

Advice to the Rugby Football Union re. Long Term Incentive Plan

1. Background

- 1.1 Freshfields (*Freshfields, we* or *us*) has been instructed by the Rugby Football Union (**RFU**) to conduct a confidential review of the provenance, design, implementation, and communication of the long-term incentive plan (**LTiP**) for the RFU executive team, introduced in 2021 and make recommendations based on our findings.
- 1.2 Our client for the purposes of this review is a group of three Members of the RFU Council (the **Council Panel**).
- 1.3 Detailed and thorough terms of reference, as agreed with the Council Panel, set out the objectives of the review. In summary, Freshfields has been asked to advise on the following key matters:
 - (a) the design of the LTiP, including a review of: the objectives, structure and reasons for the LTiP; whether the design process adhered to governance and remuneration best practice; the engagement of external advisors; and the extent to which the final structure of the LTiP met its objectives;
 - (b) the implementation of the LTiP, including: analysis of the decision-making process for its approval; assessment of its compliance with legal, financial, and regulatory requirements; and review of the documentation and criteria used to determine eligibility and performance conditions;
 - (c) the transparency and communications relating to the LTiP, including: communications with internal stakeholders; external communications; communication practices against objective expectations; and review of the consultation undertaken with relevant stakeholders prior to the LTiP's approval; and
 - (d) governance and lessons learned, including: identifying any potential governance shortcomings or procedural gaps; and providing any recommendations.
- 1.4 The scope of our review covers the period from the inception of the LTiP (including the period prior to its formal adoption) around November 2020 to the current date (the **Relevant Period**), key individuals and bodies involved in the LTiP decision-making processes, and the wider organisational, financial, and reputational context during the Relevant Period. We understand that limited, exploratory discussions may have taken place between 2018 to 2020 (possibly at the remuneration committee of the Board (the **RemCo**)) about the possibility of putting in place a long-term incentive arrangement, but the idea was not progressed at that time.
- 1.5 The following items are outside the scope of our review:
 - (a) the appropriateness of the RFU's wider strategy and strategic goals as referenced in the LTiP;
 - (b) the commercial appropriateness of the monetary quantum and the target figures of the LTiP (save to advise on the extent to which these factors were considered at the design stage);
 - (c) broader governance (unrelated to the LTiP) questions, cultural and organisational contexts of the RFU; and

- (d) any independent validation or verification of third-party benchmarking analysis in respect of the LTIP and RFU executive remuneration already conducted.
- 1.6 Our review has been conducted based on the following:
 - (a) analysis of documents provided to Freshfields (including in response to our follow up questions), as listed in the Appendix to this report; and
 - (b) conducting stakeholder interviews with individuals identified by both Freshfields and the Council Panel as having or likely to have knowledge or information relevant to our review.
- 1.7 Throughout the review process, we have had unhindered access to the documents, other information and key individuals we considered relevant to our analysis. We have also taken account of a number of follow-up questions and robust challenge from the Council Panel during the course of our review.
- 2. Executive summary**
- 2.1 A long-term incentive plan is a common structure used by corporate employers who are seeking to tie the performance of their key executives to achievement of specific long-term business goals. Such plans are also used commonly as a retention tool. Awards are usually granted over shares, although cash-based awards are not uncommon in a private (non-listed) company context. We are aware of two other sport national governing bodies (*NGBs*) that have implemented a cash long-term incentive plan.
- 2.2 The RFU's LTIP was a cash-based arrangement, with any payments to participants dependent on achievement of predetermined performance conditions over a three-year period and also subject to continued employment.
- 2.3 In our view the LTIP was an appropriate remuneration structure for the RFU to introduce in 2021, given the RFU's objectives at that time. Those objectives included (i) improving the RFU's performance (both financial and non-financial) following the challenging Covid period, (ii) retaining the existing team of executives who (individually and collectively) were needed to achieve such improved performance, and (iii) anticipating the challenges the RFU would likely face in recruiting talent from a limited pool of candidates with unique skillsets, were any of the existing team to leave the RFU, taking into account the increasingly competitive nature of the wider sports recruitment landscape. We have seen no evidence that the LTIP was introduced with the aim of "compensating" individuals for loss of income during the Covid period (notwithstanding the inconsistent statement in the 2023/24 Annual Report).
- 2.4 Subject to our findings relating to recordkeeping as set out in paragraphs 2.13 and 7.2(a) in particular, we consider that the process of design and implementation of the LTIP during the Relevant Period was robust and well-reasoned. The process demonstrated a sufficient level of input and challenge provided by the board of directors (*Directors*) (the *Board*), the RemCo, and (albeit more limited) the audit and risk committee of the Board (the *AuditCo*), within the bounds of their respective remits, advised by qualified external advisors.
- 2.5 Whilst the RFU's executive team and finance team did provide data for the RemCo to consider the RFU's strategic plans and to set challenging target figures, we have not identified any indication that such involvement exceeded what would be normal and appropriate in the circumstances. In our view it was appropriate to consult members of the executive team as part

of the overall design process, to understand what metrics and targets they believed would be appropriate.

- 2.6 RemCo's decision to appoint Pearl Meyer was also appropriate. The team at Pearl Meyer was led by two highly-experienced UK-based remuneration consultants with extensive relevant expertise in the field. Whilst no formal 'request for proposal' process was undertaken (which in itself is not a cause for concern), the RemCo considered and approached other remuneration consulting firms and evaluated those firms' relevant experiences in the sector, potential conflicts of interests and proposed fees, before appointing Pearl Meyer.
- 2.7 Based on the documentation we have seen, including various papers produced by Pearl Meyer which were presented to the RemCo, we regard their advice to be thorough and comprehensive. In advising the RemCo, Pearl Meyer took account of remuneration structures in other sport national governing bodies as well as corporate employers.
- 2.8 The structure of the LTIP, in particular the appropriate split between financial and non-financial metrics, was discussed by the RemCo in detail before being finalised. Whilst we note that in a corporate entity, we might expect to see a higher percentage of award based on financial metrics (for example, 80% financial metrics, 20% non-financial), we heard consistently that the non-financial metrics which were settled on were judged to be of particular importance for the game. In our view, an appropriate level of discussion was had with the RemCo before those targets were finalised.
- 2.9 There was some consideration by the RemCo (advised by Pearl Meyer) as to the possibility that the LTIP would not be regarded favourably by stakeholders. However, such considerations were not deemed to override the RFU's other objectives at the time.
- 2.10 In addition, the minutes of various Board, RemCo and AuditCo meetings indicate the Board's (and to a more limited extent, the AuditCo's) oversight throughout the Relevant Period, with approximately eight sets of Board minutes including references to discussions about the LTIP.
- 2.11 At the end of the LTIP performance period (July 2024), the RemCo considered whether to exercise the discretion that was available under the terms of the LTIP to adjust downward the LTIP payout amounts following a formulaic application of the performance conditions. A decision was made not to do so.
- 2.12 The RemCo decided it was inappropriate to exercise its discretion solely based on a potential reputational risk, when the intended long-term performance had been achieved. This was notwithstanding that the timing of the LTIP payment coincided with the loss-making in the RFU's usual four-year cycle. The RemCo judged that to defer, or to decide not to pay out would have had a detrimental effect on not only the retention of the current executives, but also on the RFU's ability to recruit future talent. We find these considerations to be reasonable. We would also note the material possibility of legal challenge, had the RemCo exercised its discretion to reduce the payments or not make payments to the executives at all. The RemCo had a legal obligation not to exercise its discretion in a way that was capricious or arbitrary.
- 2.13 We were informed during our stakeholder interviews that *some* communication with individual Council Members had taken place about the LTIP at key points during the Relevant Period, including at its inception. However, we have been provided with no documentary evidence that confirms any such communication.
- 2.14 Our stakeholder interviews indicated that at any given point in time, around 50% of the Board and the RemCo consisted of (i) Council-Elected Directors, (ii) Directors who are Council

Members, and (iii) members of the Board committees who were also Council Members (but not Directors). We were told that the general expectation was and is that the Council-Elected Directors should represent the Council's interests on the Board and the RemCo (although the means and extent to which this should take place are not clear).

