

COMPLAINTS AND WHISTLEBLOWING DISCLOSURES TO SPORTSCOTLAND

1. INTRODUCTION

- 1.1 On 8 December 2021 sportscotland announced it had decided to “appoint a team of independent experts to carry out a full a (*sic*) review of racism within Scottish cricket”. On 14 December 2021 sportscotland announced it had appointed Plan4Sport to carry out the review. On 25 July 2022 the report from the review was published at a press conference before Cricket Scotland or any others implicitly criticised in the report were given any opportunity to comment on or challenge the various serious criticisms levelled against them
- 1.2 The review and its report were fatally and irredeemably flawed - see Sections 2 to 5 below.
- 1.3 Because the review was fatally and irredeemably flawed in so many respects, the actions taken by sportscotland based upon the report have been equally flawed and the public money those have cost has been wasted – see Section 6 below.
- 1.4 sportscotland should have realised at the time of the report that it was so flawed or taken suitable time to validate the report but, for unknown reasons, still published it and proceeded to follow its recommendations – see Section 6 below.
- 1.5 Accordingly, I am making these complaints and whistleblowing disclosures because: -
 - 1.5.1 sportscotland predetermined the outcome of the review through its then Chief Executive’s following statement in the announcement of 8 December 2021 – “It is clear that steps must be taken to address the problem of racism within cricket in Scotland”. This one statement - quite incredible though it is as judged by any basic notion of natural justice - ensured that the review was condemned from the outset. The very body instructing the review had already determined its conclusion. There was no prospect of the organisation which was commissioned to carry out the review coming to any other conclusion, especially when the organisation was in no sense independent and impartial given that it held a continuing contract with the commissioning body (see immediately below).
 - 1.5.2 sportscotland appointed a reviewer who was a service provider to it and was thus not independent and impartial due to their conflict through their interest in maintaining their ongoing contractual relationship with sportscotland.
 - 1.5.3 sportscotland in making the appointment of the reviewer, failed to ensure they had the capability, experience and resources to undertake the review.
 - 1.5.4 sportscotland as commissioner of the review failed in its duty to oversee the review process and the methodology used by the reviewer to ensure due process, transparency, quality of the output and the fairness of the review to all stakeholders.
 - 1.5.5 sportscotland failed to halt the publication of the review when it should have realised that the review and the report were badly flawed.
- 1.6 This has resulted in sportscotland expending material public money (estimates have appeared in public of up to £1m) on the report and implementing those recommendations, despite the basis of those being fatally flawed.
- 1.7 Sportscotland, through publishing the report despite its flaws, has allowed the sport of cricket in Scotland to be very seriously damaged reputationally, operationally and financially without due justification (both domestically and internationally), thereby failing in its duty to support and promote sport in Scotland.
- 1.8 These complaints and whistleblowing disclosures are being made more than 6 months after the publication of the report (25 July 2022). However, it was only after receiving the response (on 28

November 2022) to my Freedom of Information appeal to sportscotland and other subsequent evidence that I was able to understand sufficiently the flaws in sportscotland's actions in this whole matter.

2. REVIEWER CHOSEN

2.1 sportscotland chose (without any competitive or tender process) to appoint Plan4Sport to carry out the review as per the following statement of 14 December 2021: -

[Independent review of allegations of racism in cricket in Scotland \(sportscotland.org.uk\)](https://www.sportscotland.org.uk/independent-review-of-allegations-of-racism-in-cricket-in-scotland)

2.2 Plan4Sport was described as "industry expert" in that press release of 14 December 2021, as "global EDI experts" in sportscotland's press release of 24 April 2022 and ""Global Equality Diversity and Inclusion experts" in sportscotland's release of 25 July 2022. In the 14 December 2021 statement it was also described as follows – "The multi-disciplinary company employs a skilled and diverse team of specialist staff supported by a wider group of expert consultants, with a combined total of 150 years of experience working across all levels of the sport sector."

