

# Statement regarding the “preferred recipient” announcement

The Elected Jags Foundation Board – Thursday 18<sup>th</sup> August 2022

The Jags Foundation Board has read with interest the announcement concerning Three Black Cats’ (3BC) preferred recipient for the 55% majority shareholding at Partick Thistle.

## Summary

It is our considered view that what is proposed does not amount, in any meaningful way, to fan ownership. We have serious concerns about the process by which PTFC Trust was arrived at as the “preferred recipient” and about the substance of what is to be put in place.

Whilst our board were standing for democratic election, open to scrutiny and rejection, others were plotting in the shadows, secretly.

We believe that the share transfer should not go ahead unless and until the wider Thistle support has the opportunity to make and express a judgment as to the desirability of what is purporting to be done in their name. We urge all minority shareholders at Partick Thistle to communicate this concern to the Club Board, and to insist on that wider consultation first.

## Observations about the proposed share transfer

In arriving at this position, we have a number of observations to make:

### 1. Why this vehicle and why now?

If PTFC Trust is the most suitable vehicle for the shares, we would question why the Working Group was set up at all back in November 2019. If it was a body capable of fulfilling Colin Weir’s stated wishes at the time, it would have saved a lot of good people wasted time and energy to have identified it as such and to have asked people to work with it instead.

There are now three sets of dedicated fans who have been cast aside in this process: Thistle For Ever, the original TJF Board, and the elected TJF Board. Good people, committing their time on the basis of what, frankly, appears now to have been a bait-and-switch process set out by 3BC.

### 2. Engagement and institutional support

The PTFC Trust has no credible track record of engaging with the Thistle support, in contrast to TJF. Its social media presence, for example (prior to yesterday’s “reboot”) was completely dormant for over 2.5 years. Before that, its engagement with fans was unconvincing, confined to occasional statements about the 2019 take-over bids.

It is very interesting that the Club is now proactively promoting PTFC Trust to the fans, when the same courtesy was not afforded to the original TJF board, even after the October 2021 agreement was reached to transfer shares by June 2022. This “preferred recipient” is already being treated more favourably than the one the fans themselves built.

One of the last Tweets made by PTFC Trust was one where the trustees “promised” to:

*“consult with beneficiaries and the wider support to ensure that, given the Club will ultimately be owned by supporters, they have a role in what it will look like. We will work with supporters of other clubs, both in Scotland and beyond, who currently own their clubs to share best practice.”*

Although these are all things which TJF has done, it is unclear how much of this has, in fact, been done by PTFC Trust.

### 3. Democratic accountability

The PTFC Trust’s history is not that of a members organisation, but a trust that holds shares on behalf of a largely passive group of narrowly-defined beneficiaries. It does not give the fans a meaningful say over its rules, and how it is run. Those have been handed down from above.

It remains unclear what, if any, power fans will have to change the rules of this organisation or to elect its custodians. The new set of rules and more permissive participatory criteria still, we are told, do not yet include Thistle fans who are not season ticket-holders. Surely this basic aspect of participation should already be clear for an engaged organisation?

We would also observe that 3BC specifically told TJF that a mechanism to engage season ticket holders would pose practical challenges (we assume in relation to GDPR). Yet now the Club appears willing to make its entire season ticket database available to the PTFC Trust, which could not otherwise communicate with those season-ticket holders.

The PTFC Trust, as an organisation, has a poor record in terms of democratic accountability. Since its creation in 2015, it has held only one set of elections (in 2018). None of its current trustees, or those who were in place until very recently, are or were elected by fans. Its rules have been changed repeatedly, arbitrarily, and without consulting beneficiaries, to alter its trusteeship composition.

Democratic accountability is about more than just what you promise your rules will be: it’s also about embedding and showing a track record of accountability to members.

#### 4. Fan representation

One fundamental feature of fan ownership at every other fan owned Club is that there is a guaranteed minimum representation of Club Board directors, nominated by the fan ownership vehicle.

As far as we can gather from Alan Rough's comments on a radio show, there will be zero PTFC Trust reps on the Club Board, despite it owning almost 75% of the Club, and there being a further 7.5% of "fan ownership shares" held by the Jags Trust.

We would like to know whether PTFC Trust requested representation on the Club Board. If not why not? If it was asked for, why wasn't it granted? The industry standard is for this to form part of a fan-owned working arrangement.

TJF tried to deliver for the fans something which would improve their position over and above that which presently exists in private ownership. We are unclear what the deal which the PTFC Trust reached does for fans, other than enable them to hold shares in a fairly meaningless fashion.

#### 5. Recent changes in trustees

The PTFC Trust's recent record of engagement appears to us to leave a lot to be desired. For example, we know it has been three months since its (now former) PTFC Trust Chair Gordon Shaw intimated his resignation, and yet the fans have only just (indirectly) found out about this as part of their statement this week (he is not even acknowledged or mentioned).

For the record, we at TJF believe Gordon acted entirely honourably throughout this process. He is a man of integrity and has our utmost respect and high regard.

#### 6. An uncommunicated change of position

We have seen evidence that there was an agreement in principle, reached in January 2022, between TJF and PTFC Trust. The intended direction of travel was for PTFC Trust to identify a suitable window and legal and tax-efficient mechanism for transferring its shares to TJF, subject to the agreement of its beneficiaries.

