



**IN THE COURT OF SESSION**

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL & SESSION

PETITION

of

HEART OF MIDLOTHIAN PLC, a company incorporated under the Companies Acts (company number SC005863) having its registered office at Collins House, Rutland Square, Edinburgh, Midlothian, EH1 2AA

First petitioner

and

THE PARTICK THISTLE FOOTBALL CLUB LIMITED, a company incorporated under the Companies Acts (company number SC005417) having its registered office at The Energy Check Stadium At Firhill, 80 Firhill Road, Glasgow, Scotland, G20 7AL

Second petitioner

for

orders in terms of sections 994 and 996 of the Companies Act 2006 in respect of The Scottish Professional Football League Limited

HUMBLY SHEWETH:

1. That the first petitioner is Heart of Midlothian plc, a company incorporated under the Companies Acts (company number SC005863) having its

registered office at Collins House, Rutland Square, Edinburgh, Midlothian, EH1 2AA. The second petitioner is The Partick Thistle Football Club Limited, a company incorporated under the Companies Acts (company number SC005417) having its registered office at The Energy Check Stadium At Firhill, 80 Firhill Road, Glasgow, Scotland, G20 7AL. The petitioners are members of The Scottish Professional Football League Limited, a company incorporated under the Companies Acts (company number SC175364) having its registered office at Hampden Park, Glasgow, G42 9DE (the “**Company**”). The Company is domiciled in Scotland. The petitioners seek orders under sections 994 and 996 of the Companies Act 2006 (the “**2006 Act**”). This court accordingly has jurisdiction. Reference is made to section 1156(1)(b) of the 2006 Act.

### The Company

2. That the Company is a private company limited by shares. The issued share capital of the Company is £42 consisting of 42 ordinary shares of £1, which have all been issued and are fully paid. The Company exists to govern the 42 association football clubs (the “**Clubs**”) which make up, or are owned and operated by, its 42 members (the “**Members**”). The respondents are (i) the Company; and (ii) the four other 4 Members liable to be affected by the orders sought, namely Dundee United FC, Raith Rovers FC, Stranraer FC and Cove Rangers FC.
3. That the directors of the Company (the “**Directors**”) are Neil Doncaster (CEO), Murdoch MacLennan (Chairman), Karyn McCluskey (non-executive), Alan Burrows (Motherwell FC), Les Gray (Hamilton Academical FC), Stewart Robertson (Rangers FC), Ross McArthur (Dunfermline Athletic FC), Ewen Cameron (Alloa Athletic FC), Ken Ferguson (Brechin City FC) and Peter Davidson (Montrose FC).

4. That the affairs of the Company are governed by its articles of association (the “**Articles**”) and the Rules and Regulations of the Scottish Professional Football League (the “**Rules**”). A print of each of the Articles and the Rules is produced herewith. Article 2 of the Articles provides that a “Club” is “*the undertaking of an association football club, which is, for the time being, entitled, in accordance with the Rule, to participate in the League.*” It defines the “League” as follows:

*“...the combination of Clubs known as The Scottish Professional Football League operated by the Company in accordance with the Rules.”*

5. That Article 196 of the Articles provides:

**“RULES**

*“196. Each Member shall be liable for the discharge of the obligations and duties and shall be entitled to the benefits and rights accruing under and in terms of these Articles, the Rules and Regulations of and to the Club which it owns and operates.”*

6. That rule B4 of the Rules provides *inter alia*:

*“B4 Membership of the League shall constitute an agreement between the Company and each Club, and between each of the Clubs, to be bound by and to comply with:*

*B4.1 these Rules and the Articles [...]*”

7. That the Articles and the Rules form the constitution of the Company and form part of the contract between the Company and its Members.

Divisions

8. That rules C5 to C7 of the Rules provide:

“C5        *The League shall be divided into the four Divisions. The Divisions shall be ranked with the Premiership as the top Division, the Championship the next Division, League One the next Division and League Two the bottom Division.*

“C6        *There shall be twelve Clubs in the Premiership and ten Clubs in each of the Championship, League One and League Two.*

“C7        *During the course of any one Season each Club shall, subject to these Rules and the Articles, remain a member of the Division of which it was a member at the beginning of the relevant Season.”*

### Ranking of Clubs

9. That rule C8 provides *inter alia*:

“C8        *At the end of each Season, beginning Season 2013/2014, the Clubs shall be ranked in the League from 1 to 42 inclusive on the basis that the Clubs finishing the relevant Season in positions:*

C8.1        *1 to 12 in the Premiership shall be ranked in respectively positions 1 to 12 in the League for that Season;*

C8.2        *1 to 10 in the Championship shall be ranked in respectively positions 13 to 22 in the League for that Season*