- 2.15 We also heard from stakeholder interviews that introducing the LTIP was squarely within the remit of the RemCo and there was no obligation on the RemCo to consult the wider Council. Whilst this is correct, we would have expected the Council Members who sat on the RemCo to more clearly represent likely views and concerns from the wider Council and for those views and concerns to have been recorded.
- 2.16 There is no evidence that Council Members as a whole were briefed either before the LTIP was introduced, or at any other time during the Relevant Period. The lack of awareness of the key details of the LTIP on the part of Council Members demonstrates that there was a marked lack of consideration given to communication with Council Members about the LTIP and the consequent furore that might ensue once details of the payments were finalised.
- 2.17 As further explained in paragraph 2.21, a clear governance framework on the role of the Council as a whole, especially on potentially private and confidential remuneration matters, would have clarified the Board and the Council's expectations on the degree to which the wider Council should have been consulted.
- 2.18 Furthermore, while the RFU's Annual Reports during the Relevant Period contained basic information on the LTIP, we have found the level of detail provided in those reports to be insufficient, especially when compared to the customary level of disclosure in respect of such a scheme in corporate disclosures.
- 2.19 Whilst appreciating that the RFU is not a corporate entity, that fact itself would arguably point in favour of erring on the side of providing much more detail on the LTIP in the Annual Reports. We would have expected the disclosure to explain the basis for the introduction of the LTIP, the projected numbers and the conditions attached to any payments. Disclosure of maximum LTIP opportunity and details of the performance conditions, targets and rationales for adopting the LTIP in the 2021/22 Annual Report could have better set public (and the Council's) expectations for future years.
- 2.20 We would have also expected the 2023/24 Annual Report to provide further insight into the RemCo's determination of the final LTIP payouts, including whether and how it considered exercise of any discretion (explaining why it was not exercised). Whilst some discussions were clearly had by the RemCo and the AuditCo regarding the disclosure in the 2023/24 Annual Report, it is evident that more extensive disclosure (closer to what one would expect in a listed company context, for example) would have mitigated the current criticisms.
- 2.21 A number of the Board governance structures and processes (in particular the expected interaction between the Board and the Council) could benefit from comprehensive review. Whilst there is no evidence that this has unduly affected the adoption and the operation of the LTIP, we suggest that certain current processes are reviewed and updated.
- 2.22 For example, stakeholder interviews have indicated that some Directors did not feel that they were provided with sufficient information and briefing in relation to the LTIP during the onboarding process when they joined the Board. There also seems to be uncertainty around the precise role of the Council-Elected Directors vis-à-vis the Board and the Council. There is much reliance on the individual Council-Elected Directors who, in efforts to fulfil their duties in good

faith, volunteer informal meetings and communications channels to keep their constituent Council Members informed, doing so without the benefit of any formal protocol.

- 2.23 One overarching issue that we have identified, which is not within the scope of our review, but has been relevant to our findings, is the issue of confidentiality. There appears to be a general lack of confidence that confidential matters can be discussed at the Board or with the Council without them finding their way (sometimes simultaneously) into the public domain and press.
- 2.24 The RFU may consider a comprehensive review of its information-sharing protocol and governance structures to address this issue.

3. Summary of material features of the LTiP

- 3.1 The LTiP was a discretionary cash-based long-term incentive plan under which a limited number of the RFU's executive team (including the RFU's Chief Executive Officer (**CEO**) and Chief Operating and Financial Officer (**COFO**)) (the **Executive Team**) were granted one-off awards, subject to a three-year performance period from 1 July 2021 to 30 June 2024. The LTiP awards were granted in addition to the other elements of the Executive Team's remuneration packages, namely base salary, annual bonus, pension contribution and welfare benefits.
- 3.2 The LTiP was governed by the rules of the plan (the **Plan Rules**), as adopted by the RemCo in July 2021, and was administered by the RemCo.
- 3.3 Initially there were six participants, two of whom resigned prior to the end of the performance period (although the COFO resigned only very shortly before the end of the performance period) and, therefore, in accordance with the Plan Rules, did not receive any payments under the LTiP. Subsequent to the initial launch of the LTiP, two new joiners were granted awards, with the maximum opportunity calculated on a pro-rated basis to take account of their start date. The LTiP rules anticipated that it might be appropriate to add new executive hires but that any award for such a participant would be pro-rated.
- 3.4 The LTiP provided the participants an opportunity to receive up to 100% of their annual base salary (as at the start of the performance period) in cash in a lump sum at the end of the performance period, subject to achievement of the performance conditions.
- 3.5 The performance conditions applicable to the LTiP awards consisted of the following financial and non-financial conditions:

	Percentage of salary		
	Threshold	Target	Maximum
Financial			
Profit generated over the performance period	40%	50%	60%
Revenue generated over the performance period	40%	50%	60%
Sub-total	40 – 60%, based on average of financial scores		
Non-financial			
Win ratio: average win ratio for women’s and men’s senior teams combined	0%	5%	10%
Community participation for men: number of over 16s men and boys who play rugby	0%	5%	10%
Community participation for women: number of women and girls who play rugby across all ages	0%	5%	10%
Rugby inclusivity: increase in the percentage of under represented groups that say Rugby in England is inclusive for all	0%	5%	10%
Sub-total	0 – 40%, based on the sum of non-financial scores		
Maximum total	100%		

- 3.6 In order for an award to pay out in any way, threshold levels of **both** of the financial conditions (i.e., profit and revenue) needed to be achieved. If this financial underpin was not achieved, no payment would be made, regardless of the level of achievement of the non-financial conditions.
- 3.7 Under the Plan Rules, in considering whether and to what extent to make cash payments to participants, the RemCo had the discretion (see paragraph 4.37) to take into account:
- (a) the extent to which the performance conditions had been met;
 - (b) the RemCo's view of the RFU's underlying financial position;
 - (c) any event which was (in the RemCo's opinion) significant and relevant; and
 - (d) any other factors that the RemCo chose to take into account.
- 3.8 The Plan Rules also provided that it was anticipated that if a participant had actively participated in the plan, the RemCo would consider exercising its discretion to make the cash payments (on a pro-rated basis where a participant joined after the start of the performance period). The Plan Rules also allowed the RemCo an overarching discretion to amend the plan.
- 3.9 Under the Plan Rules, any participant whose employment was terminated, or was under notice of termination, before the end of the performance period would normally forfeit their award. However, if the participant's employment was terminated as a result of death, injury, ill-health, disability, retirement or redundancy (i.e., a reason that was outside their control), then the RemCo had power to exercise its discretion to make a cash payment under the LTIP.