2.3 Plan4Sport (according to its accounts to 31 March 2021 and to 31 March 2022 - [PLAN4SPORT LIMITED filing history - Find and update company information - GOV.UK \(company-information.service.gov.uk\)](https://www.gov.uk/company-information-service) - has one paid up share of £1 (plus reserves of c£175k as at 31 March 2021), one director and one shareholder (one and the same person) and only 3 employees including the director (it is not known if the other employees are full or part time). Its stated principal place of business is 6 Trafalgar Way, Lichfield, Staffordshire, WS14 9FD which appears from Google Earth to be a residential property.

2.4 Plan4Sport is not the kind or scale of organisation which justifies the description of "global experts" or "multi-disciplinary experts". It did not employ "a skilled and diverse team of specialist staff".

2.5 There is no evidence of Plan4Sport previously undertaking any review of a similar nature and scale as this review. This review was therefore new territory for Plan4Sport in which they had no previous experience.

2.6 Because of its very limited own employed resource, Plan4Sport used external contractors to provide most of the workforce (85%) to carry out the review (see sportscotland's press release of 14 December 2021 including for the profiles of the contractors). The profiles of the contractors concerned are very largely of equality diversity and inclusion policy experts but without any clear forensic investigation skills required for a review which required detailed evidence gathering and assessment.

2.7 The preponderance of external resource meant that the review was not effectively by Plan4Sport but by the external contractors. No serious professional firm would have allowed that proportion of externals in a review because observance of quality standards and processes cannot be guaranteed with that imbalance. It is not known if Plan4Sport had any standards and processes (e.g., for evidential standards, interview recording, sharing interview notes with interviewees for confirmation of accuracy, record keeping, evidential assessment and analysis etc). I do know that the notes of my (brief – one hour) interview were not shared with me for checking as to accuracy.

3. REVIEW PROCESS AND OUTPUTS

3.1 In the sportscotland statement of 14 December 2021 it was said –

“Central to this piece of work, which will be interviews and focus groups with the following *past and present (my emphasis)*:

- Grassroots players
- Coaches
- Umpires
- Club volunteers
- Performance players (men’s and women’s teams)
- Administrators
- Interviews with each Regional Association Management Committee
- Staff members of Cricket Scotland
- Board members of Cricket Scotland”

3.2 A large number of significant people involved in cricket in Scotland was not interviewed by the review team , e.g. :-

- the Cricket Scotland CEO from 2015 to 2019
- the Cricket Scotland Interim CEO in 2015
- the Cricket Scotland Chair from 1999 to 2015
- the Head Coach from 2014 to 2017
- the Head Coach from 2008 to 2013
- the Men’s Team Captain from 2014 to 2016.

Many of these were key participants in the matters complained of by the 2 former Scottish players who initiated the whole matter. Those individuals were also heavily involved in Cricket Scotland matters generally and management for long periods of time and thus relevant to understanding the issues involved.

3.3 I, as the Chair of Cricket Scotland from March 2015 to February 2022, had to insist on being interviewed and was only allowed a one-hour interview. In that interview none of the criticisms in the report was raised with me for comment or clarification.

3.4 Names were given to Plan4Sport of key individuals (including those listed in 3.2 above) they should interview during the review, but many were not contacted by them. For example, the CEO from 2004 to 2014 asked for an interview and made many comments. He also provided the names of people to be contacted to give context and important information on the investigation. It seems all the evidence given was ignored in the review.

3.5 One individual (who is available for contact and comment) contacted the review and informed it in writing that he had witnessed one of the persons prominently associated with the review having himself used racial language to a number of persons as well as grossly offensive comments associated with race to another cricketer. His initial disclosure was acknowledged and he was “assured” the consultants would contact him directly. They did not contact him despite two follow up communications by him. When Plan4Sport did eventually contact him, it was the working day before publication of the report and he was informed that he could only be interviewed on a date after publication.

3.6 The evidence given to Plan4Sport was not checked or validated by Plan4Sport nor was any opportunity given to Cricket Scotland to challenge it – indeed Cricket Scotland has never been shown the evidence that Plan4Sport say they took. The opinions and perceptions given to Plan4Sport have

been accepted without any checking with others who were involved in the events or who were the individuals criticised and who could have given counter evidence or another perspective.

3.7 Many of those opinions and perceptions in the report relate to issues not relevant to a racism review and are inaccurate.

3.8 Nothing in the report shows when any alleged incidents took place - were they within recent times (say, last 5 years) or earlier? Historic incidents do not demonstrate current problems.

3.9 Despite the undertaking in the timeline in the sportscotland statement of 14 December 2021 that

“June 2022

• Engagement with key stakeholders on draft report”

the report was not shared with Cricket Scotland, or the identifiable individuals criticised, in draft or advance removing any opportunity to provide comment, balance, challenge or other evidence, in relation to the evidence alluded to or the findings and conclusions. This contravenes widely understood and followed good practice as well as natural justice.

3.10. In the report Plan4Sport assessed Cricket Scotland against “31 Plan4Sport Indicators of Institutional Racism” which had been created by Plan4Sport themselves for the purposes of the review. The criteria have not been validated or recognised by any external body and have no official standing. They were not discussed with Cricket Scotland before they were used by Plan4Sport. sportscotland in an email of 28 November 2022 (copy available) stated “sportscotland did not carry out any consideration of the 31 criteria test of institutional racism”.

3.11. As the 31 criteria were invented for the purposes of the review they had, of course, never been intimated to Cricket Scotland or anyone else nor were Cricket Scotland ever asked in other ways to address all the issues raised in those criteria or assess itself against them. Cricket Scotland was therefore assessed against unpublished and unknown standards.

3.12. In the report Plan4Sport said the following (page 33): -

“Once all consultations had been completed the summaries of each meeting, headline findings, desk top analysis, and referrals highlighted in Section 3 Analysis of feedback, data and insight and high-level summaries were reviewed to identify any recurring themes and these were mapped against the Plan4Sport Indicators of Institutional Racism.

From this analysis 448 separate “examples” were identified that mapped against one of the Plan4Sport Indicators of Institutional Racism.

From that mapping Plan4Sport concluded that Cricket Scotland failed against 29 of the 31 indicators and was thus “institutionally racist”.

3.13. Plan4Sport have been asked to publish the 448 “examples” but have ignored those requests. They have never been published. It is also believed that they have not been seen or reviewed by sportscotland.

3.14. There is nothing in the report that says or suggests that the 448 alleged breaches were subject to forensic investigation by the review team as would be normal in any competent review. Indeed, it is believed, as said above, that Plan4Sport simply accepted views expressed without further enquiry, validation or challenge and considered those unsubstantiated views to be “examples”. In addition, nothing in the report indicates when the so-called examples occurred – were they recent or historic?

- 3.15. The 448 alleged breaches of the 31 indicators were never shared with Cricket Scotland in advance of the report so that comment could be made on them, or rebuttal offered if appropriate. They have never been published and sportscotland have said in the email of 28 November 2022 referred to above "sportscotland did not validate or oversee the methodology or findings ..."
- 3.16. There is nothing in the report to indicate if the alleged 448 examples were separate incidents or if a single incident led to more than one example.
- 3.17. It is not known if the alleged 448 examples were of activity or behaviour by Cricket Scotland staff or officials or were by others in Scottish Cricket Scotland.
- 3.18. Without publication of those, Cricket Scotland was not given the chance to review and, if appropriate, challenge them.
- 3.19. sportscotland in its April 2023 Progress Update said that, of the 448 "examples", 246 related to "policies and procedures across the sport, which created a culture where individuals were discriminated against, while 202 detailed individual concerns relating to direct racism, discrimination and inequalities".
- 3.20. No further information was given on the 246 "examples". It is still therefore not known what the issues are though it is now clear they do not all relate to Cricket Scotland policies and procedures.
- 3.21. Of the other 202 "examples", it would seem that 68 related to what Plan4Sport called "referrals" in their report which it is assumed (in the absence of transparency) they considered to be more serious issues. Sportscotland subsequently said that number of referrals increased to 87 after the report was published. Of that total, only 22 have now been passed for formal investigation. It is still not known to when the 202 "concerns" or the remaining 22 referrals relate or whether they involve Cricket Scotland or other bodies or individuals.
- 3.22. sportscotland, as commissioner of the review, was responsible for ensuring that it was properly carried out with independence, competent resource, due process, robust methodology, transparency and fairness so that output of the report was valid, reliable and supported by strong evidence and that the whole exercise met the test of natural justice. As examples, in its 28 November 2022 response to an FOI appeal, sportscotland has stated that "sportscotland did not validate or oversee the methodology or findings..." And in relation to the 31 Plan4Sport Indicators of Institutional Racism sportscotland has stated, as said already, "sportscotland did not carry out any consideration of the 31 criteria test of institutional racism". sportscotland has therefore failed to fulfil its duty of oversight.
- 3.23. There was no recognition in the review of the scale of Cricket Scotland- approx. 35 staff (including 12 contracted players) and a volunteer board in relation to e.g., the policy and other documentary expectations in Appendix 4 of the report (126 policies and documents - it would be interesting to understand if any sport's governing body in Scotland or indeed the UK has all of those).
- 3.24. There were a number of individuals who gave positive comments to Plan4Sport about how racial issues were addressed in cricket in Scotland (including by Cricket Scotland) but those views were not reflected in the report. Others who wanted to give similar comments and who offered themselves for interview for that express purpose were ignored by Plan4Sport.
- 3.25. The report mentions volunteers a number of times, but there is no substantive recognition of the context that cricket (like all sports) is run in Scotland as a primarily amateur sport. In fact, the report is written entirely out of context with regard to the real world of running cricket on a day-to-day basis relying on an army of volunteers up to and including Cricket Scotland board members.

4. PLAN4SPORT AND SPORTSCOTLAND

- 4.1 Plan4Sport has an existing and longstanding contract with sportscotland to provide EDI advice, support and training for sports governing bodies in Scotland (which included Cricket Scotland board members and staff). They were not therefore independent of sportscotland or impartial.
- 4.2 Plan4Sport, as part of their contract with sportscotland, supports Scottish sport governing bodies in achieving the EDI standards framework laid down by sportscotland. Plan4Sport had therefore supported Cricket Scotland on its implementation of that framework at various times from 2015 onwards. At no stage did Plan4Sport indicate that Cricket Scotland was falling materially short against the expectations of Plan4Sport or sportscotland.
- 4.3 As part of that process and again acting as sportscotland's contractor, Plan4Sport re-certified that Cricket Scotland met the Preliminary Standard of the sportscotland EDI framework in 2020. Plan4Sport did not at that time raise concerns about Cricket Scotland's EDI activities or current EDI position.
- 4.4 As part of its pathway to reach the next level of the sportscotland EDI framework (Intermediate Standard), in 2021 Cricket Scotland consulted Plan4Sport about the Cricket Scotland Equality Action Plan 2021-23 which Cricket Scotland had developed to take the organisation and cricket in Scotland to that next level. Plan4Sport did not at that time raise material concerns about the plan or its aims and activities or Cricket Scotland's current EDI position.
- 4.5 sportscotland had internal audits carried out by KPMG of Cricket Scotland in 2016 and 2018 - in neither of these were concerns about its policies or Cricket Scotland's EDI activities raised.
- 4.6 sportscotland had a representative who attended most Cricket Scotland board meetings from 2015 onwards. At no time were material concerns raised about Cricket Scotland activities in the EDI area.

5. SUMMARY OF ISSUES IN CONNECTION WITH THE REVIEW

5.1 The review and the report were fatally and irredeemably flawed because: -

- sportscotland had predetermined the outcome.
- Plan4Sport were not independent or impartial. They were an existing service provider to sportscotland and thus had a conflict of interest.
- Plan4Sport did not have the capabilities (expertise, skills, experience or right resources) to carry out the review.
- The contractors chosen to fill the gaps in Plan4Sports competence almost entirely lacked forensic investigative experience and thus the review lacked robust evidence gathering in a comprehensive and fair manner from all the relevant parties.
- The reviewers failed to interview key individuals and the views those who had given information which conflicted with the predetermined outcome were given insufficient weight.
- Cricket Scotland was judged against 31 indicators for "institutional racism" invented for the review and which have never been validated or tested by experts and had never been seen by Cricket Scotland or anyone else (including sportscotland) before they were used and applied.
- The so-called 448 examples of breaches of those criteria have never been validated, published or seen by Cricket Scotland or anyone outside of Plan4sport (including sportscotland). It is not known to when they relate or to what body, and what is the level of their seriousness or significance.
- Sportscotland failed in its duty, as commissioner of the review, to ensure it was carried out by an independent and competent resource with due process (including methodology), transparency and fairness.

- The reviewer had been consulted by Cricket Scotland on its EDI activities at various times and had not raised material concerns.
- Cricket Scotland and the individuals criticised in the report had no opportunity to review or challenge the evidence used by, or the findings of, the review, which contravenes natural justice.

6. POST THE SUBMISSION OF THE REPORT

- 6.1 When sportscotland received and read the review report (Friday 22 July 2022?) the board and senior management should have immediately recognised it was fatally and obviously flawed for the reasons outlined above.
- 6.2 Despite this sportscotland decided to proceed with the publication of the report on Monday 25 July 2022 and castigated Cricket Scotland as “institutionally racist” when that was not justified due to the inadequacies of the report.
- 6.3 In addition, sportscotland facilitated a press conference for some critical of Cricket Scotland on 25 July 2022 immediately following the launch of the report by sportscotland and Plan4Sport at which those individuals were allowed to promote their views which even went beyond the flawed conclusions of the report. No equivalent opportunity was given by sportscotland to those criticised in the report. Therefore the public narrative was allowed to be set by sportscotland without giving any equivalent opportunity to provide balance to those who had been criticised.
- 6.4 Having published the report despite its obvious flaws, sportscotland sought to implement its recommendations as set out in Section 5.0 of the report.
- 6.5 In doing this, sportscotland has allowed a third-party lobbying group (called Running Out Racism) to exercise unwarranted influence and power in the activities of Cricket Scotland. This has resulted in the lobbying group being inappropriately involved in the Cricket Scotland process to deal with the referrals referred to above and members of the group being appointed to the board and staff of Cricket Scotland despite the conflict of interest.
- 6.6 All this has resulted in sportscotland expending material public money (informed estimates have appeared in public of up to £1m) on the fatally flawed report and on implementing its recommendations, despite the basis of those being similarly flawed.
- 6.7 sportscotland (both its board and management) through its failures and breaches of duty in publishing the report despite its fatal and irredeemable flaws and in following up on the recommendations in the way sportscotland has done, has allowed the sport of cricket in Scotland to be very seriously damaged reputationally, operationally and financially without proper justification (both domestically and internationally), thereby failing in its duty to support and promote sport in Scotland.

7. CONCLUSION

- 7.1 For the reasons explained I am making the complaints and whistleblowing disclosures in this document to sportscotland.
- 7.2 Due to seriousness and importance of these complaints and whistle blowing disclosures, I request a full and completely independent enquiry into sportscotland’s conduct in this matter including into the review itself. I am also calling for publication of the full details of the 448 examples used to justify the categorisation of Cricket Scotland as “institutionally racist” and for Cricket Scotland to be removed from sportscotland “special measures”.

7.3 In view of the seriousness and importance of these complaints and whistleblowing disclosures I am copying this document to: -

The First Minister

The Cabinet Secretary for NHS Recovery, Health and Social Care

The Minister for Social Care, Mental Wellbeing and Sport

The Health, Social Care and Sport Committee of the Scottish Parliament

Audit Scotland

Tony Brian

25 May 2023