C8.3        *1 to 10 in League One shall be ranked in respectively positions 23 to 32 in the League for that Season;*

C8.4        *1 to 10 in League Two shall be ranked in respectively positions 33 to 42 in the League for that Season [...]*”

### Relegation and promotion

10. That in Season 2019/2020 the first petitioner was entitled to and did participate in the Premiership. Rule A4 of the Rules defines "Season" as:

*"the period of the year commencing on the date of the first League Match in a Season and ending on the date of the last League Match of the same Season or otherwise as determined by the Board and which includes the Close Season."*

11. That rules C14 and C17 of the Rules provide, respectively, as follows:

*"C14 The Clubs for the time being entitled in terms of these Rules to participate in the Premiership shall, disregarding any abandoned or postponed matches, play in 38 League Matches in any one Season."*

*"C17 At the end of each Season (following completion of all League Matches in the Premiership in that Season) the Club in position 12 in the Premiership shall be relegated to play and be eligible to participate in the Championship for and during the next Season."*

12. That in Season 2019/202 the second petitioner was entitled to and did participate in the Championship. Rules C19 and C20 of the Rules provide:

*"C19 At the end of each Season the Clubs occupying position 10 in each of the Championship (22 in the League) and League One (32 in the League) will be relegated to play and be eligible to participate in League One and League Two respectively for the immediately succeeding Season."*

*"C20 At the end of each Season the Clubs occupying positions 1 in the Championship (13 in the League), 1 in League One (23 in the League) and 1 in League Two (33 in the League) will be promoted to play and be eligible to participate in the Premiership, the Championship and League One respectively for the immediately succeeding Season."*

13. That, according to those Rules, Clubs holding positions 13, 23 and 33 in the League at the completion of the Season (and not otherwise) are entitled to be promoted. Similarly, Clubs will only be relegated in the event that they occupy League positions 12, 22 and 32 at the end of the Season. Separately, Rules C22 to C32 provide that play-off competitions will take place to determine other promotions and relations as between the Divisions. For example, in the case of the Premiership / Championship, the Rules provide that at the end of the Season the Club occupying position 11 in the Premiership (11 in the League) and the Clubs occupying positions 2, 3 and 4 in the Championship (14, 15 and 16 in the League) shall take part in the Premiership / Championship Play-Off Competition to determine which further Clubs, if any, will be promoted and relegated to and from the Premiership and the Championship. In addition, as provided for in Rule C33, there exists a Pyramid Play-Off Competition whereby the Club occupying position 42 in the League takes place in a play-off with a Candidate Club identified by the Scottish FA from and by means of a national competition between clubs who are not members of the League.

#### The Written Resolution

14. That the Articles provide for fee payments to Members out of Net Commercial Revenues (as defined in the Articles). The level of fee payment any Member receives is based on its ranking in the League at the end of the relative Season.

15. That on 13 March 2020, the Scottish Football Association suspended all domestic football in Scotland due to the Covid-19 pandemic and, in particular, the restrictions imposed by the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. The Company thereupon postponed all League Matches. The practical consequence of these measures was that many Members had little or no income. The Company

asserted that the principal concern of Members was to secure the immediate release of the balance of fee payments held by the Company in respect of Season 2019/20.

16. That on 8 April 2020, at about 1.00pm the Directors circulated a written ordinary resolution (the “**Written Resolution**”) to Members. The Written Resolution was accompanied by a document entitled “League Season 2019/20 & Play-Offs Legal briefing note to Members”(the “**Briefing Notes**”). Prints of each of the Written Resolution and the Briefing Notes are produced.

17. That the Written Resolution proposed that the Rules be amended to provide *inter alia*:

“C7A      *This Rule C7A applies only to Season 2019/2020, the Divisional participation by Clubs in and during Season 2020/2021 and for the purposes of determining:*

C7A.1      *the final League positions 1 – 42 (inclusive) of each of the 42 member Clubs of the League on conclusion of Season 2019/2020;*

C7A.2      *the respective Divisional positions of each of the 42 member Clubs of the League, in each of the 4 Divisions of the League, on conclusion of Season 2019/2020;*

C7A.3      *the respective percentages of Net Commercial Revenue to which each shall be entitled on conclusion of the League for Season 2019/2020, payable to the Members which are the owners and operators of each of the 42 member Clubs of the League, as set out in Table A in Article 156.2;*

C7A.4      *the Champion Club of the League and the Champion Clubs of each of the four Divisions on conclusion of Season 2019/2020;*

C7A.5 *which Clubs shall be promoted to and relegated from each of the Divisions on conclusion of Season 2019/2020;*

C7A.6 *which of the 42 Clubs of the League shall be entitled to participate in which of the four Divisions in Season 2020/2021;*

[...]

