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Assurance of Independence of Investigations and Decision-Making by the Cricket Regulator

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This report follows from Terms of Reference which identified the purpose as undernoted:

Purpose

- It is intended that each year an independent assurance process will be carried out to confirm
 that there has been no interference or other inappropriate involvement in regulatory cases
 handled by the Cricket Regulator by the England and Wales Cricket Board ('ECB') personnel
 outside of the Cricket Regulator.
- 2. The purpose of this process is therefore to provide assurance that the Cricket Regulator has made its decisions free from interference from or other inappropriate involvement of ECB personnel in respect of:
 - a. The conduct of investigations;
 - b. Whether to charge Participants with breaches of the ECB's rules and regulations, and
 - c. Commencing and conducting disciplinary proceedings against Participants.
- 3. The outcome of this process is to be made public with a view to building trust and confidence in the new Cricket Regulator and its processes.

It is understood that these Terms of Reference will be published on the Cricket Regulator website together with the executive summary of findings.

Methodology - Case Assessment and Cricket Regulator Interviews

The independent investigation analysed a selection of integrity and safeguarding cases to understand the approach to charging and conduct of cases and how the Cricket Regulator team manages such matters. The review is intended to identify any scope for improvement as well as identifying any adverse ECB involvement or influence in process.

The Cricket Regulator presented a comprehensive 2024 case log with around 80 regulatory cases and 11 were selected by the independent investigator for in-depth consideration. That analysis required the full disclosure of all Cricket Regulator papers, in each of the 11 cases.

The cases were selected to provide a breadth of issues for consideration across 1) social media cases; 2) anti-discrimination matters; 3) the women's game; 4) the international game; 5) spectator and club

official behaviours; 6) safeguarding; and 7) pitch matters. There was a deliberate decision to look at the cases involving international players since those are the highest profile cases where one might anticipate the ECB had an interest. Cases concerning player selection and bat gauge issues were not deemed significantly serious to warrant further review.

For completeness, the cases identified were as follows, and the short synopsis summary is simply for audit purposes:

1)	professional cricketer - allegation of racist or otherwise
	inappropriate comments during podcast recording;
2)	professional cricketer – allegation of sexually inappropriate
	messages sent to players in coaching pathway;
3)	- allegations of financial impropriety and misuse of position
	in appointment process for senior roles within the club;
4)	 – safeguarding and misconduct
	allegations flowing from pre-season tour and concerns about inappropriate conduct towards female colleagues;
5)	- anonymous complaint concerning captaincy appointment
	process and allegations of nepotism together with concerns raised about the treatment and
	selection of black and Asian women;
6)	- anonymous complaint concerning captaincy appointment
	process and allegations of nepotism together with concerns raised about the treatment and
	selection of black and Asian women;
7)	- potential breach of the professional cricket regulations, anti-
	discrimination code and other relevant regulations;
8)	 allegations of club failing to deal with racist comments coming from
	spectators;
9)	professional cricketer – allegations of inappropriate
	celebrations when taking wickets;
10)	Pitch Regulations Investigation – investigation
. • /	into the state of the nitch following match abandonment: and

– investigation into alleged comments made at an awards evening.

The case papers then enabled focused interviews with the Cricket Regulator team. Those interviews were conducted remotely via Microsoft Teams and were recorded to enable post-interview scrutiny. The interviews were held with:

- a) Dave Lewis, Director of the Cricket Regulator;
- b) Ryan Smith, Head of Integrity;
- c) David Reid, Integrity Investigator;
- d) Hannah Kent, Lawyer; and
- e) Sara Niblock, Director, Anti-Discrimination Unit and Safeguarding

All the interviewees were familiar with the selected case papers and were well prepared for the meetings. They were open and honest and happy to answer challenges and queries on process and ways of working; their co-operation greatly assisted the independent review process.

The interviews helped signpost further follow up research and background reading to ensure the report considers all the available information and that reliance is not placed exclusively on the reported cases.

There was a consistent set of themes that developed from the interviews and are noted below.

Expertise and Experience

The calibre of staff involved in the Cricket Regulator is exceptionally high.

The interviewees all had significant investigation experience and an acute awareness of the balance between proactive and reactive investigations.

There were numbers of the selected cases which involved anonymous reporting and were not capable of being progressed when witness evidence could not be extracted. There is a live discussion about extending the Regulator's proactive investigation powers and it is understood that there may be a development of those powers in due course. It was encouraging to hear from the outset that none of the Cricket Regulator team felt inhibited in their role and rather envisage an expansion of their powers to better aid disciplinary and regulatory processes and outcomes.

Developing the Cricket Regulator Brand

All interviewees reiterated that in the first year of operations there have been challenges with participants understanding the Cricket Regulator role, who they are and what they do. There was no suggestion that the ECB had made matters difficult and rather it seems the case that the 'professionalising' of the disciplinary function may not be wholly understood by the wider game and that it may take time for participants to understand that there is now greater scrutiny and accountability for misconduct.

It is understood that standard operating procedures and disciplinary flowcharts may be published on the regulator website and that may assist the brand development and further highlight independence from the ECB and help carve out the unique function of the Cricket Regulator.

Hallmarks of Independence

Across all the sample cases and the interviews with the Cricket Regulator team, there was a strong sense of purpose and a clear intention to create an independent framework for disciplinary and regulatory decision making in cricket. All the team were focused on the 'separation of powers' from the ECB and in establishing an independent regulator.