4. Design stage

Rationale for the LTIP

- 4.1 We understand that the concept of – and possible need for – a long-term incentive plan had been discussed earlier than 2020, starting from circa 2018, but it was during 2020 that the Board and the RemCo started exploring the issue more fully.
- 4.2 In late 2020, members of the Board and the RemCo held detailed discussions on the need for and potential structure of a longer-term pay mechanism for members of the Executive Team beyond the existing elements of base salary and annual bonus. In particular, the RemCo minutes from the period note that “...it is important to retain and incentivise the senior team and to consider a justifiable award and the format of a long-term or deferred plan.”
- 4.3 The main reasons for the consideration of an LTIP were:
- (a) the fundamental need for the RFU to focus on its recovery plan following the impact of Covid;
 - (b) the strong sentiment that the existing Executive Team was the right team to achieve this recovery;
 - (c) the resulting pressure on the Executive Team to deliver the recovery plan; and
 - (d) retention challenges anticipated by the RFU to keep the Executive Team together and the expected recruitment difficulties the RFU would likely face if any of the team were to leave in short order.

- 4.4 Whilst the potential need for a long-term incentive arrangement had been discussed pre-Covid, during 2020 the RemCo became increasingly concerned about the pressure placed on the Executive Team. This was particularly because of the effects of Covid on the RFU and rugby more generally and the demands of the recovery efforts coming out of Covid. The CEO communicated some of this pressure to the RemCo. However, we understand that an LTIP was not a concept that was posited by the CEO (or any other member of the Executive Team) as a way to address such pressure.
- 4.5 Pearl Meyer's interviews with the Executive Team (which took place after the RemCo's decision to explore the feasibility of the LTIP further and engage an external compensation consultant – see more in paragraph 4.16) confirmed that the various executives were under significant pressure during the period and working long hours. The RFU was facing financial stress as a result of Covid restrictions preventing games taking place, lost revenues as a result of the ensuing lack of events and related income streams (for example, broadcast rights, sponsorship rights, food and beverage income etc.), and the need to create and administer a recovery plan to allow the RFU to recover from losses during Covid.
- 4.6 There seems to have been an overriding consensus among the RemCo members that a remuneration structure that rewarded the Executive Team for long-term performance (rather than short-term or annual performance) was at that time vital to the RFU's longer-term post-Covid recovery plan. It was also critical to position the RFU as a competitive and attractive workplace for high-calibre talent.
- 4.7 The RemCo discussions in 2020 took note of the individuals' salary sacrifices and the non-payment of bonuses during 2020. In particular, in its December 2020 meeting, the RemCo noted the individuals' 20% salary sacrifice from April to October 2020. Similarly, during the 25 November 2024 Council meeting, the Chair of the Board cited those salary sacrifices as one of the reasons why the LTIP was introduced (although he was not part of the RFU Board at the time the LTIP was introduced).
- 4.8 However, there is no evidence that at the time of its inception the LTIP was designed with the aim of "compensating" individuals for such loss of income during the Covid period. This is notwithstanding the statement on page 50 of the 2023/24 Annual Report which inaccurately refers to the LTIP being in recognition of the pay sacrifices (see also paragraphs 6.9-6.14). Instead, we understand that the impact of Covid on the RFU's business and the consequent importance of the post-Covid recovery period were the driving factors for its implementation.
- 4.9 Retention and recruitment were also key drivers prompting the RemCo to consider an LTIP. Remuneration generally had been an area of concern prior to Covid, since around 2015. It was noted that there had been ad hoc salary cuts and non-payment of bonuses in pre-Covid years, and that these had contributed to a general lack of confidence on the part of the executives in the remuneration process. Following the challenges of the Covid period, it was felt that a more systematic and holistic approach to remuneration was needed to rebuild a stable executive remuneration culture within the RFU. The introduction of an LTIP was considered as part of that effort.
- 4.10 The RemCo and the Board also regarded the executive roles as both unique and unusually demanding. This was largely due to the unusual nature of the RFU's business both in terms of its complexity and the breadth of areas it operates in. The RFU and the executive positions present particular challenges due to the RFU's multifaceted role as a governance body, cooperative membership organisation, venue operator, complex rights holder and a high

performance / professional sports organisation. Given such demands and the unique profile of executive experience required (including the varied skillset and interest in and understanding of the sport), it was recognised that recruiting for the executive roles was challenging, and that the pool of potential talent was limited.

- 4.11 As a result, the RemCo and the Board were cognisant that the RFU was competing for talent with organisations offering significantly greater remuneration packages. Whilst this was partially accepted as ‘part of the deal’ of working at an organisation such as the RFU, benchmarking conducted (see more in paragraph 4.19) showed that the RFU needed to address a significant overall pay gap. This gap had been exacerbated by the perceived changing nature of the professional sports environment, with the standard for competitive remuneration in the market being affected in particular by private equity investment into the sector in the period leading up to the Relevant Period. A number of developments in the wider rugby world exemplified a new model of commercialised professional sports organisations in the rugby sphere specifically, with levels of remuneration rising as greater funds became available.
- 4.12 There were also views within the RemCo that it was important to attract a diverse talent pool to work at the RFU. It was noted that the RFU needed to provide a package which would be appealing to executives in the prime of their career, as well as to those individuals with established personal financial security following a long professional life.
- 4.13 It is clear that the RemCo viewed an LTiP as an appropriate long-term retention mechanism. There was an awareness within the Board and the RemCo of the attractiveness of the individual members of the Executive Team to other organisations and the potential flight risks. The RemCo and the Board believed that the Executive Team in place in 2021 were extremely competent and capable, both individually and collectively as a team. Retaining this team of individuals was therefore considered a high priority for the RFU, to navigate the RFU successfully through the critical Covid recovery period. It seems that members of the RemCo at that time believed that stakeholders more generally (including the Council) shared the same sentiment.
- 4.14 During the period in which the LTiP was conceived (2020-21), we understand that particular members of the Executive Team were approached by competitors offering lucrative packages. Whilst the draw of working at the RFU continued to be strong for those with a rugby background, the RemCo considered that in light of the above factors, a stronger financial offering was required to meet the market conditions at the time.
- 4.15 In order to address such needs, whilst the RemCo considered alternative approaches, such as additional one-off bonuses, it was ultimately determined that a structure that was conditional on long-term performance and employment was more appropriate. It was also felt that such a structure would be more effective in promoting long-term retention and commitment of the executives in executing the sustainable recovery of the RFU post-Covid and to align the interests of the executives with the interests of the RFU.