*and each and all of Rules C8 to C23 (inclusive), Rules C25 to C30 (inclusive), Rules C32 & C33, Rules C35 to C37 (inclusive), Rule G5, Rules G50 to G55 (inclusive), Rules G65 to G75 (inclusive), Rules G83 & G84 and any and all such further Rules and/or Regulations and such part of such Rules and/or Regulations, all as individually and collectively, are subject to Rule C53, in order to achieve, determine and/or identify the amounts, completions, conclusions, terminations, outcomes, Championships, relegations, promotions, nominations, participations and others on conclusion of Season 2019/2020 and for and during Season 2020/2021, as provided in Rule C53.*

[...]

“C53 *Notwithstanding Rules C8 to C23 (inclusive), Rules C25 to C30 (inclusive), Rules C32 & C33, Rules C35 to C37 (inclusive), Rule G5, Rules G50 to G55 (inclusive), Rules G65 to G75 (inclusive), Rules G83 & G84 and any and all such further Rules and/or Regulations and all or part of such Rules and/or Regulations, as individually and collectively require to be made subject to this Rule C53, in order that the determinations and identifications of the amounts, completions, conclusions, terminations, outcomes, Championships, relegations, promotions, nominations, participations and others, for and in respect of Season 2019/2020*



*and at, on commencement of and during Season 2020/2021, shall be as provided in Rules C53.1 to C53.15 (inclusive):*

*C53.1 subject to the conclusion, completion, determination and ending of the Season 2019/2020 Championship, League One and League Two Divisional Competitions, under and in terms of Rule C53.3, having first occurred, the Season 2019/2020 Scottish Professional Football League Competition and the Season 2019/2020 Premiership Division Competition shall be concluded, completed, determined and at an end, on and from, the earlier of the dates on which:*

*[...]*

*C53.1.2 it shall have been determined by the Board, in its sole discretion, that no further League Matches shall be scheduled for or played in by any Club entitled to participate in the Season 2019/2020 Premiership Division Competition and that both of the Season 2019/2020 Scottish Professional Football League and Premiership Division Competitions, are concluded, completed, determined and at an end;*

*[...]*

*C53.3 the Season 2019/2020 Championship, League One and League Two Division Competitions, comprised in the Season 2019/2020 Scottish Professional Football League Competition are, notwithstanding the date of adoption hereof, from and including 13 March 2020, concluded, completed, determined and at an end;*

[...]

C53.11 *the only Clubs which will be promoted from a Lower Division of the League to a higher Division of the League on conclusion, completion, determination and ending of Season 2019/2020 Championship, League One and League Two Divisional Competitions, on the basis of the Divisional rankings determined in accordance with Rules C53.6 and C53.7 and as set out in Part B of Appendix 3, are the Champion Clubs of each of the Championship, of League One and of League Two, all as determined in accordance with Rule C53.10 and as set out in Part B of Appendix 3, so that the Champion Club of the Championship, League position 13, shall be promoted to the Premiership, the Champion Club of League One, League Position 23, shall be promoted to the Championship and the Champion Club of League Two, League position 33, shall be promoted to League One all for and to participate in such immediately higher Division of the League in and during Season 2020/2021;*

C53.12 *the only Clubs which will be relegated from a higher Division of the League to participate in a lower Division of the League for and during Season 2020/2021, on the conclusion, completion, determination and/or ending of Season 2019/2020, shall, on the basis of the Divisional rankings provided for in Rules C53.9 and C53.10 and as set out in Parts A and B of Appendix 3, shall be the bottom Clubs in the Season 2019/2020 Premiership Division, League position 12, and are, in the Season 2019/2020 Championship Division, League position 22, and in the Season 2019/2020 League One Division, League position 32, which, in the case of the Season*

*2019/2020 Premiership Division Competition shall be relegated to participate in the Championship and, in the case of the Season 2019/2020 Championship and League One Division Competitions, are relegated to and participate in League One and League Two respectively, in each of such 3 cases and for the respective Season 2020/2021 Division Competitions”*

18. That the Written Resolution thereby proposed that for Season 2019/20 the Rules would be amended with *inter alia* the following consequences:
- i. the Championship, League 1 and League 2 would be concluded with league positions determined by dividing the total number of points gained by each Club by the number of games it had been played and ranking the Clubs by their points per game, calculated to the nearest four decimal places;
  - ii. Dundee United FC (occupying position 1 in the Championship and 13 in the League) became the Champion Club of the Championship and would be promoted to the Premiership;
  - iii. the second petitioner (occupying position 10 in the Championship and 22 in the League) would be relegated from the Championship to League 1;
  - iv. Raith Rovers FC (occupying position 1 in League 1 and 23 in the League) became the Champion Club of League 1 and would be promoted from League 1 to the Championship;
  - v. Stranraer FC (occupying position 10 in League 1 and 32 in the League) would be relegated from League 1 to League 2;

