

# TJF Board Statement on the Investment Process

Wednesday 18<sup>th</sup> October 2023

There has been a lot of comment, in recent days, about the new investment in Partick Thistle. The fans undoubtedly recognise that such a significant investment, of £500k, has important and positive impacts for the Football Club.

Equally, however, there has been a lot of criticism about the lack of fan consultation in relation to approval of the investment proposal. After all, this deal does involve a dilution of the existing shareholdings, including the PTFC Trust's from 74% to 68% and The Jags Trust from about 7.5% to slightly under 7%.

The Jags Foundation board completely accepts that there should have been fan consultation before this transaction took place. Consultation (in the future in the form of a democratic vote of all PTFC Trust beneficiaries) is absolutely vital at a fan-owned Club where there would be a material impact on the majority shareholding. The fact that there wasn't on this occasion is a failure, and one that will not be repeated at Partick Thistle.

We apologise wholeheartedly to members that, on this occasion, we were unable to positively influence securing fan consultation.

However, we do think there is important context, in mitigation for TJF's role in the process, which you deserve to know about. This has been a learning experience, but it has also illustrated a clear way forward, to ensure that the same mistakes are not repeated, if and when further investment proposals are made to the Football Club.

## Background

Partick Thistle Football Club finished season 2022-23 with severe cashflow challenges. The problem wasn't just that the Club was losing significant amounts of money. It was that it was at risk of running out of cash completely, and not being able to meet its day-to-day obligations.

TJF attempted to pull together a consortium of Thistle-minded investors in early 2023, to raise in excess of £500k, and to rebuild the Club's so-called "margin of safety". We sought to develop a model that wouldn't involve any dilution of voting share capital, and which would involve more favourable "repayment" terms than a debt-based arrangement.

Ultimately this wasn't successful for a number of reasons, and the Club Board, having looked elsewhere for financial assistance, eventually addressed the concerns by way of temporary soft loans from various Club Board Directors. Shortly afterwards, TJF made a £50k donation to the Club and committed to install its "pledge" of £10kpm for the foreseeable future.

## The unresolved cashflow problem

Whilst those interventions, respectively, took the Club to the end of the 2022-23 season and reduced the budget cuts necessary for the 2023-24 season, the underlying cashflow challenge still had not been addressed. Even on a “break-even” budget, the Club was at risk of running out of money in the 2023-24 season.

TJF highlighted this risk back in June when we called on our fellow supporters to help “Save the Jags” once again. We indicated that the solution would require *at least* £500k of new capital into the Club, within a relatively short period of time. It was inevitable that *the first round* of any investment would need to be done fairly quickly, whatever its terms.

This had been compounded by the fact that the temporary loans provided by Alistair Creevy and other Board members, made prior to the end of last season, have been repaid in full. It has further been compounded by the fact that, as Alistair Creevy has disclosed, the Club Board oversaw an increase compared to what was originally proposed in the football budget for the season. This meant that the Club’s budget for this year became a larger forecast deficit than originally proposed. This enabled the Club to hold-onto key players and to bring in several important replacements for those who moved on.

All of this increased both the need for investment and accelerated the timing of that requirement.

## Who led on the investment process?

The revamped Club Board took the lead on engaging with potential investors in the close-season, and at various different points, different expressions of interest and introductions were made. This was not something the TJF board, or indeed the PTFC Trust trustees, were directly involved in. We were not involved in any negotiations until, as we indicate below, we raised concerns about the legal documents put to the PTFC Trust for approval.

## Other investment opportunities?

You will have seen that Alistair Creevy has referred publicly to other potential offers of investment into the Football Club. It is our understanding that no formal offer was ever presented to the Club Board by the individual introduced by Mr Creevy. We also understand that the other members of the Club Board did in fact set out their views to Alistair Creevy about why they did not wish to progress any further with the individual concerned.

However, we accept that the Club Board has cogent reasons for not putting the detail of exploratory investment discussions in the public domain. To do so could, frankly, breach established relationships of confidence and deter future investors from engaging at all. This could deprive the Club of important, well-negotiated, opportunities in the future.

## Approval of the Investment Deal

The PTFC Trust trustees, of which TJF is one of four, were only formally shown the final draft Investment Agreement (and related documents) on the evening of 11th September with an expectation we should sign on 13th September. Before seeing the documents we had been aware, in high level terms, of the basic structure of the deal. But we had not been told a lot of its more important finer details.

