you wish to do a deal on an aggressive timeline, and we were elected to do a deal. Accordingly, we have asked Paul Geoghegan, Head of Sports Law at Morton Fraser to provide our directors with further advice (and hopefully assurance) around this area, whilst understanding fully that you have stated it is non-negotiable.”*

We made it clear that we understood due diligence would not form part of any agreement, adding:

*“For the avoidance of doubt, we understand fully that there will be no assurance afforded to us by you, and will not return to this issue.”*

Sandy Fyfe and Andrew Holloway made clear to the rest of the Board of TJF what that would mean for their own continued involvement in TJF due to advice taken from their Institute. Both were absolutely clear that they could not compromise their professional integrity.

We have struggled with why this has been such an issue. At the theoretical commencement of a long and collaborative relationship between the Club Board and TJF, we do not understand why they would not want to provide this ‘light touch’ assurance.

When the acquisition of the shares from David Beattie et al was done by Colin Weir, Jacqui Low had been on the Board for most of the preceding years until very recently, and so would have considerable and very recent insight into the club’s finances and related business fundamentals. This is an insight we have not been afforded. In such circumstances it would be understandable for due diligence not to be done by the acquirers. However, we are aware that Jacqui Low (with Peter Shand on copy) enquired of her professional advisors in September 2019 as to what due diligence needed done, specifically citing ‘finances etc’.

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<sup>1</sup> An earlier version of this document mis transcribed this as Monday 27<sup>th</sup> July. This was corrected on Sunday 14<sup>th</sup> August.

## 8. The Foundation as a “fit and proper” share recipient

### 8.1 3BC’s statement of 9<sup>th</sup> April 2022

On 9<sup>th</sup> April, when announcing that it would be breaking off co-operation with the original TJF board, Three Black Cats stated:

*“Whilst many good people have given their time and efforts, TJF appears to have gotten sidetracked from making the case to 3BC as to their suitability for accepting the shares. Nothing we have seen to date persuades us they have made progress towards passing the “fit and proper” test to receive the shares. Nor have they have shared their vision for their involvement in the future of the club.*

*We believe that to hand over the shares to TJF could be to the detriment of the club, its stability and potentially jeopardise its future. That was not Colin’s intention in making this gift.”*

We felt that the tone of this statement, and what it implied about the individuals then on the TJF Board, was extremely uncharitable, and those of us who signed the Open Letter said so at the time. However, in our early (and informal) exchanges with Peter Shand, we sought more fully to understand what underpinned those remarks, and also examined 3BC’s correspondence with the former board, which the outgoing board helpfully provided us.

As far as we could gather, the concerns raised about the “fit and proper” criteria were to do with the governance position of The Jags Foundation, and a lack of certainty about those involved. On governance, the Foundation had been formed as a company limited by guarantee, but had used Model Articles of Association on incorporation and had not yet developed these to reflect properly its status as a members organisation.

On personnel, the original board had grown out of the Working Group, and the rules for election of TJF directors had not been properly reflected in the Articles of Association. There was also informal attendance at Board meetings by individuals who were not formally directors, and whose specific roles were not entirely clear.

### 8.2 What we did to address this

We thought 3BC had a point about the governance issues, albeit they had expressed themselves in an unduly antagonistic way. In fairness to the previous TJF Board, they had been working on a set of tailored Articles of Association, and were seeking to hold an EGM in the summer to give effect to them. They also carried out a set of elections ahead of schedule and in extraordinary circumstances.

As a priority, we updated the draft Articles of Association and then, given their importance, we commissioned Morton Fraser, our legal representatives, to carry out a swift review of the draft Articles of Association the previous board had prepared. Discussions with them then informed the preparation of a new draft, which was then approved by TJF's Board and circulated with other documents to 3BC on Thursday 16<sup>th</sup> June for review and comment.

We also included, in our "who's who" document provided to 3BC, a statement explaining our understanding of the SFA's "fit and proper person" test. We set out clearly exactly who is involved with TJF, and that we believed none of the disqualifying criteria set out in the SFA rules applied to any of the nine of us. At no point did 3BC dispute our position on that, nor did they ask for any further clarifying information.

### 8.3 Why did we share our draft Articles of Association with 3BC?

Ultimately, the rules of the Foundation are a matter for the Foundation. But we knew that, for any share transfer to happen, 3BC would need to be satisfied as to the corporate governance of the fan-ownership vehicle. We therefore wanted to make sure that their views about our rules, and in particular protections relating to our potential shareholding, would be taken into account.

### 8.4 Safeguards against future sale of the majority shareholding

One particular area of interest was whether our Articles would restrict the ability of the TJF Board to sell all or part of the majority shareholding in PTFC. We had proposed in our draft Articles that any such disposal would require a "special resolution" of the company. In layman's terms, this means that, at a general meeting of the Foundation, 75% of those voting would have to support a disposal. The threshold would therefore be the same as for any decision to amend our Articles of Association.

3BC's representatives raised concerns at the meeting of Monday 20<sup>th</sup> June. They said that this provision would potentially leave the future of the club being determined by a very small number of people (noting that fewer than 400 people had voted in the TJF elections in May). They emphasised that one of the reasons Colin Weir had sought to buy the Club was to stop it falling into overseas third-party ownership, by those with no prior or long-term connection to the Club. We were asked to consider ways to strengthen the safeguards that would be in our Articles.

### 8.5 How did we develop our proposals?

We gave this some careful thought, and consulted with Morton Fraser at some length about how we could provide a stronger assurance to 3BC. The solution we came up with was to widen the group of people who would have the right to vote on a decision to sell or otherwise dispose of the majority shareholding. We would

confer what are known as “third party rights” on all season ticket-holders of the Club. Such an arrangement would instantly ensure that more than three times as many fans would get a say in the highly unlikely event that a future TJF Board sought to dispose of TJF’s shares.

This solution, we acknowledged, would require some cooperation from the Club. However, our legal advice was that this was relatively straightforward to do, provided the Club would co-operate with us in facilitating such a ballot if it ever needed to happen. We would observe that the PTFC Trust, for example, currently relies on the football club administering its Supporters Trustee elections, because of GDPR requirements in relation to personal data of season ticket holders.

## 8.6 3BC’s response

On seeing this proposal, 3BC’s representatives suggested that it would present “practical challenges” but would not set out what it believed those were, despite us requesting this detail. Nor, indeed, did Peter Shand or Jacqui Low offer, at any point, suggestions about how these perceived and undisclosed challenges could be overcome. Nor did they set out any proposed alternative arrangements to address what was, after all, *their concern* that a special resolution was an inadequate safeguard. We did request that they did so given they had deemed our two proposals insufficient.

## 8.7 Finalising our Articles of Association

Under our current Articles of Association, we cannot implement new Articles of Association except by way of a special resolution of the Foundation. This effectively means we need to give our members proper notice of an EGM, a process which can take some time and logistical challenges (e.g. securing a suitable venue and availability of volunteers). By late July, we could not put off the changes to our rules any longer, and decided to schedule an EGM for early September. This gave 3BC time to make further comment on our Articles prior to any EGM, and we gave them time to do so. They did not do so.

We advised 3BC that, if they wanted further changes to our Articles after that date, they could still be made at a subsequent EGM and we would be happy to consider them. To date, no further feedback has been received from them on the Articles.

# 9. The Foundation as a fund-raising vehicle

## 9.1 How are privately-owned football clubs funded?

When football clubs are privately owned, there are a range of ways that they try to raise money. Some of these are from core business activities, like sponsorship, prize money, player sales, tickets and merchandising income.

In practice, however, football clubs are often partly funded by either or both their shareholders and directors. There are at least three relatively recent examples of this happening at Thistle:

1. PTFC directors have, in the past, had to make an annual financial contribution to the club. We understand this, at various points, to have been a five-figure sum for each director.
2. Clubs sometimes enter into commercial arrangements with their directors and their business associates. In 2009, part of Firhill Stadium was sold to Firhill Developments Limited (“PropCo”) as the “quid pro quo” for a near £1 million cash injection into the club, which significantly cut its bank debt and debt interest payments.
3. When Colin Weir cleared Thistle’s bank debt in 2015, the Club issued new share capital to his family and the PTFC Trust as part of that arrangement.

Football clubs rarely make money for the people who own them, or the directors who run them, unless they are also providing commercial services to the Club at a profit.

## 9.2 How are fan-owned football clubs funded?

Majority fan-owned clubs are, in many respects, the same as privately owned football clubs. They are still funded from their core business activities and from interventions by shareholders and directors. The difference is that one of those shareholders is a large group of fans, and they engage in fundraising activity rather than bring in capital from other commercial ventures.

[In a Q&A published by Partick Thistle on its website in December 2019](#), presumably with 3BC’s blessing, it drew attention to the role that The Well Society had played at Motherwell:

*“The Well Society has achieved so much in three years using a simple but effective structure, with clearly defined roles and responsibilities for all involved. Having raised almost £800,000 for their club over that period, it shows the possibilities of fan ownership at its best so there’s a lot we can learn from Motherwell, good and bad. But there will also be an opportunity to hear about projects that have gone wrong so that we can avoid a similar situation...”*

*[Following fan ownership the Club will be funded] exactly as it is now and has always been, by being self-funded via various income streams, which are being strengthened to increase monies into the Club. In addition, money from fans pledging money to the new fan ownership group will come in to play as fans decide how to spend it.”*



Motherwell is not the only example of a fan-ownership vehicle raising funds for a football club. Exactly the same thing happens at St Mirren, Hearts, Morton and clubs in England too. While the purposes for which funds are to be raised and spent may differ from club-to-club, fan ownership represents an opportunity to mobilise the fan base, and to diversify the revenue streams of a football club. It doesn't really matter if the money is being raised to subscribe for shares, to pay off a debt, to fill a budget shortfall or to supplement a balanced budget: no matter what, it leaves the club better off than it otherwise would have been.

Often, sceptics of fan ownership say that it cannot be made to work because, in a particular club's situation, the fan ownership vehicle is not big enough, and does not raise enough revenue to support the club's needs. In recent months, for example, Grant Bannerman (a former major shareholder and director of PTFC) expressed this concern. His mantra was simple: where is the money coming from to meet the Club's liabilities while keeping a competitive team on the park? **The answer to his question is, as we shall explain, that we are being told by 3BC such monies are simply not required.**

### 9.3 What was the Foundation's vision for fan-ownership and fundraising?

Given that Motherwell was specifically mentioned as an example by Colin Weir and his representatives, we assumed that the Foundation would and should be a fundraising vehicle for Partick Thistle. When we took over in May, the Foundation had pledges from members that would raise about £60kpa, having only just started to accept membership applications in late October 2021. For the record, that has since increased to about £70kpa, thanks to new members joining in June and July.

We hoped to grow the membership base with our engagement strategy, and to expand other fundraising activity so that (in the long run) we could commit six-figure sums to support the club's budget each year. As we put it in our original vision document to 3BC on Thursday 16<sup>th</sup> June 2022:

*"Fan ownership should not involve a compromise for Thistle's ambitions on the park. TJF's vision is to see Thistle back in Scotland's top-flight, and being run sustainably at that level. That means ramping up fundraising so that the club is supported financially no less well than comparable clubs in private ownership."*

At no point did we suggest that the Foundation Board or members should decide the Club's budget. We have always understood that as a responsibility of the Club Board.

### 9.4 What was 3BC's reaction to this?

At the meeting of Monday 20<sup>th</sup> June 2022 it was made explicit by the 3BC directors to our Negotiating sub-team, contrary to the previous statements made on the Club website, that there was no expectation, will or desire on 3BC's part for the Foundation to provide financial support to the football club. As far as 3BC was

concerned, the Club is a self-sustaining business and it is the responsibility of the Club Board to balance the books.

3BC seemed particularly sensitive to the suggestion that the Club “needed” a fan ownership vehicle to raise funds to meet its long-term ambitions, or that fundraising needed to be “ramped up” by the Foundation. The very notion seemed to be interpreted as a slight on the way that the Club Board (appointed by 3BC) had run the Club in recent years.

#### 9.5 What was TJF’s view about this?

Privately, we thought the 3BC position was utterly absurd. Those at the meeting expressed genuine exasperation: our members just want to support their club financially so it has a competitive advantage over its opponents. Whether or not the Club “needs” this funding, the point was we were trying to mobilise it. What kind of business tells its most loyal customers that it doesn’t want their money?

Just like other clubs, the Covid-19 pandemic hit Thistle hard. We have good reason to believe that 3BC intervened to support the Club financially during that period, and in very substantial ways. If we are right about that, frankly thank goodness, because the Club would be in a lot more difficulty without that support. But from the Club’s own published accounts, it is impossible to isolate and quantify the extent of that support, or to understand how transient the need for it was.

If we are right about that, it is also important for any fan ownership vehicle to understand:

- (a) whether 3BC intends to provide financial support to the club after the share transfer
- (b) to what extent the Club would need to fill any shortfall to sustain its existing expenditure
- (c) what is therefore expected of the fan-ownership vehicle and others to ensure that happens

#### 9.6 How did we adapt our position?

Despite our reservations about this, we recognised this was clearly a sensitive issue for 3BC, and that it indicated a much more financially passive role for any fan-ownership vehicle at Thistle. In the interests of moving discussions onto other aspects of the fan ownership model, we said in our updated document given to 3BC on Friday 24<sup>th</sup> June:

*“We discussed our vision document at the meeting, and there was one line which we agree will be removed (involving ramping up fundraising)... A significant portion of the document covers engagement and how we are going to do that. We now completely realise that you on no way see nor expect TJF to be a fundraising vehicle for the Club, and we understand this. This has been helpful as it informs our future membership growth strategy.”*

## 9.7 Communications with fans

Now that we have set this out, we hope that fans will understand why we have been unable, in substance, to address a lot of the concerns some of you have about whether fan-ownership is financially viable. We were “negotiating” with two 3BC directors who were telling us that our role was not to fundraise for the club, and whose stated position is that the club doesn’t need financial support from its majority shareholder, either now or in the future.

In that situation, it is very difficult to set quantifiable goals or objectives for fans with regard to recruitment and fundraising. A lot of people will rightly ask what’s the point of joining the fan ownership vehicle if it’s not going to make any difference at all to the club’s financial position? What’s the urgency? What are my subs doing?

We saw this as an opportunity, of sorts, to reduce the barriers to joining the Foundation, and had planned to cut the minimum membership fee. This was not able to be put in place, however, before 3BC informed us the Foundation would not be receiving the shares. We intend to make an announcement about this in the coming days, in light of recent developments.

## 9.8 Why do we think 3BC does not want the fan vehicle to fundraise for the club?

We suspect, though we would put it no more strongly at this point, that 3BC’s apparent change of position on fan-fundraising since December 2019 is about control and influence. If the majority shareholder is expected to make major contributions to the club’s finances, it might then more reasonably expect some degree of oversight and say about how that extra money is spent.

In both the face-to-face meeting and subsequent email correspondence, 3BC pushed back on any suggestion that TJF’s own Board would have the opportunity to scrutinise or veto the Club Board’s proposed annual budget before it was put into place.

We did not request any such budget veto for TJF, but we did point out to 3BC that the Club-Trust agreements at clubs like Exeter and St Mirren explicitly contemplate an oversight role of finances for the fan ownership vehicle.

## 10. Other parties expressing an interest

The Three Black Cats’ update on the Club website of Monday 23<sup>rd</sup> May 2022 said that:

*“By way of an update, since 9th April we have had one note of interest but nothing more. As retaining the shares is not a long-term option for 3BC, we*

*look forward to hearing substantive proposals from any interested fan representative parties without any further delay.”*

This statement was made before our election to the TJF Board (later that week). For the avoidance of doubt, we do not know who the other party was, at that point, to have expressed an interest in acquiring the majority shareholding.

We were advised by Three Black Cats on 12<sup>th</sup> July 2022 that a third proposal had been put to it, and that it was considering all three proposals and had not ruled any of them in or out.

This was a source of real frustration for us. The Foundation and its board members have transparently put themselves in the public domain, made themselves answerable to all Thistle fans, not just existing members, and has a mobilised membership significantly larger than other Thistle-fan-representing organisations.

We also believe we were the only entity fulfilling the engagement requirement initially made of the Working Group. Indeed, at the meeting of Monday 20<sup>th</sup> June, Jacqui Low when asked what she wanted most from TJF, replied ‘engagement’. It seemed counter-intuitive for 3BC then to launch discussions with other groups who had clearly done no visible or meaningful fan engagement whatsoever.

Having previously secured agreement with 3BC that we would be able to update our members on Saturday 16<sup>th</sup> July, we prepared a statement which would have disclosed the existence of the third proposal. We intended to call on both other groups expressing an interest to make themselves and their intentions known to the Thistle support in an open and transparent way in the same way as we have. We were, and remain, confident that we perform objectively better on fan engagement and suitability, and felt that a level playing field would demonstrate that.

We gave 3BC prior sight of this draft statement. We received an email response suggesting that this was disclosed in confidence and it would be “unprofessional” to negotiate in that manner in the public domain. Peter Shand stated:

*“I hear your point here, but please make it to me and Jacqui directly, rather than negotiate it in public.”*

We agreed to remove the relevant words from the statement and instead immediately aired this concern privately with 3BC’s directors as Peter Shand had requested. They provided us with no response. That is why we disclose this now.

It is also unclear how any anonymous group can meet the criteria originally set for The Working Group as published on the club website, which stated :

*“The two primary goals of this group will be to:*

*1. produce a model of fan ownership that will be implemented following the gifting of shares, after receiving approval from 3BC*

*2. to engage with and involve fans of Partick Thistle Football Club in the process of creating the aforementioned model.”*

## 11. Timetables

This process has already dragged on for some time. It is almost 3 years since Colin Weir acquired the Club, and 2.5 years on from the original preferred timeframe for transitioning to fan ownership (March 2020). The key initial reasons for delay were entirely understandable (Colin’s untimely passing and then the Covid pandemic).

Mindful of the complexity of a proper transaction to acquire the shareholding of a multi-million-pound turnover company, and the other legal and financial matters we felt needed to be addressed. We had sought – in our initial draft Head of Terms – there to be an agreement whereby we would be given exclusivity until mid-September to thrash out a deal ready to be put to our members.

We felt a 3.5 month timeline for the new Board would be realistic and achievable with goodwill from all involved, and would ensure everything was done right.

3BC made clear to us that their preference was for everything wrapped up by the end of July, before the league season was properly underway. We had reservations about this accelerated timeline, but said that we would do what we could to meet it.

We were mindful, for example, that part of the negotiations would unavoidably involve changes to our own Articles of Association, and that we needed to get agreement on any negotiated terms and then to put them to our membership for approval. These are unavoidable legal constraints on any transaction with a proper members organisation.

After meeting every single deadline that was discussed and agreed, with a view to meeting 3BC’s desired timeline, we repeatedly encountered delays and non-responses on things to which we had requested substantive answers.

When we pointed out, in mid-July, that if they were still considering multiple proposals it was unrealistic to meet their publicly stated preferred deadline, and that we felt mucked about by this shifting of goalposts, Peter Shand freely admitted that their publicly stated preferred timeline was designed as a means of soliciting contributions from us. He advised that 3BC would in reality decide on whether to identify a preferred recipient on their own, undisclosed, timetable.

## 11.1 The final meeting

The lack of respect for the time and commitments of us as volunteers was particularly acute in the last three weeks, but sums up what we feel was the profound insincerity with which 3BC engaged with us.

Peter Shand made himself unavailable for contact in the final week of July (the very week by which they originally said they wanted matters substantially resolved). He delegated the plans for a meeting on 2nd August to his secretary, then cancelled that meeting at less than half a day's notice (also by indirect email) citing an appointment which had not been put in his diary. All TJF Negotiating Team members had had to change their plans, including one to arrange childcare, to be available. We specifically asked for confirmation the date was still available and were told it was.

Despite being given a week's notice, and being chased for it several times, 3BC failed to produce an agenda and venue for the rescheduled meeting until yesterday morning, and the agenda consisted of nine words: "Update from TJF; Update from 3BC; The way forward". We were slightly surprised to have been asked for an update ourselves, because of the implied nature of the meeting from previous correspondence (we had expected to be "in listening mode"). Nonetheless we produced a comprehensive written update ahead of that meeting.

In the meeting it was immediately apparent that there was no intention to stick to this "agenda" such as it was.

3BC claimed that, at that point of issuing the agenda, they had not yet made a decision about whether to dismiss us from the process. You can make your own mind-up about how credible a claim that is.

It will not surprise you to learn that the four of our Negotiating Team found the conduct of the meeting to be completely unacceptable and unprofessional in the extreme. The final nail in the coffin was when our Chair, Sandy Fyfe, was making some sensible observations on what "good" might look like to a visibly disinterested Peter Shand. Sandy simply stopped and said "you're not interested, are you?". There were some half-hearted protestations but at this point Andrew Holloway suggested to his fellow board members that it was time to call it a day.

## 12. Conclusion

We have tried our very best during a highly frustrating process to bring back a deal to the members so you get to decide whether it met the vision of fan ownership you wanted. We will now shortly consult with our members about the future of TJF. Your board will remain active in the meantime with matters related to this.

Finally, as a democratically elected board of a large portion of the support, we remain happy to listen and enter dialogue with the preferred bidder at any time if they feel the pursuit of unity would be welcome.