- vi. Cove Rangers FC (occupying position 1 in League 2 and 33 in the League) became the Champion Club of League 2 and would be promoted from League 2 to League 1;
- vii. no play-off matches would take place;
- viii. the final fee payments for Season 2019/2020 for the Championship, League 1 and League 2 Clubs would be allocated and paid (based on the League ranking positions per sub-paragraph (i) above); and
- ix. the Directors were given sole discretion to determine that no further League Matches would be scheduled or played in the 2019/2020 Premiership season, in which case:
  - a. Premiership placings would be determined as per sub-paragraph (i) above;
  - b. the first petitioner would be relegated;
  - c. Celtic FC would be declared the Champion Club of the League and of the Premiership; and
  - d. the fee payments for Season 2019/2020 for the Premiership Clubs would be allocated and paid (based on the league ranking position per sub-paragraph (i) above).

### The Briefing Notes

19. That the Directors proceeded upon the basis, and represented to Members, that the balance of fee payments could not be paid to Members unless or until the 2019/2020 Season was ended. The Briefing Notes were circulated at around 1.00pm on 8 April 2020 and stated *inter alia*:

*“Your Board has taken advice from a leading Q.C. about the implications of the Covid-19 epidemic for the broadcasting and other Commercial Contracts to which the SPFL is a party relating to Season 2019/20. In addition, we asked the Q.C. to consider the SPFL’s future contracts for Season 2020/21 and onwards and the options available to the Company under the Articles and Rules as regards the termination of Season 2019/20, other than by playing out the remaining fixtures and the various Play-Off Competitions.*

*The Q.C. has given us his opinion about whether and how the Season may be brought to an end without the remaining fixtures and the Play-Off Competitions being played, given that neither the SPFL Articles nor the SPFL Rules make any provision for the Season completing prior to the playing of 38 Premiership Matches per Club and 36 such matches in the other Divisions. The preferred method involves putting a Written Ordinary Resolution, amending the Rules and giving the Board express powers, all as described below, to all 42 Members.*

.....

*in the judgment of the SPFL Board, the only practicable means by which the outstanding fixtures and the Play-Offs and the beginning of Season 2020/21 could all be accommodated would be by a lengthy delay in the commencement of Season 2020/21, until likely around the middle September at the earliest.*

*“This would also mean that the balance of Season 2019/20 Fee payments to Members could not take place until around the end of August when final League standings would be known.*

.....

#### ***“Fee payments***

*“The Company’s Articles (152 – 156.4) provide for fee payments to Members out of Net Commercial Revenues based ultimately upon League position.*

*“For that reason, interim fee payments are paid on a conservative basis; that of the worst-case position in the League possible for each Club for the relevant Division at the time each payment is being considered.*

*“Crystallization of League positions at the end of each Season, in the ordinary course of events, enables further part-payments to be made to Members based upon each of their individual Clubs’ final League positions and as per the relevant percentages in Table A in Article 153.2 [of the Articles].*

*“Payments to Members totalling £7,602,032 + VAT (i.e. **£9,122,438.40 gross**) were made to Clubs in May 2019.*

*“Iain Blair has indicated, if the accompanying resolution is approved by Members and there is no material change in circumstances, then he expects to be able to make a slightly higher aggregate payment to Members, in respect of Season 2019/20, of £7,750,000 + VAT (i.e. **£9,300,000 gross**).*

*“The table below details the projected payment for each individual 2019/20 Ladbrokes Championship, League 1 and League 2 position, based on this aggregate figure.*

*“These payments could be made to these Members immediately after the Resolution was adopted.”*

20. That various Members inquired whether there was any way that payment of fees could be made without the Season being brought to an end. They were wrongly advised by the Directors that that was not possible. Rangers FC proposed such an alternative resolution but were wrongly advised by the Company that Rangers’ proposed resolution was “not competent.” Indeed, by letter dated 12 April 2020 (the “**SPFL Letter**”), the Chairman of the Company, Murdoch MacLennan, wrote to Members stating *inter alia*:

*“It has been suggested that it is open to the SPFL Board to distribute end-of season fee payments to clubs now, in the absence of league placings being finalised. That is simply not the case. For the Board to be able to authorise end*

*of season fee payments to clubs (amounting to £9.3 million gross), final league placings must be determined. Those who have suggested that the SPFL may make such payments, without a line being drawn under Season 2019/20, are wrong."*

21. That Members were thereby presented with the Written Resolution on a "take it or leave it" basis, as being the only realistic means by which payments could be made. That representation by the Directors was materially inaccurate. Advance fee payments could have been made to Members. That had been done before. In particular, in season 2016/17, because the way the League fixtures fell, the second petitioner and Motherwell FC did not stand to benefit from the significant income to be derived from a third home League Match against either Rangers FC or Celtic FC prior to the Premiership splitting into two (as it does in around April of each Season). The Company therefore agreed to make advance fee payments of £150,000 to each of the second petitioner and Motherwell FC in around January 2017.