Design process

Engagement of external consultant

- 4.16 During February/March 2021, as part of the RemCo’s consideration of an LTiP, it engaged Pearl Meyer (a consulting firm specialising in executive remuneration) to provide independent remuneration advisory services, including to advise on the development of an LTiP. Whilst no formal ‘request for proposal’ process had been undertaken prior to Pearl Meyer’s appointment,

other remuneration consulting firms were considered and approached. After evaluating various factors, including those firms' relevant experiences in the sector, potential conflicts of interests and proposed fees, Pearl Meyer was determined to have the relevant expertise and was independent, and was, therefore, appointed.

- 4.17 Although Pearl Meyer is headquartered in the US, the Pearl Meyer team advising on the LTIP was led by two highly-regarded London-based consultants, each with extensive experience in UK executive remuneration. We did not interview the individual consultants involved in the advice as they are no longer with Pearl Meyer. However, we note that Pearl Meyer was at the time one of the twelve members of the UK Remuneration Consultants Group who are required to comply with its "Voluntary Code of Conduct in relation to Executive Remuneration Consulting". This Code contains fundamental principles including transparency, integrity and objectivity. We have also confirmed that Pearl Meyer did not provide any other services to the RFU during the Relevant Period which would have been a cause for a potential conflict of interest, and reviewed the fees paid to Pearl Meyer to confirm that they were reasonable.
- 4.18 During Pearl Meyer's engagement, the Chair of the RemCo and the RFU's People Director served as the firm's main client contacts, with Pearl Meyer attending certain of the RemCo meetings to present the LTIP proposals to the full committee. As part of the process of devising the LTIP, Pearl Meyer interviewed certain stakeholders within the RFU, including members of the Executive Team. These interviews were aimed at understanding the details of the executives' roles and responsibilities, the broader strategic plans of the RFU and its finances. This is in line with what would be expected as part of a remuneration consulting firms' fact-gathering exercise, in order to ensure that any remuneration mechanisms are appropriately calibrated and address the particular retention and recruitment needs of an organisation. We have not identified any evidence that the individual executives had any undue influence on the advice provided by Pearl Meyer or on the ultimate design of the LTIP.

Benchmarking

- 4.19 Ahead of the engagement of Pearl Meyer, the RemCo had already undertaken preliminary benchmarking exercises against other NGBs and against companies in one of the London Stock Exchange's index (*FTSE250*). This was done in order to understand the market position and standards for executive remuneration, using data provided by Towers Watson (a compensation consultancy firm) to inform the RemCo in their consideration as to whether it was appropriate to continue to explore an LTIP structure. Subsequently, as part of their advice on the LTIP, Pearl Meyer undertook a review and "sense-check" of this benchmarking, carried out further benchmarking for the CEO and COFO roles against corporate and NGB roles.
- 4.20 It also conducted a "job sizing" exercise (utilising the input from the stakeholder interviews mentioned above) to determine appropriate remuneration levels compared against other organisations. This benchmarking was conducted based on the total remuneration package (rather than the LTIP specifically), and used data provided by firms including Rothschilds (its benchmarking services) and Perrett Laver (an executive search firm) (although these firms were not engaged to provide advice on the LTIP).
- 4.21 The benchmarking exercise showed that the pay for the CEO and COFO at the time was not competitive compared to corporate roles, even at the lower end of the FTSE250, although the CEO's total compensation was competitive when compared to other UK NGBs. The COFO's total compensation was found to be even less competitive, especially given the dual nature of the role.

- 4.22 Pearl Meyer’s advice also indicated that, while disclosure around variable pay arrangements within NGBs is limited (see paragraph 6.15), the England & Wales Cricket Board and the Scottish Rugby Union had similar cash-based long-term incentive arrangements, which were paid out in 2022 and 2020, respectively.
- 4.23 There were specific discussions within the RemCo on the relevance and appropriateness of benchmarking against FTSE250 rather than just NGBs. After due consideration, for the reasons set out in paragraph 4.10, it was concluded that benchmarking against FTSE250 data as well as against other NGBs was appropriate. The challenges of performing an executive role at the RFU meant that the RFU needed to include consideration of possible candidates from the talent pool within the FTSE250 when recruiting. The RemCo also considered possible future recruitment and retention needs (see paragraph 4.1 above). We have found the rationale and the extent of such deliberation, as gleaned from both the RemCo meeting minutes and the stakeholder interviews, to be reasonable.

Features of the LTIP

- 4.24 There is evidence that the RemCo members engaged in debates around the key features of the LTIP, including on: (i) the three-year (rather than four-year) performance period, (ii) the relative weighting between financial and non-financial conditions, (iii) specific target figures for the performance conditions, (iv) the interaction of the LTIP performance conditions with those of annual bonus, and (v) the maximum opportunity.
- 4.25 In determining the appropriate length of the performance period, the RemCo considered the long-term retentive purpose of the plan (see paragraph 4.9 above), as well as the market practice where a three-year performance period is common. Even prior to the adoption of the LTIP in July 2021, the RemCo discussed the desirability of a four-year (rather than three-year) performance period. This would have avoided the difficult optics of payments under the LTIP falling due in a projected financial loss year for the RFU, which we understand occur cyclically, driven by the men’s Rugby World Cup.
- 4.26 The potential for this to cause the RFU reputational damage was considered as part of these discussions. However, there were also concerns that aligning the end of the performance period with a financially ‘safe’ year within the RFU cycle could be perceived as an ill-intentioned manipulation. It was also considered that such misalignment would in fact enhance the long-term performance incentivisation purpose of the LTIP by ensuring that the performance was a reflection of the RFU business cycle. Some members of the RemCo also voiced concerns that a four-year performance period would dampen the retentive effect of the LTIP as it would be *“too long for the executives to wait”*.
- 4.27 With respect to the relative weighting between financial and non-financial conditions, some consideration was given to the UK listed company environment, where more emphasis might be placed on financial conditions. However, we understand that, following discussions within the RemCo, especially in light of the views of the Council-Elected Directors and Directors who were Council Members, it was determined that the final weighting would be 60% on financial conditions and 40% on non-financial conditions. There was sentiment amongst the RemCo members that the Council may have preferred even more emphasis on non-financial conditions, given the importance the Council attaches to achieving non-financial metrics and the benefit of such metrics for the community game. Notwithstanding that fact, it was thought that the RFU’s financial stability was the underpinning of successful strategy and progression across the board. It was therefore considered necessary as a baseline for the non-financial targets to be achieved.