The deal that had been negotiated and presented to us was:

1. Subject to certain confidentiality clauses
2. Substantially agreed between the Club Board and investors
3. In need of urgent completion

The third of these points was impressed upon the trustees very strongly: that there was no clear contingency plan if this investment could not be delivered.

To be completely frank, there were direct exchanges, both between the trustees and Club Board members, and between the trustees themselves. The Directors of the Football Club have a fiduciary duty to 'keep the lights on' and so their primary focus was to deliver the investment. As they have acknowledged in their statement last week, they did not consult the Trustees early enough in the process. The counter argument being advanced was of course that the fans would not thank us for letting the Club running out of cash.

## How TJF responded to the draft deal

Despite this, TJF impressed upon all involved four specific concerns:

1. That the majority shareholder had been consulted far too late in the process, and inadequately
2. That the confidentiality clauses were extremely restrictive, and would negatively impact our ability to communicate the terms of the deal to the fans, even after its completion
3. That the proposed protections of the majority fan-owned shareholding were not strong enough, and left the fans vulnerable to losing their controlling interest in the Club.
4. That the defects in the process had exposed the shortcomings of relying on the Memorandum of Understanding, rather than a fully-developed set of Working Together Protocols between the Club and the PTFC Trust.

At that stage, we made clear that we were unwilling to sign-off on the deal (in our capacity as a trustee) unless the majority fan-ownership protections were strengthened, and we were given sufficient freedom to communicate the essential gist of the deal to our members and the wider fanbase.

It is worth noting, at this stage, that TJF is only one of four trustees. Even if we had voted against the deal, it could still have progressed (and we believe it probably would have). This

is one of the inherent tensions that exists because our fan ownership model is not yet fully implemented.

### The commitments we secured

However, when given the opportunity to make representations directly to the principal investor, we were in fact able to secure important safeguards that were not in the original deal.

#### Commitment 1 – the 51% rule

It was because of our intervention that both the Investment Agreement and the Club's new Articles of Association impose a "floor" of 51% beneath which the PTFC Trust's shareholding cannot fall.

In the spirit of full disclosure, the investor was also in favour of a 51% protection. However, the original documents had proposed that only the **combined** shareholding of the PTFC Trust and The Jags Trust be protected at that 51% level.

Our concern was that this could allow the PTFC Trust itself to become a minority shareholder in the event of further rounds of dilution. We wanted to avoid this outcome as it would have (in our view) represented a fundamental change to the fan ownership model. Donald understood these concerns and was willing to strengthen the PTFC Trust's protection when asked.

It should be noted that, prior to the Investment Agreement, no such protection of the majority shareholding existed at all in the Club Articles. This is a long-term protection for fan ownership.

#### Commitment 2 – future fan consultation

We also secured important commitments in principle (from both Donald McClymont and the Club Board) that no future dilution of share capital (including under phase 2 of this Investment Agreement) would be made without **prior** consultation with the fans. This will include a vote of the PTFC Trust beneficiaries.

#### Commitment 3 – enforceability

Thirdly, we have secured a commitment that the Memorandum of Understanding will be urgently reviewed, and replaced with a legally binding set of Working Together Protocols. This will give effect to the fan consultation protections for future rounds of investment impacting the majority shareholding. This work is now underway between the Trustees and the Club Board.

The future consultation model that we will propose is a four-stage process.

The first stage is the signing of an exclusive Letter of Intent. This is when the Club Board and Investor agree to a protected negotiations period, based on a formal investment offer.

The second stage will directly involve the fans. This will take the form of an information-sharing exercise with the fans about the proposal, followed by a vote of the PTFC Trust beneficiaries.

Provided that the beneficiary vote is in favour of an investment deal proceeding, the Club Board and the investors would then move to the third stage. This would involve the negotiation of a definitive investment agreement (i.e. the final legal document).

Any investor is likely to want rapid completion of any deal following stage three. However, there will be an important further safeguard at the final stage.

The trustees will be asked, at stage four, to assess the final documents to ensure that they are materially similar to the terms set out in the original Letter of Intent (and approved by the fans). If there are material differences, the trustees would revert to the beneficiaries for fresh approval on those terms.

#### Commitment 4 – transparency

Fourthly, TJF secured the right to explain this deal to you, a carve-out that the Club Board had not secured when the deal was first put to us. In the future, communication will be governed by the process we outline above.

#### What does the deal mean for the majority shareholding?

The deal that was put in place has diluted the shareholding of each of the pre-existing PTFC Ltd shareholders. The PTFC Trust's 74% shareholding is now 68%.

TJF and the other trustees are, in any case, exploring ways that we can further strengthen and consolidate the fan-controlled shareholdings.

The Investment Agreement also includes certain vetoes for the principal investor, Donald McClymont. Most of these vetoes are really designed to protect the terms on which he and the other two investors have put their money into the Club.

The voting rights of preference shares cannot be changed. The Club cannot engage in dubious financial practices to move key company assets into partially owned subsidiaries or wind up the club. The Club may not raise debt above £250k, nor may it take an investment from a third party without approval. These are all, in our view, pretty benign and common-sense restrictions. They protect the investment and the Club. It is important to bear in mind that any veto exercised must still observe a fiduciary duty to the Club.

There are really only three other significant rights that the preference shareholders have that minority ordinary shareholders would not have.

The first is that Donald McClymont (as the principal investor) has a veto over any moves to make the Club Board smaller than three appointees or larger than eight. This will need to be carefully managed alongside the Working Together Protocols, so that fan representation is not compromised, but we are satisfied this should be an entirely workable constraint. The Thistle Board has operated within that boardroom size envelope for decades.

The second is that Donald has the power to appoint a director or an observer, and this person cannot be removed against his wishes by the Club Board or the other shareholders. This right is far from unusual in investment agreements such as these. Under St Mirren's fan-ownership arrangement, its minority shareholder Kibble is guaranteed the right to make two appointments to their Club Board. In fact, Donald did not intend (in the short-term at least), to exercise his rights in this area. We understand he now intends to join as a director imminently.

The third right is related to the fact that these are redeemable preference shares, rather than ordinary shares. In the event that the Club makes a huge cash surplus, such that its reserves go over £2 million, the excess of those reserves may be used, in part, to "redeem" the preference shares (i.e. pay Donald and the other two investors back without premium). As and when this happens, their shareholding will be reduced, and the voting power of all the other shareholdings will increase again back towards their original levels.

In terms of managing expectations, the Football Club has never had more than £2 million in cash reserves. History suggests that such a scenario only seems likely in remote scenarios. It is therefore unlikely in the near future that these shares will be redeemed. The structure of this deal aligns everyone's incentives, however. It ensures that the Club only has to "repay" the investment from a position of substantial financial strength, and that the majority shareholding recovers at the same time.

Donald has stated to us that he is in this for the long haul and would prefer not to redeem. His interests lie primarily with the Club and he is not focused on financial return.

### [What's this about the German model and 51%?](#)

In our original communications we alluded to "the German model" which is a requirement that football clubs must be majority (more than 50%) fan-owned. This was an attempt on our part to communicate the fact that this deal introduces a new guarantee that the Club will never fall into minority fan ownership.

We accept that this reference was a clumsy one and gave some fans the impression that the Club is moving "downwards" towards being only 51% fan owned. This is **not** what we meant and is **not** what is happening under this deal.

The 51% protection is a **legal minimum**, not a **target**. Whilst there is a possibility of further dilution in the future (as part of "phase 2" of this investment) we are clear that it would have to be done for the right reasons and with proper fan consultation. Even if phase 2 of this investment deal goes ahead as currently contemplated, on which the fans **will** be consulted,

the fan-ownership shareholding will still be above 60%, which is higher than it is at fan-owned St Mirren for example.

## Conclusion

It is completely accepted by all that there should have been fan consultation but the compromise was made for valid reasons. That is not an excuse, but we hope all of the circumstances are now fully and transparently explained.

This has all been very difficult for the TJF board to bridge idealism, instincts and beliefs which we hold dear, with realism of the Club's inherited financial situation.

We fought for all of the above concessions to improve the investment deal for fans. We did not enjoy being put in that position so soon after being assumed as a Trustee. We tried to make the best of the situation by securing all these revisions to ensure this situation could not recur in future.

Once again, we apologise for the lack of consultation, but we hope there is now an understanding of the background to this, and the guaranteed future protections that now exist.

Despite some passionately held views and robust exchanges during the process, it is now time to look forward. We expect to work constructively with both the Club Board and the Investors to improve the future for our Club.

The Investors also intend to interact directly with fans shortly, and we would ask all fans to receive them with an open mind. The lack of fan consultation is not down to them; it is down to a set of circumstances, and, we reiterate, will not happen again.