22. That, in any event, the Rules required to be changed to end the Season. Absent a rule change, neither the Company nor its Directors could have declared the Season over. It would therefore have been equally possible to change the Articles and Rules to allow final fee payments to be made to Members, based upon current League positions. That would have: alleviated the financial pressures on Members; removed the imperative on them, as urged by the Directors, to vote in favour of the Written Resolution; and, given effect to the accrued rights and expectations of Members that promotion and relegation would only be determined in accordance with the Rules, all as hereinafter more fully condescended upon. Equally, in the event that the Season did ultimately have to end because of the Covid-19 crisis, it did not follow that Rules required to be changed to treat the Season as having been completed, for the purposes of promotion and relegation.

All of that ought to have been explained fairly and clearly by the Directors. It was not. The Directors' failure to so explain matters to Members constituted a breach of their duty to provide sufficient information to allow Members to make properly informed decisions when voting on the Written Resolution.

### The Dundee Rejection Vote

23. That in terms of article 64 of the Articles the proposed changes to the Rules in the Written Resolution is a "Reserved Matter". Such changes may only be made by "Ordinary Resolution". Article 2 of the Articles (in contrast to section 282(1) of the 2006 Act) defines an "Ordinary Resolution" as:

*"a resolution of the Company at a General Meeting, which is not a special resolution, Qualified Resolution or Commercial Resolution, of which notice has been duly given in accordance with these Articles, and which requires the support of not less than each of: (i) 75% of the Members owning and operating Clubs entitled for the time being to participate in the Premiership; (ii) 75% of the Members owning and operating Clubs entitled for the time being to participate in the Championship; and (iii) 75% of the Members owning and operating Clubs entitled for the time being to participate in League One and League Two, whether all the Members of the Company actually attend and vote or not, to be passed"*

24. That article 74 of the Articles provides for a period of 28 days within which a written resolution may be voted upon. Section 297 of the Companies Act 2006 provides that a written resolution lapses if it is not passed before the end of the period specified in the particular company's articles. However, the Company proceeded by issuing with the Written Resolution a voting form to be completed as indicating whether a Member voted for or against the Written Resolution. It required that the form be returned as soon as signed, and if possible by 5.00pm on Friday 10 April 2020. It confirmed that



scanned responses could be emailed to the Company and provided an email address therefor.

25. That on 10 April 2020 at around 4.48pm, one Member, namely The Dundee Football Club Limited ("**Dundee**"), submitted its vote on the Written Resolution by email. Dundee voted to reject the Written Resolution (the "**Dundee Rejection Vote**"). The Dundee Rejection Vote was received by the Company. In any event, in terms of article 185 of the Articles, it was deemed to have been delivered when it was sent. The Dundee Rejection Vote was executed and had effect when it was sent at 4.48pm on 10 April 2020.
26. That the effect of the Dundee Rejection Vote was that the Written Resolution had failed to achieve the support of at least 75% of Members owning and operating Clubs entitled for the time being to participate in the Championship. As a result, the Written Resolution was rejected by the Members. The "Ordinary Resolution" required to effect the changes to the Rules contained within the Written Resolution was not passed.
27. That notwithstanding, following the 5.00pm deadline, the Company issued a statement at 5.44pm, publicising the fact that all but one Championship Club had voted. The allegedly missing vote was that of Dundee. The factual position in relation to discussions between the Directors and Dundee following the 5.00pm deadline is unclear. In the SPFL Letter, Mr MacLennan said this:

*"Further, it has been suggested that all Ladbrokes Championship club votes were cast on Friday night. One Ladbrokes Championship club attempted to submit a voting slip, which did not reach the SPFL until late that evening. Earlier, at 6pm on Friday, that club had confirmed in writing to the SPFL that any attempted vote from that club should not be considered as cast. We have had a number of conversations with the chairman of that club over the weekend, in which he reiterated that his club had not yet voted on the SPFL resolution.*

*The SPFL has proceeded on the basis of the unequivocal instruction from that club received at 6pm on Friday."*

28. That although the Written Resolution had been rejected, and, specifically, that Dundee had cast its vote against it at 4.48pm on 10 April 2020, Dundee purported to re-cast its vote in favour of the Written Resolution on 15 April 2020. The Written Resolution was treated by the Directors as having been passed on that date. On that basis the second petitioner was relegated to League 1.
29. That on 18 May 2020, the Directors exercised their discretion under rule C53.1.2 of the Rules to determine that no further matches would be played in the 2019/2020 Premiership season (the "**Board Decision**"). The Board Decision had the effect *inter alia* of relegating the first petitioner to the Championship.