The specific observations from the cases and interviews that aid that strong finding of independence are as follows:

a) Increased Case Volumes - the volume of cases has increased since the establishment of the Cricket Regulator. This shows a greater focus on integrity and misconduct matters and that the Regulator is acting effectively, and without any fetters or barriers applied by the ECB. There are numerous emails on the files expressing dismay at cricket's general unwillingness to report misconduct and evidently the Cricket Regulator is endeavouring to be more proactive in investigations and encourage reporting which demonstrates a positive intention to fulfil the independent role and flush out misconduct in the game.

The easiest thing for the ECB to do would be to inhibit reporting or not encourage it and there would be no way of matters then progressing to the Regulator – there is no evidence of those barriers being put in place by the ECB and rather the Regulator is demonstrating an increased proactive vigilance in this area which is reflected in the annual statistics.

b) Robust Case Management - the cases passed relatively expeditiously from allegation to charge, and the quality of the reporting was very transparent with good communication with the charged participants. There is nothing to suggest that the Cricket Regulator is 'sense checking' allegations with the ECB or that there are any requirements to notify the ECB of case

milestones other than outcomes. The audit trail of papers including 'request for charging advice' show a consistent approach to case management and an effective set of processes are in place. The Cricket Regulator team appear to work well together, and each has a defined role and structure to their job which assists independent service delivery.

- c) 'Ringfencing' of IT Systems It is understood the Cricket Regulator has a separate SharePoint folder only accessible to Cricket Regulator staff and also recently introduced a new, secure case management system, where sensitive information is only accessible to Cricket Regulator staff. It was apparent that in certain sensitive cases there were password protections used on key documents and the communication on cases was kept tightly restricted to the defined Cricket Regulator team. It is evident that measures are in place to protect the confidentiality of investigations and to ensure independence in these matters.
- d) Jurisdictional Considerations A number of the cases reveal that the Cricket Regulator actively considers jurisdictional boundaries and whether they have the power to intervene in certain misconduct cases e.g. after dinner speakers, office holders at club, misconduct overseas.

The case papers reveal that the jurisdictional question is framed exclusively by reference to the published rules and regulations and there is no evidence of jurisdiction being in any way tainted by ECB influence or 'back door' communications. It is the Cricket Regulator team that determines jurisdiction alone and that is a hallmark of independence.

- e) Dealing with High Profile Cases the Cricket Regulator has not shied away from pursuing high profile cases, even in situations where the threshold of the alleged misconduct breach may have been considered quite low or historic. The case, in particular, showed an appetite to pursue the anti-discrimination agenda and to be proactive in investigating an even when that might impact team performance. The high-profile cases that were considered did not reveal any ECB influence on process.
- f) Cricket Regulator influencing ECB there is evidence of a change of regulatory policies at the instigation of the Cricket Regulator including i) a move away from the ECB approach of advising participants that there will be no further action (NFA) when there was no original notification of investigation in the first place; ii) the Cricket Regulator's clearer regime of reviewing safeguarding cases in the professional game to determine whether misconduct proceedings will commence; iii) an expanded jurisdiction to pursue breaches of financial regulations and to hold individual cricket office holders to account for charges, rather than there

only being vicarious liability for clubs for such breaches; and iv) a proposal that there be a new sanction of 'Caution' which provides another option for managing misconduct cases and helps with some of the confusion that can arise from 'words of advice'.

These developments may be referred to as 'reflective learning' and demonstrate the Cricket Regulator's ability to influence the ECB (rather than the other way round). They also show the Cricket Regulator's evolving powers in managing independent investigations.

g) Reporting to independent Regulatory board – there are quarterly formal meetings between the Cricket Regulator and the independent Board and there is an ongoing quality assurance of the Regulator's work which provides comfort that independence is a strong strategic focus and priority.

The question of location of operations was discussed in the series of interviews, as the Cricket Regulator is based at Lords and there might be the perception of ECB influence based on physical proximity. It is understood that this is a live debate within the Cricket Regulator, and that there are obvious logistical benefits in having a 'shared services' model as there is not the cost in setting up new finance, payroll and communications teams, for example.

As the Regulator is in the first year of operations, it is accepted that the benefits of a shared location outweigh the negative perception of being 'close to the ECB'. During this reporting process, it was very clear that the Cricket Regulator is alert to managing investigations confidentially and privately. It was explained that sensitive meetings are often held offsite and in different locations to preserve best practice. Additionally, it is understood that they are trialling a co-working space as a proof-of-concept model to see if this is a solution to the perception issue.

It may be that the location question is more one of brand identity within the wider game and might assist the Cricket Regulator in that regard, rather than it having any impact on the quality and independence of the actual work.

To conclude, the hallmarks of independence are very clear both from the case papers and interviews with the Cricket Regulator staff. The team are professionally focused on their

unique governance and regulatory role and demonstrate strong behaviours in preserving that independence. There was no evidence of interference or influence being exerted by the ECB and rather it seems that all parties welcome having a highly skilled independent regulator to manage regulatory and disciplinary matters.

Executive Summary (for Publication)

The Cricket Regulator has acted in a transparent and open manner in assisting this independent review and has fully explained the challenges and opportunities presented in the first year of operations.

There is no evidence that the ECB has sought to, or actually exerted, influence or interference with the Cricket Regulator's investigation, charging and/or disciplinary powers and rather the independent regulator has established the necessary standard operating procedures and control mechanisms to best ringfence and protect its independence. The team are professionally focused on their unique governance and regulatory role and demonstrate strong behaviours in preserving that independence.

The Cricket Regulator is required to collaborate with the ECB in progressing the evolution of the Regulator role beyond its first year. The parties continue to discuss expanding the jurisdiction of the Regulator and this recognises the highly specialised skillset at the Cricket Regulator and their successes to date.



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