

IN THE MATTER OF AN APPEAL TO THE (FIRST-TIER) TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

Case Number: EA/2010/0162

BETWEEN

MR C ZACHARIDES (Appellant)

and

THE INFORMATION COMMISSIONER (Respondent)

and

THE UK SPORTS COUNCIL (Additional Party)

**APPELLANT'S SKELETON ARGUMENT
TO BE LODGED BY 23RD FEBRUARY 2011**

THE APPELLANT'S SKELETON ARGUMENT

- 1) The Appellant will deal with the argument for disclosure by addressing the 5 points made by the Respondent when deciding to support the Additional Party in the Decision Notice:
 - a) The relationship between UK Sport and UK Athletics is a sham. UK Athletics is an organisation without substance that was created by UK Sport, is funded by UK Sport, and receives all of its other benefits thanks to the patronage of UK Sport. It is not just a case of reading from the same page, or being on the same page, there is only one page and they are only one page. UK Athletics are the "Athletics" department of UK Sport.
 - b) A compelling public interest in disclosure. The suspicion and mistrust of UK Athletics is so widespread within the athletics community, that the reputation of the United Kingdom leading up to the 2012 Olympic Games can only be harmed by allowing them to avoid scrutiny by the sport that they govern.
 - c) Necessary quality of confidence. Is the nature of the information worthy of being described as confidential.
 - d) An obligation of confidence. Would a reasonable man in the shoes of UK Sport consider the information to be confidential.
 - e) Detriment of the confider. Would the release of information effect the performance of athletes to such an extent as to put British athletes at a competitive disadvantage.

RELATIONSHIP BETWEEN UK SPORT AND UK ATHLETICS IS SHAM

- 2) As regards the matter of an actionable breach of confidence being taken out by UK Athletics against UK Sport, I hope to persuade the Tribunal that such an action would not succeed, and also that UK Athletics have no free will to undertake such an action.
- 3) Firstly we must look behind UK Sport and UK Athletics and establish where they are joined. Game Plan (Bundle 233 - 247) was a government policy document published in December 2002. In the final paragraph of his Forward, Prime Minister Tony Blair says "This report focuses on the importance of increasing grassroots participation for health benefits, estimating that physical inactivity currently costs the nation at least £2bn a year (or 54,000 lives lost prematurely). It highlights the central importance of Government working closely in partnership with those that provide sport - national governing bodies, clubs, schools, local authorities, the voluntary and the private sectors - to help deliver key outcomes."

- 4) In her forward on page 6 of Game Plan The Right Honourable Tessa Jowell MP, Secretary of State for Culture, Media and Sport wrote: "Those involved in supporting and running sport have often been criticised for being inefficient, lacking vision and failing to develop common goals. Too often, too many organisations fail to join up their policies and their programmes. Too often, evidence on how to be most effective is lacking. Too often, initiatives lack sustainability. This means that children and young people miss out on the opportunity to enjoy sport, and we as a nation fail to identify future champions." Mrs Jowell went on to state the obvious: "If you get public money, then it comes with conditions".
- 5) The sport of Athletics did not have the infrastructure to receive the huge quantities of public money that the government wanted to invest. On page 76 of Game Plan (Bundle 241) paragraph 2.139 states "Government does not run sport - and nor should it. Government intervention, however, is legitimate where it remedies a 'gap' in voluntary provision".
- 6) On page 139 of Game Plan (Bundle 245) the following is written: "There are UK and Home Country Governing Bodies for the same sport (eg. UK Athletics and the Amateur Athletics Association of England). Potentially this leads to duplication of effort and extra bureaucracy." With hindsight we now realise that Athletics did not know the meaning of the word Bureaucracy until it met the government agencies, UK Sport and Sport England.
- 7) These are the elements which justified the aggressive take-over of athletics implemented by the government agencies UK Sport and Sport England.
- 8) A year later Athletics was informed that an independent review was to be carried out, into the sport by the former chief of the Audit Commission, Sir Andrew Foster. At this point if we skip forward to Sport England's email to the Appellant dated 12th July 2006 (Bundle 315) confirms that Sir Andrew Foster joined the Sport England Board in July 2003, so was far from "Independent".
- 9) Returning to the implementation of Tony Blair and Tessa Jowell's Game Plan Policy, In May 2004 Sir Andrew Foster published his now discredited review into athletics. (Bundle 252 - 255). On page 15 of the Foster Review (Bundle 253), Sir Andrew Foster says "When this project started we did not particularly want to plunge straight into the 'structural problem'. But it is reinforcing conflict and blighting development. It sits like a black cloud over the sport and has to be sorted out".
- 10) On page 17 of the Foster Review (Bundle 254), Sir Andrew Foster says "It is time for a fresh start. - Our proposal in summary is that the English Regions should be managed by a new England-level body - English Athletics"
- 11) Sir Andrew Foster goes on to say: "UK Athletics should cease to be the defacto England home country entity and concentrate on its pan-UK strategic leadership roles. It should remain the internationally recognised governing body for athletics in the UK. The AAA of England and the three English territorial athletics associations should be invited to play a very full part in designing and establishing the new organisation, which would assume full responsibility for delivering athletics in England through its nine Regions."