### Unfair prejudice

30. That sections 994 and 996 of the 2006 Act provide:

***"994 Petition by company member***

*(1) A member of a company may apply to the court by petition for an order under this Part on the ground –*

- (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or*
- (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.*

***"Powers of the court under this Part***

- (1) *If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.*
- (2) *Without prejudice to the generality of subsection (1) the court's order may –*
- a) regulate the conduct of the company's affairs in the future;*
  - b) require the company-*
    - i. to refrain from doing or continuing an act complained of, or*
    - ii. to do an act that the petitioner has complained it has omitted to do;*
  - c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;*
  - d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;*
  - e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly."*

31. That the affairs of the Company have been and are being conducted in the circumstances set out above in a manner that is unfairly prejudicial to the interests of Members, including the petitioners. First, as hereinbefore condescended upon the Directors breached their duty to provide sufficient information to Members when they were asked to vote on the Written Resolution. The Directors withheld relevant and necessary information from the Members. They wrongly advised Members that fee payments could not be made unless or until the Season ended. The insufficiency of information thereby invalidated the Written Resolution procedure. The

Directors then declared the Written Resolution to have been passed notwithstanding that, as a matter of fact and law, it had been rejected.

32. That, *separatim*, in relation to the Written Resolution, the Members failed to exercise their voting power in good faith for the benefit of the Company. Rule B1 of the Rules provides as follows:

*“In all matters and transactions relating to the League and Company each Club shall behave towards each other Club and the Company with the utmost good faith.”*

33. That the Members voting in favour of the Written Resolution did not adhere to that Rule. Instead, they exercised that voting power in a manner amounting to oppression of a minority, which was unfair and unjust. No reasonable member could have thought that the Written Resolution was in the interests of the Company. That being so, the Written Resolution was invalid.
34. That the Company and its Members agreed to conduct themselves in accordance with the Rules, and the Members’ rights emanating therefrom. Members’ success (or the success of the member Clubs that they own and / or operate) is judged by their success in sporting competition i.e. the League. Inherent in the Rules is the requirement that competitive fairness, or sporting integrity, be observed. It is with reference to that criterion alone that the Members agreed their financial entitlements (i.e. flowing always from sporting success) were to be determined. It was thereby a fundamental understanding amongst the Members, as agreed with the Company, that considerations of competitive fairness and sporting integrity would form the basis of their association. The Company’s interests are served by adhering to that fundamental understanding, and are not so served by departing, arbitrarily, therefrom. They are not served by relegating the petitioners unfairly.

35. That prior to the purported approval of the Written Resolution the first petitioner could only be relegated in the event that it occupied League position 12 at the end of 38 League Matches played by it in the Premiership. The second petitioner and Stranraer FC could only be relegated in the event that they occupied League positions 22 and 32, respectively, at the end of the Season. Equally, member Clubs were entitled to be promoted if they occupied positions 13, 23 and 33 in the League at the end of the Season (and not otherwise). The effect of the Written Resolution was (i) to remove from the petitioners and Stranraer FC rights to which they would otherwise have been entitled in accordance with the Articles and Rules; and (ii) to grant to member Clubs in League positions in positions 13, 23 and 33 rights to which they would not otherwise have been entitled. The removal and grant of rights in that manner was contrary to the way in which Members had agreed that the League would operate. It was unfair and arbitrary.
36. That no reasonable member, properly informed, could have considered that the Written Resolution was in the interests of the Company. Such a member would not be misled by the Directors' misrepresentations hereinbefore condoned upon. It would be aware that it was not necessary for the 2019/2020 Season to be terminated so that final fee payments could be made to Members. It would know that the link between ending the Season (including, for the avoidance of doubt, the promotion and relegation of Clubs) and the making of fee payments could be decoupled. It would be aware of Members' expectations that the League competition (and promotion and relegation) would be determined by observance of (i) the Rules and (ii) competitive fairness which was integral thereto. It would not vote for arbitrary changes to the Rules which, on the one hand determined promotion and relegation on an average points per game basis (to four decimal places) but, on the other, otherwise dispensed with play-offs and relegations and promotions emanating therefrom, and consequently spared Brechin FC, placed bottom of League 2 and 42 in the League, from the prospect of relegation from the League. It would recognise that the arbitrary

nature of the petitioners' relegation was, as Leslie Gray stated on 15 June 2020, "unfair".