- 4.28 It was also important to the RemCo that, with the LTiP only paying out if the financial underpin was met, the LTiP was in effect “self-funding”. There is evidence that careful consideration was given to the specific performance conditions chosen, with Pearl Meyer providing extensive analysis of potential conditions and their alignment with the principles of quantifiability and alignment with the RFU’s strategy and future, among others.
- 4.29 We consider the process of RemCo’s deliberations to be thorough, evidencing a sufficient level of challenge and debate among its members. This included consideration of comprehensive advice from Pearl Meyer, which included rationales for each proposed performance condition and how each one aligned with the RFU’s strategies. For example, in respect of the “win ratio” condition, whilst one may question and/or disagree with the RemCo’s decision on this condition, the recommendation by Pearl Meyer was that this be based on the average of men’s and women’s records in order to “*promote a mindsight of parity of the two teams*”.
- 4.30 In setting the specific target figures for each of the conditions, the RFU’s finance team and the Executive Team provided input into the RemCo’s discussions. This included providing information as to the current status of progress and projected achievement for each of the performance conditions, if the strategic plan in place at the time was executed. This level of contribution is as we would expect, including for the Executive Team, given their familiarity with the business plan and budget. It is also noteworthy that the minutes record that certain executives recommended increasing some of the targets so that they would be more stretching and challenging.
- 4.31 There is also evidence of the RemCo’s consideration of how the LTiP fitted into the wider executive remuneration package. In comparing the LTiP performance conditions against the annual bonus (being the other performance-based element of the package) during the Relevant Period, we note that there were some overlap in the conditions used (see below), especially on the financial conditions.
- 4.32 However, we note that the specific targets set for the conditions were representative of the short-term versus long-term nature of the two remuneration elements. For example, long-term revenue targets can avoid intentional skewing or manipulation in favour of satisfying short-term revenue targets (e.g., by concentrating all revenue streams in one year). Organisations may consider references to revenue metrics in both forms of remuneration to be reasonable and effective in ensuring both short and long-term focus.
- 4.33 The different weightings assigned to the financial conditions under the LTiP and annual bonuses are also indicative of the two forms of remuneration serving different purposes, with the annual bonus more focused on strategic non-financial objectives. We also note that Pearl Meyer provided comprehensive and methodical analysis of potential performance conditions. This included criteria such as the extent of overlap with bonus metrics, whether they were quantifiable, and whether they were critical to the RFU’s strategy and future.
- 4.34 Overall, we do not think that the apparent overlap in some of the performance conditions is problematic, and consider the metrics selected to be objectively acceptable.

Performance conditions	Underpin	Financial (maximum opportunity in % of salary)	Non-financial (maximum opportunity in % of salary)
LTiP	Threshold levels of profit and revenue must be met	Profit and revenue target (60%)	Win Ratio (Women & Men Blended) (10%) Community Participation for Men (10%) Community Participation for Women and Girls (10%) Rugby Inclusivity (10%)

2021/22 bonus	Profit target must be met	Revenue target (5%)	Team goals, such as organisational cultural development, D&I, player welfare (12.5%) Individual goals, such as succession planning, formatting of annual report, head impact management, stadium safety (25-32.5%)
2022/23 bonus	Profit target must be met	Profit target (5%)	Team goals, such as D&I, organisational excellence, enjoyment (12.5%) Individual goals, such as developing safeguarding strategy, organisational and system transformation, ensuring statutory compliance, proactive external communications, succession planning (25-32.5%)
2023/24 bonus	Profit target must be met	Profit target (5%)	Team goals, such as D&I, organisational excellence, optimising the English rugby eco-system (12.5%) Individual goals, such as hotel tenders, ensuring statutory compliance, developing engagement strategy, driving digital transformation, managing head injury litigation (25-32.5%)

- 4.35 The RemCo also engaged in discussions on the maximum LTIP opportunity – including whether the quantum should be lower than 100% of salary. The discussion was largely driven by the benchmarking which had been conducted in the months leading up to the design of the LTIP (see paragraph 4.19). Pearl Meyer’s proposal was that, in order for the LTIP to be meaningful, a maximum opportunity of 100% of salary should be granted to each executive (with no distinction between roles). The Remco determined that this proposed level was appropriate.
- 4.36 We note that whilst the introduction of the LTIP resulted in an increase in the overall quantum of executive remuneration (and we are not in a position to opine on the appropriateness of the quantum), we understand this to be the very intention of the RemCo. This was in line with the RemCo’s objective of bringing the Executive Team’s remuneration close to the market levels (see paragraph 4.10).

Drafting of the Plan Rules

- 4.37 Once the basis and rationale for the LTIP had been approved by the RemCo, the RFU engaged a law firm, Bates Wells, to draft the Plan Rules and an explanatory participant guide for the scheme in Autumn 2021.
- 4.38 Specific attention was given to, and advice was obtained, in relation to the RemCo’s discretions within the Plan Rules. This was in order to mitigate risks of future claims from participants, to ensure that the Executive Team had no absolute contractual entitlement to payments under the LTIP, and to provide flexibility for wider future-proofing of the LTIP.
- 4.39 We would normally expect a long-term incentive plan to reserve a remuneration committee’s discretion to adjust formulaic outcomes to take account of overriding business conditions. However the fact that the Plan Rules provide the RemCo with overarching discretions is unusual (e.g., “*Provided the Minimum Financial Performance has been achieved, RemCo will consider exercising its discretion to award a cash payment . . .*” and “*It is anticipated (but will remain subject to RemCo’s absolute discretion) that if a participant has actively participated . . . RemCo will consider exercising its discretion to award them a cash payment . . .*”) (see also

paragraph 3.7). This indicates that the RemCo had a particular focus on making sure that the RFU's interests could be protected against any future claims from participants.

Selection of participants

- 4.40 The selection of participants was driven by rationale for the introduction of the LTiP, particularly the focus on retaining the team of executives in place at the end of the Covid and “keeping the team together” (see paragraph 4.13). The CEO made recommendations as to who should be entitled to participate, which were then reviewed and approved by the Board and the RemCo. There appears to have been no disagreement as to the appropriate participants in the LTiP.
- 4.41 For completeness, we note that a decision was made in December 2022 to increase the CEO's notice period from six months to 12 months (notice being either from the RFU or the CEO). We are satisfied that the decision was taken in light of the need to secure orderly succession planning and transition (when the time came) and stability at the leadership level given the complexity of the role. In our experience, it is common for CEOs to have 12-month notice periods.

Internal governance

- 4.42 Throughout the initial discussions of the LTiP and design process, the meeting minutes provided to us demonstrate regular updates and discussions were had beyond the RemCo, including with the Board. We also note that (i) Council-Elected Directors who are members of the Board and the RemCo, (ii) Council Members who sit on committees such as the RemCo (but who are not Directors), and (iii) Directors who are Council Members were active participants in the deliberations on the LTiP.
- 4.43 However, the minutes do not record detailed discussions on the extent to which the finer details of the LTiP (e.g., specific targets) were reported on and debated in the Board meetings. Whilst the lack of documentary evidence does not necessarily demonstrate the absence of those discussions, and our interviews with key individuals have suggested that such discussions were held, we have not been able to evaluate the extent of such deliberation.
- 4.44 The final approval of the LTiP was by the RemCo rather than the full Board. This aligns with the RemCo's remit and authority to make remuneration decisions pursuant to the RemCo's terms of reference.
- 4.45 Overall, we consider that the final structure of the LTiP and its features were aligned with the objectives which the LTiP had been put in place to address.
- 4.46 In our view, an LTiP structure was appropriate in light of the goals it sought to achieve. It is a common structure in corporates and is also one that has been adopted in some other NGBs. We acknowledge that the RFU is not a corporate entity in the same way as (for example), a company listed on the FTSE250. However, significant elements of the requirements of the roles of the Executive Team, in particular, the CEO and the COFO, are aligned to those of someone in an equivalent role within a corporate setting. We also note that within a corporate environment, deferred shares rather than deferred cash would be used typically. However, that structure is not available to the RFU.
- 4.47 The fact that the majority of the executives remained with the RFU during the performance period demonstrates that the LTiP was effective in serving the intended retentive purpose. One of the participants did leave the RFU in 2022 to assume an executive role at a professional

sporting organisation, which we assume entailed an uplift in remuneration. The second participant left the RFU in 2024, having stayed with the RFU throughout most of the performance period, to join another professional sporting organisation as an executive.

- 4.48 We find that the RemCo's deliberations were sufficiently supported by external advice and debates amongst its members, and appropriately took into consideration the Executive Team's input. Some of the record keeping on the internal governance process was insufficiently thorough and we therefore could not assess how detailed the relevant discussions were or how much challenge was provided by individual members of the RemCo. However, we regard the overall design process as reasonable.

5. Implementation of the LTIP

Tracking and accrual

- 5.1 Throughout the implementation period (from July 2021 until July 2024) the RemCo provided annual updates to the Board, tracking progress against the LTIP targets, with potential payouts. This is documented in the Board and RemCo papers and minutes throughout this period. These papers show that the RemCo and the Board continued to consider the progress of the LTIP participants against the performance conditions throughout the performance period, and kept the performance conditions and targets under review, including reviewing how the conditions were measured.
- 5.2 For example, in November 2023, the RemCo discussed and determined that one-off revenues should be included for the purpose of calculating the revenue achieved. Then, in April 2024, the RemCo, with the AuditCo's input, determined that any actuarial gain on defined benefit pension plans should be excluded from the profits calculations, noting that this could result in a windfall (or downside in case of actuarial loss) for participants which they did not have any control over, demonstrating some ongoing consideration as to the appropriateness and suitability of the performance conditions.
- 5.3 We note that regular input was received from the RFU's finance team as it provided data for the RemCo's consideration. However, the extent of the AuditCo's involvement appears to be limited. Whilst this is not unexpected, as an LTIP would not normally fall within the remit of the AuditCo, greater involvement of the AuditCo members to "sense-check" the LTIP's performance could have provided stronger financial oversight and expertise.

Consideration of discretion

- 5.4 In 2024, as the performance period for the LTIP came to a close, the RemCo considered the vesting of the LTIP awards and the performance against the targets.
- 5.5 The RemCo members noted the context of the overall RFU financial results for FY23/24, the redundancy exercise which would be taking place around the same time and the consequent likelihood that there could be an adverse public reaction to the LTIP payments being made the participants.
- 5.6 As part of these deliberations, the RemCo considered the potential use of its discretion under the Plan Rules to adjust the payouts downward from the formulaic application of the performance conditions which indicated the LTIP awards vesting at 77.5% of maximum, given the reputational risk as a result of these other factors (see paragraph 6.16).

- 5.7 Ultimately, the RemCo determined that such exercise of discretion was not appropriate for the following reasons:
- (a) the potential reputational risk should not determine the final LTIP payout, which was intended to reward long-term performance, and was not a sufficient reason to justify an exercise of discretion;
 - (b) the formulaic outcome was a fair reflection of the performance achieved during the three-year period;
 - (c) downward adjusting the LTIP payout because of the loss-making year would be inconsistent with the purpose of the LTIP, which was designed to reward long-term performance; and
 - (d) while the Plan Rules were deliberately drafted to retain the maximum discretion and flexibility, an arbitrary exercise of discretion (which the RemCo considered it would have been in light of (a)) would have a significant impact on executives' trust in the RFU and its remuneration structure.
- 5.8 There was also a concern about the potential adverse effect on the future retention and recruitment efforts of the RFU, which would have defeated the original impetus behind the adoption of the LTIP. The documents provided, however, do not go into details of the extent to which such discussions took place. It is also not clear whether the RemCo considered any partial (if not to nil) downward adjustment of LTIP payouts as another option to mitigate the reputational risk presented. Nevertheless, we consider the factors which the RemCo considered, as set out in paragraph 5.7 above, to be reasonable.
- 5.9 Similarly, the RemCo considered whether discretion should be exercised to upward adjust the formulaic outcome given that some of the strategic targets were almost met. In particular, the Rugby Inclusivity condition, which consisted of threshold targets specific to women, ethnicity, and LGBTQ, were met in respect of the first two, but not in respect of the last one. We understand that the RemCo considered this, but determined that exercise of its discretion for the participants' benefit was not warranted. However, we note that there is little detail in the minutes of the RemCo's discussions on this matter.
- 5.10 In the same period, at the CEO's request, the RemCo also considered whether to use its discretion to defer the final LTIP payouts to future years. This would have meant that the LTIP payments would not coincide with the year in which the RFU reported a financial loss due to the RFU's four-year business cycle (see paragraph 4.25) and while there was a redundancy exercise underway.
- 5.11 However, it was decided that an exercise of the RemCo's discretion in this manner was not justified. As the LTIP performance outcomes had been calculated in accordance with the predetermined terms, and the payments were accrued and were already scheduled to be paid in 2024, the amounts would need to be disclosed in that year's Annual Report regardless of whether they were actually paid, and a deferral would do little to mitigate the potential reputational risk. Further, the factors discussed at (a) to (c) in paragraph 5.7 above (relating to the appropriateness of a use of discretion in the context) were also considered relevant, with the RemCo similarly concluding that these factors meant that an exercise of discretion for a deferral would again be inappropriate.

6. Transparency / communication and risk management

Internal governance and transparency

Board

- 6.1 As described in paragraphs 5.1 to 5.3, there appear to have been regular updates to and feedback from the Board throughout the Relevant Period regarding the LTIP, although at times some of the specifics of such discussions could have been described in more detail in the relevant meeting minutes.

Council

- 6.2 As stated in the RFU Rules, the role of the Council is to “*hold the Board of Directors to account for the management of the affairs of the Union*”. The following mechanisms exist to facilitate this:
- (a) Council representation on the Board and on committees: there are normally four Council-Elected Directors on the Board, and each of the committees further includes Council Members whose role is to represent the interests of the Council (but see paragraph 6.4).
 - (b) Council Meetings and Chair’s and CEO’s Reports: the Council meets five times per year, with Board members including the CEO, the Chair and the COFO attending to provide written reports and oral updates on the work they are conducting and answer questions from Council Members (but see paragraph 6.3).
- 6.3 We understand from our interviews that communication to some Council Members about the LTIP did take place during the Relevant Period. However, this is not documented, so we are unable to ascertain if and when this took place, nor whether any feedback from Council Members on the LTIP was received. A Board Chair’s Report to Council from February 2022 lists “LTIP targets” as a Board agenda item, but we understand that no discussions of this actually took place at the Council meeting. We have not seen any written evidence indicating consultation at any stage with the Council in relation to the LTIP, whether in relation to its design or implementation.
- 6.4 We understand that there is an expectation that Council-Elected Directors communicate with their constituents (a group of Council Members who they are assigned to, to keep them updated on Board activities) as part of ensuring sufficient socialisation of developments and plans, particularly given the level of Council representation on the Board and the RemCo. However, this expectation is undocumented and unformalised, and there is no clear delineation of Council-Elected Directors’ role or a standard protocol. We also note that in any event the primary responsibility for ensuring appropriate levels of communication with the Council on key matters rests with the Chair and the CEO of the RFU.
- 6.5 The RFU Rules include no specific duty on Council-Elected Directors (and committee members) to consult and share information (both from Council Members to the Board/committees and vice versa). There is no prescribed method of communication to ensure that items such as the LTIP are communicated to stakeholders, or any requirement that communication which does take place should be documented.
- 6.6 Where a subject is within the remit of the Board and/or its committee (as was the case for the RemCo in respect of the LTIP) the extent to which the Council should be consulted is not clear,

nor is the appropriate timing or forum of such consultation. We understand that Council-Elected Directors have found systems to actively share information and consult with the wider Council on various matters (e.g., through regular Teams calls and WhatsApp groups). However, the lack of structured/prescriptive obligations leaves the system open to significant inconsistency and weakness. Factors such as the materiality and sensitivity of certain information may make providing specific guidance and processes more challenging. However, the governance documents of the RFU could nonetheless be expanded to more clearly set out the expectations of the governance structures and processes within the organisation. The absence of formal record keeping may also lead to future governance challenges.

- 6.7 A further point noted as a challenge to greater transparency and internal communications, including consultation with the Council, is concern around confidentiality. In particular, we have been told that the history of the RFU's confidential information being leaked into the public domain (including with the press), virtually simultaneous to its presentation to the Council, has created difficulties in sharing information which is sensitive, not yet finalised, or which may be of particular media interest.
- 6.8 Notwithstanding the above, it is clear that there was no direct communication with Council on the LTIP during the Relevant Period.

Public disclosure

- 6.9 The RFU Annual Reports throughout the Relevant Period, contain some references to the LTIP. The 2021/22 Annual Report, the first Annual Report following the adoption of the LTIP, states that the RemCo approved the introduction of a one-off LTIP for the period of FY21/22 to FY23/24, with the awards vesting at the end of the three-year performance period. It goes on to say that the targets are closely aligned to Covid recovery and the long-term strategic plan, noting that an amount of £0.4m had been accrued in the year based on best estimates of whether the targets will be achieved in FY23/24.
- 6.10 The disclosure did not, however, include any references to an individual participant's maximum opportunity, what the performance conditions and the exact targets were, or the relevant weighting between the performance conditions, which we would normally expect in similar disclosures made in a listed company setting. We note that the disclosure also did not explain the rationale behind the adoption of the LTIP, which could have mitigated some of the reputational impact in 2024.
- 6.11 Following the initial disclosure, the 2022/23 Annual Report contained a short update on the expected total liability for the LTIP and the amount accrued for the year, which reads as follows: *"The Committee reviewed progress against targets in the LTIP for Executive Directors. The LTIP runs for the period FY21/22 to FY23/24. Awards will be vested at the end of the three-year performance period and targets are closely aligned to both the intensive recovery plan required post COVID-19 and the longer-term strategic plan. The total liability for this scheme now totals £1.0m based on best estimates of whether the LTIP targets will be achieved in 23/24. Accordingly, an amount of £0.6m has been accrued under this scheme in year."*
- 6.12 The 2023/24 Annual Report then included some details of the final LTIP outcomes. The disclosure included the level of performance targets achieved in percentage terms, and a tabular summary of aggregate salary and bonus figure, and the LTIP figure, for each of the CEO and the COFO (but not for the other participants, who were not Directors of the RFU). The disclosure, however, did not include any further information on the exact targets and the level of performance achieved, nor did it give any indication as to whether the RemCo considered

the outcome appropriate and/or the extent to which exercise of any discretion was considered, which we would normally expect in similar disclosures made in a listed company setting.

- 6.13 The 2023/24 Annual Report also included a statement which refers to the LTIP being in recognition of the Covid-related pay sacrifices. This is inconsistent with the RemCo discussions during 2021 leading up to the adoption of the LTIP (see paragraph 4.7). We understand that the final published disclosure was the result of discussions within the RemCo and the AuditCo (for example, the presentation of the level of performance achievement and the breakdown of the LTIP figure resulted from such discussions). However, it is evident that the disclosure was not adequate to pre-empt the Council's and the media's questions and negative reaction.
- 6.14 The RFU's Annual Reports, including those preceding the Relevant Period, reported total remuneration on an aggregate basis, without breakdown into its various elements such as salary, bonus, benefits in kind, pension contributions. Leading up to the 2023/24 Annual Report, consideration was given by the RemCo as to how the LTIP figure would be presented in the report. It was determined that the LTIP payout should be presented in its own column for better transparency and to explain the increase from the previous year.
- 6.15 Whilst the disclosure in the RFU's Annual Reports in relation to the LTIP is limited when compared against corporate disclosures, it is worth noting that (i) the RFU is not subject to the same disclosure requirements listed companies are subject to under the relevant legislation, (ii) the cost of fulsome corporate-style remuneration disclosure can be very high, and (iii) other NGBs (where they, according to Pearl Meyer's advice, had similar long-term incentive arrangements – see paragraph 4.19) have published little (if any) detail on their arrangements.

Consideration of reputational risk

- 6.16 In 2021 when the LTIP was introduced, there is reference in the RemCo minutes to the possibility of the scheme attracting an adverse reaction from stakeholders, although the discussion appears to have been limited.
- 6.17 Minutes of the RemCo and the AuditCo meetings during 2024 indicate that there were further internal discussions of the reputational risk of the LTIP payout against the context of the cyclical financial loss of the RFU in 2023/24 and the redundancy exercise which took place in the same year. The committees each acknowledged the potential reputational repercussions following the 2023/24 Annual Report disclosure on the LTIP, and on the need for careful communications strategies.
- 6.18 However, it is unclear from the minutes how robust these discussions were, and whether concerns raised were sufficiently considered and responded to. For example, it is not clear how much consideration was given to potential exercise of discretion to reduce/defer/not make payments before deciding that it would not be appropriate, although we understand from stakeholders that the point was considered and discussed (see paragraphs 5.4-5.9 above). We have not seen any confirmation that the reputational risk was entered into RFU's "Risk Register" (an internal log on which potential risk elements would be expected to be lodged), in spite of the recognition of the reputational risk over a period of several months.
- 6.19 The discussions on the LTIP in July 2024 (when the RemCo determined the vesting outcomes of the awards), as evidenced by the meeting minutes and the paper presented to the meeting, included the need for a communication strategy. The RemCo recognised the potential for public negative reaction, given the RFU's financial results for the year and the redundancy exercise, and noted that a communication plan was being discussed. The recommendation presented to

the RemCo (although it is not clear by whom) was that the message should be made through the 2024 Annual Report, rather than sharing a message separately with different audiences. We have not seen details of any communication plan that was devised at the time, nor any evidence that any separate early engagement with the Council and other stakeholders was deployed at this time.

- 6.20 We have been provided with evidence of a detailed draft communications strategy prepared in connection with the release of the 2023/24 Annual Report in November 2024. This was prepared using an external communications consultant with whom the RFU had worked previously and included a draft press release, Q&As and steps plan. We have not seen evidence as to how and precisely when these plans were put into action, or that they were prepared in a way which ensured that they were flexible and robust enough to take account effectively the fast-paced events which unfolded following the publication of the 2023/24 Annual Report.
- 6.21 On the face of it, the Council, the wider game and press reaction following the release of the 2023/24 Annual Report indicate that the communications strategy was not sufficiently timely or properly effective. Given the reaction from the Council in late 2024, it is clear that the RemCo and the Board should have actively considered a separate engagement with the Council in particular. We have seen no evidence that suggests earlier engagement with the Council was contemplated. Given the duty of the Board and its committees to consider how best to manage the communication of matters that are likely to be contentious, the Board could have better anticipated the eventual reaction of both the Council, the wider game and the press once the Annual Report was published.

7. Governance and recommendations

- 7.1 Based on our review and analysis of the relevant documentation, our interviews with key stakeholders, and our consideration of the wider contextual background, we consider that the process for the design and implementation of the LTIP was robust and the structure was sufficiently tested against the RFU's objectives, governance standards, stakeholder expectations, and best practice.
- 7.2 We have, however, identified the following key weaknesses in the process via which the LTIP was put in place and implemented, and set out our recommendations.
- (a) Insufficient recordkeeping
- (i) During our review, we noted a lack of written, documentary evidence demonstrating the extent of stakeholder consultation and the extent of internal Board/committee deliberations which were undertaken in relation to the LTIP during the Relevant Period. Whilst we were able to get insight into these aspects through our interviews, which we evaluated for consistency, more careful and detailed recordkeeping is needed.
- (ii) Secondly, we note that the RFU Executive Remuneration Policy (developed in 2022 with advice from Pearl Meyer) has not been made public, contributing to a sense that the RFU has not been sufficiently transparent / public in its policy on remuneration. Publication of this policy, along with a more fulsome disclosure in the 2021/22 Annual Report (see paragraph 6.9) could have better set public expectations as to the nature and extent of the remuneration, from an earlier stage.

- A. **Recommendations:** Documentation of key decisions and consultations with stakeholders should be recorded in more detail and should include more detail as to how suggestions were discussed and responded to and the basis on which decisions were made. This would include minutes of Board and committee meetings as applicable, and of Council meetings and consultations.

Public disclosure should be more detailed and provide sufficient information for the intended audience to fully understand the information being provided. For example, future Annual Reports could include full breakdowns of remuneration packages (including quantum and elements), the rationale for any changes which are made, and, if necessary, explanations as to remuneration structures and how they work. This should be balanced against potential increased complexity in disclosure and associated costs of doing so.

The RFU Executive Remuneration Policy should be made public to provide greater transparency and accountability, and enable the public and stakeholders to have a realistic understanding of the standards by which remuneration is governed and set. Whilst a broader evaluation of the RFU's governance structure is outside the scope of our review, we note that any governance review and reform (including on subparagraphs 7.2(b) and 7.2(c)) should be conducted with the aim of complying with the Code for Sports Governance.

(b) Weakness of Director onboarding process

- (i) During the Relevant Period, the Board underwent many departures and new appointments of Directors, including the Chair of the Board and the RemCo Chair, and also other members of the Board and its committees. Whilst we have been provided with some onboarding materials, our stakeholder interviews indicated that, when they joined the Board as new Directors during the Relevant Period, they did not feel that they were provided with sufficient information and briefing in relation to the LTIP. Whilst there is no evidence that this materially affected the ultimate decisions made in relation to the LTIP specifically, we note that this is a governance gap, with a lack of continuity weakening long-term oversight and strategic planning. This is particularly worth consideration when noting the turnover of committee and Board members; whilst we do not understand this to have been particularly high in the Relevant Period for an organisation like the RFU, we nonetheless consider it relevant to note.
- (ii) We also note that there is a lack of clarity around how the Board's committees should interact and advise one another. For example, the extent of the interaction of the AuditCo with the RemCo in relation to the LTIP appears to have been limited, and there does not appear to have been clear guidance or clear expectation as to what this should look like. Whilst the LTIP falls within the RemCo's remit, more engagement with the AuditCo could have been valuable.

- B. **Recommendations:** Whilst no new Director would expect to be familiarised with all historic records of the Board, a more formal and consistent induction process is needed which briefs new Directors on the key ongoing works of the Board and its

committees to enable new Directors to ask probing questions and pre-empt any potential risks.

We further recommend that, in general, more formalised protocols in relation to input and interaction between committees (notably, between the AuditCo and the RemCo) should be put in place. This would allow for more structured oversight and ensure that specialist advice is available where necessary. Linked with this, we would recommend greater consideration of the composition of the Board and committees in terms of the members' skillsets, in order to ensure that committees include the requisite blend of expertise and range of experience.

- (c) Uncertainty around the roles of the Council-Elected Directors
 - (i) As noted in paragraph 6.4 above, we found that there is, on a broad level, a lack of clarity around the duties and obligations of Council-Elected Directors, in particular in relation to their role in ensuring that there is sufficient communication and feedback between the Council and the Board / committees. The RFU Rules provide little detail as to directors' duties to provide / share information generally, and no specific obligations or guidance for Council-Elected Directors.
- C. **Recommendations:** The responsibilities of Council-Elected Directors and Directors (notably, the Chair of the Board and the CEO) in relation to communications with the Council should be more clearly delineated and set out in governance documents, for example, the RFU Rules. Clearly, matters of materiality and sensitivity should be communicated to the Council in a timely manner, led by the Chair and/or the CEO. Further, a more formalised structure for feedback to and from constituent Council Members should be mandated, and such communications documented.

APPENDIX

Documents provided to Freshfields

1. RFU Board meeting minutes from the Relevant Period
2. Audit and Risk Committee meeting minutes from the Relevant Period
3. Remuneration Committee meeting minutes and accompanying papers from the Relevant Period
4. Remuneration Committee updates to the Board from the Relevant Period
5. Chair's Report to Council, 11 February 2022
6. Council meeting minutes and recordings from the Relevant Period
7. RFU Annual Report 2023/24 draft Press Release, Q&A, Council Meeting Update and 3 Steps comms plan
8. LTI Plan Rules and LTI Summary Booklet for Participants, December 2021 and including draft versions
9. Remuneration Committee Terms of Reference, September 2020 draft
10. RFU Annual Reports from the Relevant Period
11. Pearl Meyer benchmarking reports and advice
 - (a) Proposal for Independent Remuneration Advisory Services, 9 March 2021
 - (b) Confidentiality Agreement, 3 February 2021
 - (c) Independent Advisory Services – Business Terms, 18 May 2021
 - (d) Confirmation Note re Additional support to the Remuneration Committee, 18 May 2021
 - (e) Incentive Review, 28 July 2021
 - (f) Incentive Review – Additional Information for the RemCo, 28 July 2021
12. Legal advice received by the RFU from Bates Wells relating to draft LTIP arrangements, dated 7 October 2021
13. Executive Annual Bonus Letters from the Relevant Period
14. RFU Board & Executive Remuneration Policy, July 2022
15. RFU Summary of Strategy Targets – 2021/22 & Long Term Aspiration