We would like to understand at exactly what point in the process PTFC Trust decided that it, instead, wished to become the shareholding vehicle, and why it did not tell its beneficiaries, TJF, or the fans generally, about this. The trustees, after all, have fiduciary duties under trust law to act in the best interests of the beneficiaries.

#### 7. Financial impact

The PTFC Trust's proposal includes no declared revenue raising component. 3BC has (it is widely understood) provided significant financial assistance to Thistle in recent

seasons, which we cannot expect to be replicated going forward. What specific assurances have they received that this source of funding has been substituted?

The PTFC Trust “membership” model is one whereby there is no positive choice to join, and no independent financial commitment. This drastically restricts its ability to fundraise, even to sustain its own activities (if indeed it has any).

TJF’s revenue-raising strategy already would have provided around £70kpa to the Club, with a view to growing that into regular substantial six-figure sums. Did the Club Board independently assess the full implications of 3BC rejecting this new source of funding?

8. Disparity in treatment of respective proposals

The aforementioned concern is compounded when we bear in mind that the previous PTFC Trust included, among its trustees, the Club’s Chief Executive Officer (Gerry Britton) and two Club Directors (Andrew Byron and Alan Caldwell). By virtue of those positions, they will have had access to information, particularly legal and financial information, about the Club that we, simply put, did not.

This would include precisely the information we were prevented from accessing as part of a co-operative due diligence or financial disclosure exercise. Had there been a level playing field, we feel that we could have developed proposals that would have more closely met 3BC’s, still undisclosed, expectations.

9. Fit and proper test

When rejecting the original TJF board in April, 3BC emphasised that they must be satisfied that the person(s) who inherit the shares of the club are “fit and proper”. It was noted that there is a need to certify to the SFA that an investigation has been conducted into the provenance of those person(s).

We have some concerns, given recent public observations made by several female members of our fanbase, about whether such an investigation has in fact been adequately carried out in relation to the PTFC Trust “bid”. We would also point out that TJF board members have offered ourselves up to public and democratic scrutiny in a way that PTFC Trust trustees demonstrably have not. This is not the strongest of footings on which to begin a new journey of this kind.

The fit and proper test is also an institutional one. We would note that the PTFC Trust, as constituted until now, has not lived up to the standards of a well-governed, transparent and accountable entity. The reasons given for dismissing the original TJF Board apply at least to the same extent to the PTFC Trust.

## 10. Governance questions

On a related note, we have a series of governance questions, to which the fans urgently deserve an answer. We are not alone in raising these questions. Supporters Direct and other fans have already raised these since the announcement. And it should be noted, more than half of our members are, as we understand it, beneficiaries under the new definition, and so they would, we presume, have a right under trust law to information of this kind about the PTFC Trust.

- (a) Is the PTFC Trust still a trust, or is it now, or intended to become, a different type of legal entity?
- (b) On what dates, exactly, did the five outgoing trustees (i) intimate their intention to resign and/or (ii) were removed as trustees? Were any of them involved in exploring or preparing an “offer” for the shares and do any of them have a continuing role in the PTFC Trust’s operations?
- (c) On what dates, exactly, did the new trustees become involved with the PTFC Trust bid? At whose behest were they appointed?
- (d) If the PTFC Trust is still a trust, when and where will it publish its up-to-date trust deed, complete with variations?
- (e) What consultation did the trustees carry out with the beneficiaries before (i) redefining the qualifying criteria (ii) appointing five new trustees?
- (f) Was anyone else involved in preparing the PTFC Trust proposals that were presented to 3BC, other than the trustees? We have reason to believe that others were involved, but this involvement has not been publicly or transparently disclosed. Alan Rough has publicly stated that there were eight individuals who met with the Club Board. But there are only six trustees. So who, exactly, has been involved in this, and in what capacity?
- (g) Will the PTFC Trust hold elections for the appointment of trustees? If so, when will these happen, how frequently, and what proportion of the group of trustees will be elected by the fans? Will there be any appointees made by the Club Board, as was the case before?
- (h) How does the PTFC Trust propose to communicate with its newly redefined class of beneficiaries, given that the data controller for GDPR purposes of the season-ticket database is the Club and not the Trust?
- (i) The PTFC Trust, as previously constituted, was not a revenue-raising vehicle. Its only assets were the 19% shareholding it had in PTFC. It seems clear from their statement and the radical overhauling of their organisations that the trustees took legal advice on the implications of taking on the 55% shareholding. Who commissioned it and who paid for it?

- (j) Will PTFC Trust consult its beneficiaries by ballot before accepting the share transfer?

“The way forward”

If PTFC Trust is serious about delivering a fan-centric ownership model of Partick Thistle, the first thing we hope it will do is to engage with the existing grassroots Thistle membership organisations, of which we remain the largest. More than 750 fans backed our approach, and became members of our organisation on an explicitly opt-in basis. There is simply no comparison to be made with an organisation which has not had to “recruit” a single one of its “members”.

Each and every one of those fans deserves to be listened to in this process. We are listening to them, and as a board will take our collective steer from what they tell us at our General Meeting on Thursday 1<sup>st</sup> September.

If – following proper consultation and engagement with the wider fanbase – it becomes clear that this transfer is in fact what Thistle supporters want, and it is shown to be an objectively good deal for the Club, we stand ready to work with PTFC Trust to help Partick Thistle succeed on and off the park. As Thistle fans, that is all that we ultimately want out of this process. If it is not, however, we stand ready to provide the fan ownership option that Jags supporters were promised almost three years ago.