37. That, as a result of the Board Decision, the Written Resolution purports to relegate the first petitioner to the Championship notwithstanding that it had eight League Matches to play in the Premiership Season. While the first petitioner was four points off League position 11, it was only six points behind Ross County FC, a team the first petitioner had to play twice (with three points awarded for a win and with the first petitioner holding a substantially better goal difference to Ross County).
38. That the Written Resolution purports to relegate the second petitioner to League 1. The unfairness visited upon the second petitioner is particularly egregious. It is 0.037 points per game worse off than the team in League position 22, Queen of the South FC ("**QotS**"). The effect of the Written Resolution is that the second petitioner is to be relegated notwithstanding that minute margin. That margin exists in circumstances where the second petitioner was required by the Company to postpone a League Match to accommodate an opponent who was playing a Scottish Cup Tie. Consequently, the second petitioner had played one fewer match than QotS (in footballing parlance had a "game in hand") but was only two points behind QotS. The second petitioner had nine League Matches remaining in the Championship. The second petitioner is a full-time professional team. It has 17 full time players contracted to play in Season 2020/21, along with 6 full time members of staff in the football department. However, as a consequence of the ongoing Covid-19 crisis, there currently exist no arrangements for League Matches to be played in Leagues 1 and 2 in Season 2020/21.
39. That a reasonable member would have had regard to all of the foregoing. It would be aware of the significant and ongoing loss which relegation will

visit upon the petitioners in an unprecedented time of inherent uncertainty for all businesses and professional sporting competitions alike. It would have had regard to the alternative options available to the Company and its Members including those which received no attention in the Briefing Notes. In particular, it would have considered the option of ending the Season with there being no promotion and no relegation. Proceeding in that way would have most closely respected the rights and expectations of Members and the fundamental importance of competitive fairness which, until the Written Resolution, underpinned the Rules. Relegating (or for that matter promoting) Clubs without the Season being completed, but rather in consequence of a wholly unforeseen and unparalleled situation, i.e. the Covid-19 crisis, ignored the agreement and expectation of Members that the Rules and competitive fairness would be observed. In these circumstances the petitioners seek relief in terms of sections 994 and 996 of the 2006 Act.

40. That in the foregoing circumstances it is submitted that the Court should grant the orders set out below. On 15 June 2020 the Company announced that a consultation exercise had demonstrated insufficient support for a new divisional structure within the League, accommodating the first petitioner within the Premiership and the second petitioner in the Championship. The Company confirmed that it will announce a Premiership fixture list (for 38 League Matches), with League Matches commencing on 1 August 2020, and a Championship fixture list for a reduced, 27 League Match Championship, which will start on 17 October 2020 at the earliest. In terms of the purported Written Resolution, unless or until an order is made by this Court the Company will exclude the first petitioner from the Premiership and the second petitioner from the Championship.

41. That the exclusion of the petitioners from the Premiership and the Championship, respectively, will be to their severe financial detriment, the extent of which cannot be accurately quantified. First, due to the ongoing Covid-19 crisis, it is not clear whether the Championship programme will

be capable of completion. It is not clear whether League Matches will take place in League 1. For those reasons, and in any event, there is no certainty for how long the petitioners might be so excluded from the Premiership and the Championship, respectively. The petitioners face the prospect of incurring their usual operating expenditure (including notable player salaries) yet the first petitioner will be forced to operate within a significantly curtailed season in a Division which is far less profitable. The second petitioner will be denied the opportunity to trade altogether, if League 1 League Matches do not commence. Accordingly, it is submitted that the interim orders sought below should be granted and that the balance of convenience favours the granting of such orders.

#### The Orders sought

42. That the petitioners seek partial reduction of the Written Resolution, insofar as it provides for the promotion and relegation of Clubs between the Divisions of the League. The petitioners do not seek reduction of the Written Resolution insofar as it provides for (i) the declaration of Champion Clubs of the League and of the Divisions; (ii) the Clubs nominated to participate in European Club Competitions in Season 2020/2021; and (iii) the distribution of final fee payments made to Members for Season 2019/2020.
43. That the petitioners are under the necessity of applying for the following orders:
  - i. An order suspending the Written Resolution insofar as it introduced rules C7A.5, C53.11 and C53.12 to the Rules (providing for promotion and relegation of Clubs in Season 2019/2020); and for such an order *ad interim*.



- ii. An order interdicting the Company, its Directors or anyone acting upon their behalf from implementing the terms of the Written Resolution insofar as it introduced rules C7A.5, C53.11 and C53.12 to the Rules (providing for promotion and relegation of Clubs in Season 2019/2020); and for such an order *ad interim*.
- iii. An order reducing the Written Resolution insofar as it introduced rules C7A.5, C53.11 and C53.12 to the Rules (providing for promotion and relegation of Clubs in Season 2019/2020).
- iv. In the alternative to an order of reduction, an order requiring the Company to pay to the first petitioner the sum of EIGHT MILLION POUNDS (£8,000,000) STERLING as compensation for the financial loss that the first petitioner will sustain as a consequence of its relegation in terms of the Written Resolution.
- v. In the alternative to an order of reduction, an order requiring the Company to pay to the second petitioner the sum of TWO MILLION POUNDS (£2,000,000) STERLING as compensation for the financial loss that the second petitioner will sustain as a consequence of its relegation in terms of the Written Resolution.
- vi. An order finding the Company and any other respondent opposing the terms of this petition jointly and severally liable to the petitioners in the expenses occasioned by this petition.