- 12) The AAA's and the three English territorial associations, the North, South and Midland Counties of England, received a letter from UK Athletics CEO, David Moorcroft dated 20th October 2005 (Bundle 301-302).
- 13) I don't propose to read the entire letter now, however, in summary it claims governance of the sport, based on a dubious recognition by the International Amateur Athletics Federation (The IAAF), and transfers its delegated governance duties in England from the democratic AAA's to the new Body, funded by Sport England, UK Sport and UK Athletics, England Athletics. At the same time all revenue generating mechanisms are withdrawn from the AAA of England leaving it as broken shell, after 125 years with the queen as its Patron.
- 14) In response to this process the AAA's held two EGM's in close proximity in late 2005. At the first the clubs voted to retain its title to its assets including its championships, and at the second EGM clubs voted to retain governance with the AAA's.
- 15) As a response to the weakness of the officers of the AAA's of England, clubs formed a new Association of British Athletics Clubs (ABAC). However, neither the Club's Associations nor the Club's themselves had access to funding in the same quantities as were being pumped in by UK Sport and Sport England to the unaccountable governing bodies, so the administration of the sport had effectively been nationalised.
- 16) I would refer you to the England Athletics Articles and Memorandum of Association (Bundle 287 - 300). This document confirms England Athletics as being a governing body subordinate to UK Athletics. Paragraph 3(ix) of the Memorandum of Association states "to co-operate with and carry out functions delegated to it by UK Athletics" (Bundle 288).
- 17) England Athletics is a company Limited by Guarantee, without Shareholders, so is answerable to nobody but its funders. The Company Secretary and Director, Mr Jack Buckner is today an employee of Sport England, and until recently was an Employee of UK Athletics. He is not considered to have changed jobs, just moved departments.
- 18) In summary. UK Sport and Sport England have created UK Athletics England Athletics in their own image as vehicles into which they have urinated public money. They have closed the efficient voluntary administration of the clubs and have delivered lower participation levels and lower performance standards. The unsustainable new expensive system was designed without the capacity for independent thought.
- 19) Refer now to the Structure of UK Athletics, taken from the UK Athletics website. (Bundle 347). The chart is self explanatory. The Red (Unreadable black) indicates the funders UK Sport/Sport England, and the yellow indicates the subordinate organisations. UK Athletics appears as the White entity in the middle. Irrespective of the colour codes, this chart gives a clear indication about who is in charge. It is a joint enterprise of UK Sport and Sport England, known as the Sports Councils.

- 20) I hope it is recognised that when discussing the structure of athletics governance, the voice of UK Athletics is generally an embarrassed silence. UK Athletics are a seamless and subordinate organisation to UK Sport, and I would now like to address the way the two organisations deal with each other and establish that UK Sport are the controlling mind of UK Athletics.
- 21) Ms Sue Campbell, The Chair of UK Sport wrote a letter to the Appellant dated 12th December 2005 (Bundle 304 - 306). In the final paragraph of the second page of the letter (Bundle 305) Ms Campbell writes "For both people and programmes we intend to reward the best, support those improving and force change where underperformance or failure is found."
- 22) When UK Sport force change, the power of huge funding is overwhelming, as David Moorcroft the former Chief Executive of UK Athletics discovered 8 months later.
- 23) In the UK Sport Press Release which followed the resignation of David Moorcroft, dated 24th August 2006 (Bundle 316), John Steel the CEO of UK Sport said: "This is a brave decision which is typical of a man who has always put his sport first. With the unique challenge of 2012 looming, David has realised that if change is needed, it is better that it happens sooner rather than later."
- 24) The following day Matthew Syed reported in the times that Richard Caborn, the Sports Minister expected to be consulted on the appointment of the new chief executive. (Bundle 317 - 318) It was reported that the Sports Minister wanted David Moorcroft's replacement to have a "strong background in business".
- 25) A month later an advert for the newly created post of a Chairman of UK Athletics, and Chief Executive, appeared in the broad sheets (Bundle 319).
- 26) Note that the Headhunter Company appointed to handle these appointments was Odgers Ray & Berndtson.
- 27) Four years later the company have reduced their name to just Odgers Berndtson. Clearly they are company who take great pride in their previous appointments, because helpfully they have posted a list to their website which is included in the Bundle (356 - 361).
- 28) The Appellant suggests the closeness that this headhunter company has with the Department for Culture Media and Sport demonstrates that it was they in partnership with UK Sport who appointed Ed Warner and Niels de Vos as Chairman and Chief Executive of UK Athletics. UK Athletics had neither the finances or the infrastructure to make such appointments.
- 29) The Athletics Community had no involvement in these appointments. On 9th January 2007, UK Athletics issued a press release announcing the appointment of Mr Ed Warner. (Bundle 320 - 321).

- 30) The press release introduces Mr Warner as a “City Businessman”, and also “a leading commentator on financial issues”. If we refer back to the Minister for Sport, Richard Caborn MP’s requirement that the candidate has “a strong background in business”, tick!
- 31) Paragraph 2 of the press release, “His role will be equivalent to that of a Chair of a public company”, tick.
- 32) The Non Executive Director who is said to have “managed” the recruitment process is Mr John Taylor. John Taylor works in the public/private finance industry. He is the Chairman of Birmingham and Solihull Solutions (BaSS), Confusingly, BaSS have a LIFT Company (Local Improvement Finance Trust) and in 2007 had £200 million pounds of NHS building projects in the pipeline, and several huge projects just completed. On the 17th January 2011 I called UK Athletics informing them I needed to talk to Mr John Taylor, the Chairman of BaSS. I told UKA that this was the only number I could find for him. They said they would pass on a message to him. He called me back within 5 minutes, and seemed disappointed my call related to Athletics. He is not a member of a club, does not participate and refused to say whether he was involved in the sport in any capacity. I have mentioned his name to many individuals who have been around the sport of 30 to 50 years, and nobody has heard of him. The Appellant suggests his only qualification for being involved is the fact he is a quango friendly individual based in Solihull, the home of UK Athletics.
- 33) Such was the vacuum that existed within the UK Athletics management at the time of the appointment of Ed Warner as Chairman, he was quoted in the press release announcing his own appointment, as saying about the Chief Executive role, “we have had some outstanding applicants for the post”.
- 34) The Appellant maintains that UK Sport is the controlling mind, and that the UK Athletics Chief Executive and Chairman have no ambitions for athletics beyond that of UK Sport's own agenda.
- 35) On 30th January 2007 Niels de Vos was unveiled as the man to become Chief Executive Officer of UK Athletics from May 2007. UK Sport’s Chief Executive, John Steele said: “Niels’ appointment is a significant step in the restructuring of UK Athletics. Following on from the recent appointment of a new Chair, the senior team is now in place to drive forward change and make sure the sport is best able to meet the enormous challenges it faces. UK Sport’s investment in and support for Athletics is substantial and I look forward to working with Niels in his new role to ensure the benefits are maximised.”

- 36) I would refer to the section of the bundle relating to UK Athletics Commercial Partners (Bundle page 335 to 339). In particular on Bundle Page 337, under the heading of UK Sport it says "UK Sport is the Government agency responsible for maximising British success in the Olympic and Paralympic Games through investing in, and supporting, our most talented athletes. It was established in 1997 following the introduction of the National Lottery - and specifically a change in Lottery legislation in 1996 to allow investment in people as well as facilities. This latter change enabled a systematic programme of investment to be put in place around our best sportsmen and women." Please note the investment is "around" the best sportsmen and women. "Around" equals UK Sport investing in themselves. UK Athletics is an example of UK Sport investing in themselves, or as they prefer to describe it, investment around our best sports people. Using this analogy, UK Athletics represent the noose that UK Sport have placed around the neck of the sport of athletics.
- 37) In the Team Manual - About UKA (Bundle page 334) it is written "UK Athletics (UKA) is the national governing body within Great Britain and Northern Ireland for the sport of athletics and is recognised as such by the International Association of Athletic Federations (IAAF), the International Paralympic Committee (IPC), the British Olympic Association (BOA), the British Paralympic Association (BPA), the Sports Councils and all other bodies involved in the administration of the sport. The organisation of national and international competitions, trials and the selection of national teams require the establishment of national federations with certain exclusive powers and UKA is such a federation."
- 38) UK Athletics are not a federation. The only recognition that UK Athletics can claim comes from senior organisations. UK Athletics would not dare to claim such recognition from the Athletics Community, because it does not exist, and this hearing is an expression of the fury which has spoken loudly since the discredited Foster Review. UK Sport and Sport England have stolen our sport, and have cheated many of our finest young athletes out of the prize which motivated them. That prize was the opportunity to compete at the highest level - at an Olympic Games.
- 39) UK Athletics require all athletes who have earned the right to represent their country to sign an athlete agreement. The responsibilities of UK Athletics to the athlete listed in section 5 are negated by the first paragraph, 5.1 which says: "Subject always to the continued financial support of UK Sport (in amounts sufficient to enable the delivery of the services referred to in this Clause) and in consideration of the Athlete's responsibilities under this Agreement" (Bundle Page 376). This again demonstrates the inability of UK Athletics to perform even the most basic of services to athletes without UK Sport being available to provide support. The sport of athletics has provided team management services to athletes for over 100 years without the support of public money.

- 40) One part of the evidence submitted by the Additional Party includes a freudian slip which illuminates the dilemma of UK Sport, as they seek to mask the truth about the extent of their control over athletics. The Mission 2012 - Consultation Response. Bundle Page 331, under the heading "Summary", they write "to use the London Games to transform our the performance system" [sic]. It is not clear whether they intended to take out the word "our" or "the". What is clear is that UK Sport pay great attention to the detail of when, where and how they reveal that they are the owners of the performance system, and UK Athletics are merely the delivery men.
- 41) Under the heading of "Public Reporting" in the M2012 Consultation Response (Bundle Page 328), UK Sport write "we have decided not to report publicly on the outcomes of the first quarter of Mission 2012". This sentence again demonstrates that it is UK Sport who are in charge, and it is they who are choosing what is and is not confidential.
- 42) The failure of UK Sport to ensure a regular reporting process from UK Athletics further illustrates the sham relationship between the two organisations. The information request dated 6th May 2008 from the Appellant to the Additional Party says "please provide a copy of all reviews, quarterly or annually received from UK Athletics since the UKS Performance Update 2006/2007 Quarter Two." (Bundle 132). This request relates to all reports received between 1st October 2006 and 6th May 2008, which represents 1 year and 7 months, which one would have expected to include at least 1 annual report, and 5 quarterly reports. Because 31st March is the end of year in accordance with the funding agreement, it was expected that the period would include 2 annual reports plus 4 quarterly reports. No quarterly report is expected for the quarter when the more detailed annual report is submitted.
- 43) The Additional Party have consistently prevaricated over the existence of the reports which were required in accordance with the 2005/2009 funding agreement, and instead have focussed attention on the Mission 2012 reviews. The first page of the letter from the Additional Party dated 2nd July 2008 (Bundle 143) represents the prevarication where UK Sport acknowledge that information is held by UK Sport, then go on to state in paragraph 4 "In respect of Mission 2012..". After this point, the Additional Party steadfastly seek to focus all the attention of this information request on Mission 2012, and imply confusion and misunderstanding about what information was being requested.
- 44) It is for this reason that the Appellant charges the Additional Party with being complicit in hiding the requested information.
- 45) Section 1 clause 13 of the funding agreement (Bundle 265) lists 5 key objectives that UK Athletics were required to deliver. The first of those objectives was to "Unite the sport behind a clear strategy". Jim Cowan is going to be a witness to the the lack of strategy. The failure of UK Sport to show any interest in the lack of strategy, despite it being an important objective for UK Athletics shows the relationship between UK Sport and UK Athletics to be a sham.
- 46) **Witnesses:** Mr John Bicourt, Mr Jim Cowan, Mr Dennis Daly, Mr William Laws
Mr Rob Whittingham, Mr Michael A. Winch

A COMPELLING PUBLIC INTEREST IN DISCLOSURE

- 47) Athletics is a performance sport, and the rewards for success can be enormous, and long lasting. Unfortunately this creates an environment where cheating is perceived as being wide spread, and even a necessity for being successful on the world stage.
- 48) Added to this is the excessive pressure from government to win medals. On Page 80 of the Government Game Plan Policy Document (Bundle Page 242) a long term objective for sport is summarised as "Our target is for British and English teams and individuals to sustain rankings within the top 5 countries".
- 49) The objective of top 5 success is justified on page 83, paragraph 3.10 of the game plan document, (Bundle page 243) talks about the positive benefits of National Pride. The table at the foot of this page shows three blocks side by side. On the left, sport is described as fun and health, and on the right it is described as success. The central block, with arrows pointing in both directions shows Talent Identification and Talent Development. This block is far more sinister and the attributes are in the third party. Here we have UK Sport and UK Athletics imagining that they can contribute something positive, when in fact they have distorted the fun and the health and the success.
- 50) For this diagramme to be a healthy representation of sport the block on the right which represents success should be placed on top of the fun and health. The Talent Identification and Talent Development is the aspect of the diagram which has brought us here today to scrutinise UK Sport and UK Athletics.
- 51) In 1988 Ben Johnson the Canadian Sprinter was briefly the Olympic Champion. He was stripped of his 100 Metres gold medal and world record when he was found to have cheated with drugs. This high profile case led to Canada's Dubin enquiry which cost \$4 million, sat for 91 days, saw 119 witnesses and produced over 14,000 pages of testimony. On 26th June 1990 the Canadian Broadcasting Company reported on the findings which are quoted in part. (Bundle page 228).
- 52) The main finding on how to avoid drugs cheating in sport is to ensure that public funding is not linked to medal counts. Page 22 of the UK Sport/UK Athletics 2005/2009 funding agreement (Bundle page 283) demonstrates this bad practice has been actively embraced.
- 53) Furthermore the Key Performance Indicators include percentage rises in athletes winning medals and reaching finals as a measure of progress. This allows for the manipulation of KPI's by reducing the team size, which demonstrates that UK Sport and UK Athletics were in partnership in allowing for such a misleading measurement of progress. (Bundle page 283)

- 54) UK Athletics Chair, Mr Ed Warner embraced the idea of excluding legitimately qualified athletes from competing at major international championships in a radio interview on 6th February 2007, within one month of his appointment. During the interview Mr Warner called legitimately qualified athletes as "also rans", and described their magnificent efforts in qualifying for an Olympic Games as just scraping by. (Bundle page 324).
- 55) The words of Mr Warner reflect exactly the key performance indicators which require a percentage increase in medalists and finalists. However these words fly in the face of the values of sport in general and athletics in particular. The most famous words of the Baron Pierre de Coubertin, the founder of the Modern Olympiad are paraphrased as "it is not the winning that matters, but the taking part". His exact words at a 1908 banquet in London were "The important thing in life is not the victory but the contest; the essential thing is not to have won but to have fought well".
- 56) The words of UK Athletics Chair Mr Ed Warner, and the values expressed in the key performance indicators listed on Bundle page 283 give cause for great concern. Especially for those of us who are seeking to persuade young children that athletics is a sport in which they should aspire to high achievement, and a long time commitment.
- 57) We simply do not trust the integrity of UK Sport and UK Athletics, especially now they have revealed that they are protecting secrets, something unheard of in a performance sport.
- 58) The reasons for such mistrust of UK Sport and UK Athletics is based on real evidence.
- 59) On 11th August 2009, Andy Parkinson the head of the Additional Party's anti-doping unit was appointed to lead the new independent drugs agency that will oversee testing at the London 2012 Olympics (Bundle Page 346). The separation of drugs testing from UK Sport was considered important because of the conflict of interest in having the agency responsible for winning medals, as also being the agency responsible for finding drugs cheats. Retaining the former UK Sport employee in the lead role of the new agency did not inspire confidence.
- 60) The British Olympic Association have in place an eligibility bylaw which prevents any athlete from representing Great Britain at an Olympic Games if they have been found guilty of a doping offense. (Bundle pages 256 - 259)

61) On 14th December 2010 Andy Parkinson the former head of the Additional Party's anti-doping unit wrote an article outlining his priority on how to rout out drugs cheats (Bundle pages 363 - 364). In this article Andy Parkinson expressed good intentions and talks of implementing systems. However concealed behind all the fine talk is a single plan of action. Andy Parkinson writes "If, as is the case with the eligibility rules of the International Olympic Committee and here in the UK the British Olympic Association, we remove all incentives for athletes to share their stories and information with us, then we will continue to struggle to catch those who are supplying performance enhancing substances and often operate on the edges of sport with relative impunity."

"It is clear that this is a hard measure to get across and to agree on, largely because these eligibility rules are easy to defend, but if we cannot be seen to be working with all athletes, then what hope do we have in really getting to the heart of the doping problem and to those that traffic and supply."

62) To promote the idea that by banning drugs cheats for life from representing Great Britain at an Olympic Games, you are burning the bridges which will enable you to find the traffickers of performance enhancing drugs is ludicrous, and disingenuous. Those who deal in the distribution of performance enhancing drugs are different from those who deal in the distribution of recreational drugs. For a person in the position of Andy Parkinson to imply that an athlete who uses drugs to cheat, is being exploited by the supplier in the same way a recreational drugs user is being exploited, is disheartening. It is suggested by the Appellant that this article demonstrates that the need to win medals has been retained by Andy Parkinson in his new role at the UK Anti Doping Agency, as it was when he was doing the same job as part of UK Sport. This creates a case for the compelling public interest in disclosure of the information being held by the Additional Party.

63) Reliable evidence about the extent of drugs cheating is difficult to come by but the survey on Anabolic Steroid use from 1994 by Pirkko Korkia (Bundle pages 229 - 232) suggests that more than 10% of regular trainers who use heavy weights might have at least experimented, and a significant proportion of these individuals would not be perturbed by whether such use was made illegal.

64) In recent years the highest profile drugs cheat in the UK is Dwayne Chambers, the 100 Metres runner who although admitted to charges of drugs cheating, has never produced a positive drugs test. In May 2008 Victor Conte, the coach to Dwayne Chambers at the time of his drugs cheating wrote, at the request of the athlete a detailed letter outlining the nature of the cheating.

65) This letter demonstrated for the first time the sophistication which has evolved around drugs cheating, and places a huge responsibility on the governing body of Athletics to demonstrate themselves to be transparent. The letter to Dwayne Chambers from Victor Conte was published in most serious media outlets including the BBC (Bundle pages 343 - 345) and the Times Newspapers (Bundle pages 340 -342).

- 66) When reviewing the same letter published by two different well respected news organisations, the difference is that in the first paragraph the BBC Online version says "I am willing to assist you in providing UK Sport and others with information that will help them to improve the effectiveness of their anti-doping programs." The Time Newspapers version of the same letter makes reference to "UKA and others", rather than UK Sport.
- 67) This same confusion between the articles extends to the second paragraph where the Time Newspapers refers to the "UKA and IAAF anti-doping tests", and the BBC article refers to the "British and IAAF anti-doping tests".
- 68) Although both respected news organisations are reproducing the same document, a confusion has crept in. However the fact about this confusion is that it does not matter. In the eyes of everyone in the sport, and the journalists who regularly cover the sport, UK Athletics, and UK Sport are the same organisation with the same goals and the same culture. It does not matter whether Victor Conte wrote "UK Sport" or "UKA", and that creates a compelling case for it being in the public interest that the documents which UK Sport deem to be confidential at the insistence of UK Athletics, be released.
- 69) Turning now to the performance of UK Athletics in raising standards I refer to the 30 pages of evidence from witness Mr Rob Whittingham. Pages 4 and 5 of Mr Whittingham's evidence displays the performance of every British Athlete at a senior World level international championship between 1993 and 2009. Page 4 is for men, and page 5 is for women. These performances are totalled and summarised on page 6, and split into Olympic cycles to show development in line with the funding agreements.
- 70) The decline in medal winning performances since UK Sport created UK Athletics in 1998 is dramatic. when considered alongside the growth in income it might be considered by some as being considerably worse than "amber". Using the grant aid column provided on page 3 (Table 1) of Mr Bill Laws evidence(where available), the growth in income, compared with the decline in performance at international level is:

1993/1996 Olympic Cycle - No Public Funding for 21 medals
1997/2000 Olympic Cycle - Estimated £1,200,00 public funding for 19 medals
2001/2004 Olympic Cycle - £16,547,554 public funding for 9 medals
2005/2008 Olympic Cycle - £30,602,231 public funding for 12 medals

- 71) UK Sport and UK Athletics continually throw up clouds of smoke to hide this information from the wider public. Personally the Appellant is more appalled at the number of events with no British competitors.

1993/1996 - No Public Funding - 6 events without British representation
1997/2000 - Estimated £1,200,00 public funding - 28 events without British representation
2001/2004 - £16,547,554 public funding - 45 events without British representation
2005/2008 - £30,602,231 public funding - 42 events without British representation

72) In some cases these blank events are due to no British athletes meeting the qualifying standards, which in itself is a testimony to the expertise of UK Sport and UK Athletics. However in other cases it is the disgraceful intent of UK Sport and UK Athletics seeking to mask the low standards of British Athletes by preventing them from competing. It is the taking part that matters, and the attitude of the quango's has resulted in a downward spiral which continues to impact our sport.

73) It was never the choice of the sport to be judged on the basis of international medals. That was a government, UK Sport and UK Athletics agenda built on ignorance and arrogance. A better way of assessing the health of our sport is to look domestically at standards. The major portion of the information which makes up Mr Rob Whittingham's evidence are the tables for men and women, for all athletic events showing development from 1958 to 2010. The headings for the tables are as follows:

Column 1 : Year

Column 2 : Performance of top ranked individual

Column 3 : Name of the top ranked individual

Column 4 : Performance of the 10th ranked individual

Column 5 : Performance of the 50th ranked individual

Column 6 : The number of athletes achieving a predetermined level indicated at the top of each event report

Column 7 : The number of British athletes in the 100 of the world rankings (Women 1958 to 1965 = top 50)

74) The tables demonstrate that in the past athletes without the expertise of UK Sport and UK Athletics in support and often holding down a job of work have managed to out perform today's athletes. This is not so much a criticism of today's athletes, but a complaint at the interference of UK Sport.

75) It is worrying to note that one aspect of these statistics that bucks the trend in decline is the number of athletes to surpass the predetermined level, column 6, in the 100m and 200m sprints. These are the events which appear to suffer from a disproportionate level of drugs cheating. Indeed the British rankings are headed by Dwayne Chambers. UK Athletics are openly targetting relay medals at the major championships. Relay medals are generally considered as less important medals by the athletics community. Nobody becomes an athlete to become a relay runner. Every athlete wishes to become the individual champion. However for UK Athletics and UK Sport, a relay medal has as much value as an individual medal, and they see it as the easiest route to achieving medal targets.

76) This submission includes no direct evidence of state sponsored systematic cheating by UK Sport and UK Athletics, however the statistics give great cause for concern, and the determination of UK Sport and UK Athletics to avoid scrutiny does not inspire confidence, and represents a case for the compelling public interest in disclosure.

- 77) UK Athletics require all athletes who have earned the right to represent their country to sign an athlete agreement which is so restrictive on the athlete, it might be described as exploitation. Paragraph 8.2 under the heading of "Developed Intellectual Property" (Bundle Page 395) says:

"If, at any time during the Membership Period, the Athlete develops any new technology or process with regard to any equipment, training or competition analysis, or other matter, which provides (or may provide) a sport performance benefit and this technology or process is discovered or developed substantially as a result of the performance of his or her obligations under this Agreement and/or relating to the WCP (the "Developed IP"), the Developed IP shall vest in UKA by way of assignment. Unless otherwise agreed by UKA and the Athlete in writing to the contrary, the Athlete hereby assigns by present assignment of all future rights, title and interest that he or she may have in relation to the Developed IP to UKA with full title guarantee. The Athlete will enter into and execute documents that UKA reasonably requires to perfect its title in the Developed IP."

- 78) **Witnesses:** Mr John Bicourt, Mr Jim Cowan, Mr Dennis Daly, Mr William Laws
Mr Rob Whittingham, Mr Michael A. Winch

NECESSARY QUALITY OF CONFIDENCE

- 79) The information requested related to a requirement in the funding agreement between UK Sport and UK Athletics dated 3rd June 2005 (Bundle 260-286). The initial request for information was a letter from the Appellant to the Additional Party dated 5th February 2008 (Bundle 119). The reply received from the Additional Party dated 25th March 2008 (Bundle 123-124) was the first knowledge that the Appellant had about Mission 2012. As a response to the Additional Party's reliance on Mission 2012, the Appellant made a second information request in a letter dated 26th March 2008 (Bundle 125). This second information request was for sight of documents which amended the terms of the funding agreement. In the Additional Party's reply dated 17th April 2008 (Bundle 129-130) UK Sport stated "There has been no variation in the Funding Agreement with UK Athletics in respect of the 'Annual Review', there is still a requirement for an annual review, supported by quarterly reviews". The Appellant responded with a letter dated 6th May 2008 (Bundle 131-132) requesting the annual and quarterly reviews in accordance with the 2005 funding agreement, and it is this request which is the subject of this hearing.
- 80) Section 2 clause 1(a) (Bundle Page 266) states that the funding agreement terms and conditions can be amended by "any subsequent agreement or variation properly entered into and authorised by both parties." Mission 2012 was not entered into in a way which amended the terms of the funding agreement. Reporting terms of the funding agreement allow the Additional Party to demand reporting in a way to satisfy any system of analysis. This freedom of information request is for the raw data provided by UK Athletics, irrespective of the system of review that the Additional Party might wish to apply. If the UK Athletics Chief Executive wished to demand confidentiality, this should have been applied by revising the terms of the funding agreement, not sending a letter 3 years late.

- 81) In the Additional Party's Mission 2012 Consultation Response, under the heading of Public Reporting (Bundle page 328), they express the intention to keep reporting to a minimal "traffic light setting", "accompanied by a short sharp (no more than 50 word) summary". This process has nothing to do with the information requested. It is a derisory effort of accountability for the tens of millions of pounds of public money received by UK Athletics.
- 82) The information which was issued by UK Athletics in accordance with the terms of the 2005 funding agreement, and which is being represented as a Mission 2012 submission, does not have the "quality of confidence" necessary.
- 83) Section 2 Clause 4 of the funding agreement (Bundle 266) talks about Accountability. UK Athletics were required to appoint an Accountable Officer. This clause makes no reference to the Accountable Officer only being "honest" if he is assured of confidentiality.
- 84) Section 2 Clauses 12 and 13 of the funding agreement (Bundle 271 and 272) refer to Monitoring, Review and Reporting, and an Annual Review. These two clauses amount to 706 words, and none of those words state or imply confidentiality. Indeed the opposite is true. These two clauses imply transparency and openness.
- 85) Section 2 Clause 25 of the funding agreement (Bundle 280) addresses the issue of confidentiality directly. Paragraph A implies that only information marked "Confidential" at the time of submission will be recognised as having achieved the status of "quality of confidence". Paragraph B gives the "One Stop Plan" a status of confidentiality, which does not extend to the activities and the accumulated information which arises as a result of the plan. This is demonstrated by the release to the media of medal targets. Finally Paragraph C recognises that any confidentiality that UK Athletics and UK Sport might wish to impose, is subject to the authority of the appropriate government bodies. Therefore it is understood by both UK Sport and UK Athletics that neither party can have the final word as regards what information can be hidden from public view.
- 86) The purpose of this information request is to shine a light on the genesis of the incoherent ideas and initiatives which have consumed enormous amounts of public money, and have inflicted untold harm on the sport of athletics. It is clear that UK Sport and UK Athletics have a shared interest in keeping such information hidden, so would claim it as being confidential. I hope the tribunal will accept that paper documents cannot give a sporting advantage to one nation over another, and will reject the idea that the disputed information has the quality of confidence.
- 87) The funding agreement is a document for ensuring value for money. The funding agreement is a document which requires accountability. The funding agreement is a document which demands reporting and checking to ensure the reporting is honest. The funding agreement is a document of transparency and openness. The funding agreement is not a document of confidentiality.

- 88) In addition athletes who are selected to represent Great Britain are required to sign a contract with UK Athletics. Paragraph 7.3 of the Athlete Agreement covers the Data Protection duties of UK Athletics (Bundle 394), and indicates the potentially wide network of individuals and organisations who might have access to information deemed by UK Athletics to be confidential. This list includes employees, agents and contractors of UK Athletics, as well as other organisations. Again this demonstrates the possibility that the information does not have the quality of confidence.

AN OBLIGATION OF CONFIDENCE

- 89) As has been previously stated, the requested information consisted of reports required in accordance with the 2005/2009 funding agreement (Bundle 260-286). In paragraph 18 of the Decision Notice (Bundle Page 5) The Respondent applies the "reasonable person" test to the obligation of confidence.
- 90) The Appellant argues that a reasonable person standing in the shoes of UK Sport would not expect confidentiality to be attached to reports and information submitted by UK Athletics as a requirement of the funding agreement. In contrast, A reasonable person might expect such reports to be the minimum one would expect in return for the investment of public funds.
- 91) The Respondent has relied on a confidentiality agreement signed between the Additional Party and UK Athletics on 31st March 2009. This document has been hidden from the Appellant. However, just 5 days earlier than the signing of the hidden confidentiality agreement, the Additional Party responded to a freedom of information request made by the Appellant in a letter dated 26th March 2009 (Bundle pages 167 - 168). In the letter, the Additional Party confessed that a company called Performance Impact Associates Limited, which provided consultancy services to UK Athletics, was owned by 2 former UK Sport employees.
- 92) In 2006 the former UK Sport employees, presented as independent consultants gave UK Athletics performance management process a clean bill of health stating: "Performance Managers have made explicit differences in key areas of performance, culture change and reconnection. By presenting a coherent performance message and establishing trust and credibility they will continue to support athletes to deliver medal-winning performances at future championships".
- 93) Two years later at the 2008 Beijing Olympic Games the British team produced the worst medal performance in over 30 years, and most of the high performance team were sacked.

- 94) The contribution of Performance Impact Associates to this chain of events is not known, however it left an impression that UK Sport employees were developing systems which they then exploited for financial gain after leaving the organisation. Clearly in this instance the former UK Sport employees added no insight, expertise or value to the process. It is 5 days after admitting that UK Athletics' consultants were former UK Sport employees, that the confidentiality agreement between UK Sport and UK Athletics was signed. It is this confidentiality agreement that the Respondent relied on in paragraph 19 of the Decision Notice (Bundle Page 5) when they accepted that an obligation of confidence existed between the parties.
- 95) The Appellant concludes that the signing of the confidentiality agreement between the parties has more to do with cover up, than it has to do with protecting sporting secrets.
- 96) The Respondent also relies in paragraph 19 of the Decision Notice (Bundle Page 5) on a letter from UK Athletics CEO dated 30th April 2010 (Bundle Page 355) as giving information submitted to UK Sport an obligation of confidence. Although this letter is dated 30th April 2010, it describes confidentiality discussions which took place between Mr Ed Warner (UK Athletics Chair) and Mr Niels de Vos (UK Athletics CEO) and the Additional Party in 2007. The exact date of these confidentiality discussions is not disclosed however, Mr Niels de Vos describes himself as the CEO of UK Athletics at the time of the discussions. Mr de Vos took up the post of CEO in May 2007, so it is presumed that the discussion took place on or after 1st May 2007.
- 97) The backdated confidentiality letter is extremely difficult to reconcile with the aspirations expressed at the launch of Mission 2012 on 8th May 2007, just 8 days after Mr Niels de Vos became CEO of UK Athletics.
- 98) Mission 2012 was launched "at a meeting of all Summer Olympic National Governing Bodies (NGBs) by John Steele, UK Sport's Chief Executive, held in London on Tuesday, 8th May 2007 (Bundle 325 - 326). John Steele said about Mission 2012 in May 2007 "It will also provide UK Sport with a transparent means to demonstrate that public investment in elite sport is being spent effectively." John Steele is also quoted in the same press release as saying "we need a way to shine a light on progress that is both objective and transparent". John Steele also said about the Governing Bodies, UK Athletics, and UK Sport themselves "There is no hiding place – nor should there be".
- 99) Richard Caborn the Minister for Sport was quoted as having said "Given this investment it is vital that we know that sports are moving in the right direction on both performance and governance". It is presumed that when Richard Caborn said "we", he was speaking as the government representative of the people.
- 100) Despite the tone of accountability expressed in the UK Sport press release, if the letter from UK Athletics dated 30th April 2010 (Bundle 355) is to be believed, Mr Niels de Vos the newly appointed CEO of UK Athletics was determined to refuse to co-operate with Mission 2012 unless confidentiality was agreed. Contrary to values expressed in the press release, UK Athletics wanted somewhere to hide.

- 101) The timing of the letter from Mr Niels de Vos claiming confidentiality suggests to the Appellant that the Additional Party was complicit in withholding the information. The failure of the Additional Party to present any evidence that they challenged, or expressed surprise at the determination of UK Athletics to avoid scrutiny, again suggests to the Appellant that they were party to the wish for confidentiality, and encouraged UK Athletics ensure the information remains hidden.
- 102) In view of the reporting terms of the funding agreement which was the basis of the requirement on UK Athletics to provide information, which allows their performance to be scrutinised and judged, the Appellant maintains that the information does not have the obligation of confidence that would satisfy a reasonable person.

DETRIMENT OF THE CONFIDER

- 103) In paragraphs 21, 22 and 23 of the Decision Notice (Bundle Page 6), the Respondent outlines the reasons why he accepts that the release of information would be detrimental to the confider.
- 104) The Respondent is particularly influenced by a hidden letter sent by UK Athletics to the Additional Party dated 23rd March 2010, and having seen the withheld information accepts that it "is of a competitively sensitive nature". The Appellant will be bringing forward two of the most respected athletics coaches in the United Kingdom, both of whom were international athletes in their own right, as witnesses to testify that there are no legal coaching secrets in athletics.
- 105) Tom McNab is arguably the most respected athletics coach in the United Kingdom, as well as being highly respected on the world stage. During the 1960's he was one of the National Coaches who laid the foundations for the success of athletics in the late 1970's and 1980's. Tom has written many successful books on athletics including "The Fast Man", which was recently acclaimed as the finest novel ever written on athletics. He was also the technical director of the Oscar winning film "Chariots of Fire". Tom now into his 70's is still an active coach who is credited with raising the level of Greg Rutherford into a world class long jumper, and is coaching 16 year old Bradley Pike who is currently the outstanding young triple jumper in the country. Tom is unable to be with us here today but sent me the following comment in response to the Decision Notice.

"If there are indeed coaching "secrets", then they could remain secure only by denying them to the voluntary coaches whom UKA is obliged to train, thus rendering that education incomplete. There are no such secrets, because all of UKA's coaching materials are in the public domain, and because that information is also readily available to coaches from a host of other sources. The additional element in coach education is coach-experience, which helps trainee coaches to transform information into something of practical value. Again, the knowledge derived from this source could not possibly be kept secret in a voluntary system, and there is no evidence that UKA has attempted to do so in its coach education programmes. In truth, there are no coaching "secrets", only differing means by which coaches have made practical use of technical information which is readily available to any coach with sufficient energy and ambition".

- 107) All of the other points which deal with this matter of "competitively sensitive information" relate to methods of cheating so are referenced in paragraphs (51, 52, 59, 60 61, 62, 63, 64, 65, 75) in the "compelling public interest in disclosure" section above.
- 108) **Witnesses:** Mr John Bicourt, Mr Jim Cowan, Mr Michael A. Winch

Mr.C.Zacharides (Zac)
The Appellant

Dated: 23rd February 2011

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