#### Intimation and service

44. That the petitioners seek intimation of this petition on the walls in common form. For the following reasons they seek an order from the Court to shorten the period of notice for lodging answers to a period of seven days. The petitioners reasonably attempted to avoid litigation. In the period that

followed the Board Decision the first petitioner proposed a new divisional structure to the Members which would have avoided the enforced relegation of the petitioners and Stranraer. As has been widely reported in the media, discussions amongst the Company and its Members regarding League reconstruction have continued for many weeks (since the Written Resolution was purportedly passed). However, on 15 June 2020, following an indicative vote by Members, the Company determined that those reconstruction discussions were finally at an end. Accordingly, the petitioners are now required to litigate to resolve their dispute with the Company. The petitioners seek an expedited resolution of this petition given that the Premiership Season is due to commence on 1 August 2020. The first respondent has the benefit of senior counsel's advice relative to the petitioners' challenge to the Written Resolution and the unfairly prejudicial nature thereof. In particular, on 15 June 2020, Leslie Gray confirmed that the Written Resolution was "unfair", that "Hearts will do what they have to do" but that the Company had "got our QC advice". As Members the other respondents are entitled to see that advice. The petitioners therefore reasonably anticipate that the respondents will be in a position to lodge answers at short order. A copy of this application is being sent to all of the Members.

#### Basis of this petition

45. That this application is made under sections 994 and 996 of the 2006 Act and the relative Rules of Court.

MAY IT THEREFORE please your Lordships

- (i) to appoint this petition to be intimated on the Walls in common form and to be served on the persons specified in the schedule

hereto in common form and to ordain them and any other person claiming an interest, to lodge answers hereto, if so advised, within seven days after such intimation and service;

and thereafter upon resuming consideration hereof with or without answers and after such procedure as to your Lordships shall seem proper

- (ii) to make an order suspending the Written Resolution insofar as it introduced rules C7A.5, C53.11 and C53.12 to the Rules (providing for promotion and relegation of Clubs); and for such an order *ad interim*;
- (iii) to make an order interdicting the Company, its Directors, and anyone acting upon their behalf from implementing the terms of the Written Resolution insofar as it introduced rules C7A.5, C53.11 and C53.12 to the Rules (providing for promotion and relegation of Clubs); and for such an order *ad interim*;
- (iv) to reduce the Written Resolution insofar as it proposed the introduction of rules C7A.5, C53.11 and C53.12 to the Rules (providing for promotion and relegation of Clubs);
- (v) alternatively, to order the Company to make payment to: (i) the first petitioner of the sum of EIGHT MILLION POUNDS (£8,000,000) STERLING and (ii) the second petitioner of

the sum of TWO MILLION POUNDS (£2,000,000) STERLING with interest thereon at the rate of 8% a year from the date of the first order in this petition until payment;

- (vi) to find the petitioners entitled to the expenses of this petition and the procedure to follow hereon from the Company and any other respondent opposing this petition on a joint and several basis;
- (vii) and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

ACCORDING TO JUSTICE ETC.

A handwritten signature in black ink, appearing to be 'O. H. T.', located at the bottom right of the page.

## SCHEDULE FOR SERVICE

Service of the petition in common form is sought upon:

1. The Scottish Professional Football League Limited, Hampden Park, Glasgow, G42 9DE
2. Cove Rangers Football Club Limited, Balmoral Stadium, Wellington Circle, Altens, Aberdeen, AB12 3JG
3. Dundee United Football Company Limited (The), Tannadice Park, Dundee, DD3 7JW
4. Raith Rovers Football Club Limited, The Pavilion Stark's Park, Pratt Street, Kirkcaldy, KY1 1SA
5. Stranraer Football Club, Stair Park, London Road, Stranraer, DG9 8BS



**IN THE COURT OF SESSION**

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL & SESSION

PETITION

of

HEART OF MIDLOTHIAN PLC & THE PARTICK THISTLE FOOTBALL  
CLUB LIMITED

for orders under section 994 and 996 of the Companies Act 2006 in respect of  
The Scottish Professional Football League Limited

2020

Gilson Gray LLP  
29 Rutland Square  
Edinburgh EH1 2BW  
Ref: