

**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)

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THE APPELLANT'S REPLY

BY MR C ZACHARIDES

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1. This Appellant Reply is served in accordance with rule 24 of the Tribunal Procedure (First- tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the 2009 Rules").
2. Mr C Zacharides (the Appellant) hereby acknowledges The Information Commissioner's ("the Commissioner") Response to the Notice of Appeal. The decision appealed against is a Decision Notice ("the DN") dated 9 September 2010, reference number FS50294752. The Response is dated 28 October 2010, and the reply on behalf of the Additional Party dated 5th November 2010.
3. As allowed by rule 24(1) of the 2009 rules this document is the Appellant reply to the Commissioner's Response dated 28th October 2010, and is required to be served by Thursday 11th November 2010.

## THE ISSUE

4. This document argues that UK Sport and UK Athletics are so connected that they are effectively the same organisation, and therefore confidentiality afforded to UK Athletics, who are not a recognised public body for the purposes of the FOIA, is the same as giving confidentiality to UK Sport who are a public body for the purposes of the FOIA.

It is recognised that UK Athletics have a distinct management which operates separately from UK Sport and have a limited amount of autonomy. It is the limitations of this autonomy, and the relationship that UK Athletics has with the sport of athletics which is the subject of the Insurance analogy below.

## THE INSURANCE ANALOGY

5. It is possible to separate an insurance company into 3 distinct departments. The first department creates the insurance policy, the second department sells the insurance policy and the third department assesses and pays the insurance claims. Although the three departments of the insurance company have clearly defined roles with separate management, they are linked not only by a shared goal to make money, but also to provide the best service possible to the customers. However the insurance company is distinct from its customers. The first department which creates the policy has minimal contact with the customer base, but they set the agenda which drives the claims and sales departments. By allowing for broader insurance conditions the first department who create the policy can assist the sales department in selling more policies. The impact would also be to invite more claims. These are judgements that can only be made from the top and ultimately the sales and claims departments must work to deliver the best possible outcome based on the policy conditions that have been handed down.
6. For athletics, UK Sport in partnership with Sport England create the policy and the priorities. UK Athletics are responsible for high performance and have very close connections with the customers - who make the claims. England Athletics have responsibility for participation - or selling the policies to the wider public.

The point of this analogy is to highlight that we the athletics community are the customers. We have been forced to become consumers of the Sports Councils who are separate from us, and have installed two departments to deal with our needs, be they high performance athletics or mass participation. UK Athletics and England Athletics are both companies limited by guarantee and without shareholders. We the athletics community have no influence on what they do. Our democratic Associations were rendered ineffective by the Sports Councils and replaced by these professional organisations under the guise of "modernisation".

7. The evidence which follows describes:
  - 1) **How we came to be where we are today**
  - 2) **The negative consequences since the creation of UK Athletics**
  - 3) **The joint efforts made by UK Sport and UK Athletics to hide the negative consequences.**

Note: Sport England (who together with UK Sport are "The Sports Councils") have responsibility for mass participation and use England Athletics to deliver policy. The two England bodies are not part of this FOI request.

## Government Policy On Sport

8. In December 2002 the Strategy Unit of the Cabinet Office published; **Game Plan: a strategy for delivering Government's sport and physical activity objectives.** Both the Prime Minister Tony Blair, and the Secretary of State for Culture, Media and Sport, Tessa Jowell wrote significant forwards to this document (387 words and 3,152 words respectively). Game Plan articulated a clear statement that government perceived sport and physical activity as a potential social instrument to reduce the inequalities of opportunities for people (citizens) to participate in the social structures in British Society.
9. On page 76 (2.139) of Game Plan the following is written:  
*Government does not run sport – and nor should it. Government intervention, however, is legitimate where it remedies a 'gap' in voluntary or private provision and the benefits of intervention outweigh the costs. There are two broad reasons why there might be a gap in private or voluntary provision:*
  - . *Inefficiency.*      *Private and voluntary provision may be inadequate in some way. This undersupply results in reductions in social welfare that might be avoided by government intervention.*
  - . *Inequity.*         *The government may wish to intervene to promote fairer access to all than would be otherwise achieved.*
10. On page 80 of Game Plan the following is written:  
*Our target is for British and English teams and individuals to sustain rankings within the top 5 countries, particularly in more popular sports.*
11. On page 83 (3.10 / 3.11) of Game Plan the following is written:  
*Success in the international sporting arena produces benefits for the country as a whole through enhanced national prestige and pride (although such benefits are very difficult to measure). International success needs to be built on a strong system of talent identification and development. We consider that government has a role to play in facilitating the development of such systems, given the degree of co-ordination activity required, and the longer timescale that must be considered.*  
  
*Therefore, from the perspective of government investment, it makes sense to invest in creating a mass participation culture which will enable us to generate health benefits, while also looking at ways in which we can achieve greater international success.*
12. On page 87 (3.26) of Game Plan the following is written:  
*There is little point in investing in infrastructure for major sporting events if we do not have the champions to win. We will only produce these champions if we have systems in place to identify and develop the stars of the future.*
13. On page 139 (5.88) of Game Plan the following is written:  
*There are also too many National Governing Bodies: at least 302 for over 100 sports recognised by the sports councils. This is because in some cases: there are UK and Home Country NGBs for the same sport (eg. UK Athletics and the Amateur Athletics Association of England). Potentially this leads to a duplication of effort and extra bureaucracy. Although in some cases it represents legitimate specialisation, it does mean that for every sport there can be competing and rival organisations bidding for resources.*

14. On page 145/146 (5.119, 5.120, 5.121) of Game Plan the following is written:

*Broadly speaking there are three types of NGB:*

- . the largest NGBs (such as the FA, RFU, ECB and LTA) are not reliant on government funding, but are direct partners with government;*
- . a second group of NGBs receive significant support through the WCPP;*
- . a third group of small NGBs receive only small grants from government, if at all.*

*Sport England and UK Sport need to work with these groups through the modernisation programme, so that they reach a position where they “earn autonomy”. At this point (to be measured through a series of performance indicators), the NGB will be able to receive funding for services direct from SE, rather than these being channelled through the EIS. Those in the first category of NGB should be at this stage already; those in the second should be able to reach it over time. The third group may still need centralised support (for example through CCPR). Year on year, SE funding for EIS would therefore be decreased, as more funds are transferred to the customer.*

*Once this happens SE and UK Sport will need to apply funding agreements with NGBs far more rigorously, to ensure that funds are used for the services intended.*

## Implementation Of Government Policy By Sport England/UK Sport

15. Following on from the Government’s Game Plan document, responsibility for implementing the policy was to be carried out by Sport England and UK Sport. In May 2004 Sir Andrew Foster presented a review of athletics in the UK.
16. Sir Andrew Foster explained on page 7 of the review that UK Sport and Sport England had invited him to “*make **independent** recommendations about the future direction of the sport*”. Much was made in 2004 of Sir Andrew Foster’s independence. Following a Freedom of Information request on 13th June 2006, Sport England revealed:
- a) Sir Andrew Foster became a member of the Sport England Main Board in July 2003.
  - b) Sir Andrew Foster became Chair of Sport England’s Audit and Governance Committee in December 2003.

Clearly he was far from independent.

17. On page 15 of The Foster Review the following is written:
- 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.*
- It is suggested that this view gave license to UK Sport and Sport England to engineer the complete take over of athletics as allowed for in the Game Plan policy document and described in paragraph 14 above.

18. On page 17 of The Foster Review the following is written:

*A key focus of agreement is the creation of nine English 'hubs' (we will call them 'regions' - they will be coterminous with the English development and administrative regions) as single points of contact for clubs, schools, athletes, officials, volunteers, county associations: the place to which they will go for information, advice, resources and services.*

The nine hubs which were formed by this process dovetailed exactly with Sport England's own structure, and reinforced the belief that the Foster Review was surreptitiously working towards the take over of athletics by the Sports Councils. Contrary to what Sir Andrew Foster wrote in 2004, the nine English hubs had minimal support and were closed down on 21st October 2008 when England Athletics announced "a significant restructure". These nine professional offices which existed for almost 3 years consumed a huge amount of public money, and contributed nothing.

19. On page 17 of The Foster Review the following is written:

*It is time for a fresh start. In line with the general principles outlined in the last section, our proposal in summary is that the English regions should be managed by a new England-level body - English Athletics [renamed England Athletics when it came into existence]. The new organisation would have a compact central office, and most activity would be devolved firmly to the regional level.*

## **GOVERNANCE CHANGES EXCLUDING THE ATHLETICS COMMUNITY**

20. UK Sport announced the creation of "UK Athletics 98" at an initial cost of £300,000 on 28th November 1997 as an intermediary body. UK Athletics was formed as a permanent governing body in January 1999.
21. UK Athletics is not accountable to the sport of athletics. UK Athletics may be a limited company but it is a limited company with no shareholding making it answerable only to UK Sport.
22. Previously the AAA's were the guardians of the rules, who ensured fair play. The rules no longer have a conscientious guardian. Instead they are the responsibility of UK Athletics who have conflicting priorities as outlined in paragraph 41 below.
23. All commercial funding accessed by UK Athletics is thanks to the status they are afforded by Government and UK Sport in recognising them as the governing body for athletics.
24. In parliament on 10th December 1997 Mr Tony Banks MP, the Minister for Sport at the time said: *"UK Athletics 1998, an interim successor body to the British Athletics Federation, was announced on 28 November. The United Kingdom Sports Council is proposing to make a significant investment through its Exchequer funding to support the body during its envisaged 12 months' life"*. This represented the first steps towards the Additional Party taking charge of athletics through its creation UK Athletics.

25. In accordance with the directions of the Foster Review, England Athletics Limited was formed on 5th October 2005 as a company, like UK Athletics, without shareholders, therefore only accountable to its funders Sport England and UK Athletics. Mr Jack Buckner who had been employed by Sir Andrew Foster to implement the changes, was registered as the Company Secretary.
26. On 20th October 2005, David Moorcroft the Chief Executive of UK Athletics wrote a letter to The AAA of England, The South of England AA, The North of England AA and The Midland Counties AA in which he said:  
*UK Athletics Limited is recognised by the IAAF as the governing body for the sport of athletics in the UK and as such has jurisdiction to govern athletics generally. The governance function of the National and Territorial Associations within the UK stems from UK Athletics Limited's Memorandum & Articles of Association and Rules, under which the National and Territorial Associations are recognised and made responsible for governance at a national or territorial level.*  
*I am writing to give you formal notice that, with effect from the close of business on 31 March 2006, those functions which you currently carry out for or on behalf of UK Athletics Limited will become the responsibility, of England Athletics.*
27. On the 10th December 2005 an EGM of the AAA's was called to vote on the following resolution:  
*"The A.A.A. of England agrees that all governance of Athletics in England will be transferred to a new body, England Athletics Ltd. and that, consequently Clause 3 (1) of the Memorandum of Association of the Company shall be removed."*  
**THE RESOLUTION WAS DEFEATED.**
28. Mr Jack Buckner's appointment with the Foster Project Board was advertised as being an 18 month contract, however on completion of his work, he transferred to work with UK Athletics, and today in 2010 he is employed by Sport England. This supports the belief that working for the Sports Councils, UK Athletics and England Athletics is a matter of moving desks up and down the corridor.
29. On 24th August 2006 David Moorcroft resigned as Chief Executive of UK Athletics. Commenting on his decision, John Steele, Chief Executive 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."* Mr Steele went on to say *"Recent results in Gothenburg and Beijing [Young Athletes International Championships] have demonstrated that the future is encouraging and we must ensure that the planning for 2008 and then London 2012 remains firmly on track".*

30. In contrast Matthew Syed wrote in the Times Newspaper on 25th August 2006: *“The curious thing about the dramatic resignation of David Moorcroft yesterday was that it has taken this long. A decent man, who excelled as a distance runner, Moorcroft has presided over falling participation, bitter internal conflict and a catastrophic decline in elite performance. He would not have survived this long as chief executive away from the cosy world of sports administration”*. Matthew Syed went on to write: *“The misuse of public cash has been stark. Moorcroft assembled a vast staff (UKA employs about 115 people at an annual cost of £3.6 million, according to Moorcroft’s own figures) and has spent more than £25 million of lottery money on the World Class Podium Programme since 1997. Meanwhile, according to Rob Whittingham, UKA’s statistician, elite performance is the worst it has been in global terms in history”*.
31. Mr Rob Whittingham referred to in Matthew Syed’s article was a World respected athletics statistician long before the formation of UK Athletics, and it is hoped he will be available to answer questions of fact at the hearing, should the tribunal agree that an oral hearing is appropriate.
32. With hindsight we now know that athletics delivered the worst medals performance in over 30 years at the 2008 Beijing Olympic Games, contrary to the optimistic words of John Steele, Chief Executive of UK Sport, quoted in paragraph 29 above.

## **APPOINTMENTS OF NEW CHAIRMAN AND CEO FOR UK ATHLETICS**

33. On 9th January 2007 Edmund Warner was named as the first chairman of UK Athletics. The UK Athletics press release said: *“Ed will act as a part time non-executive Chairman. His role will be equivalent to that of the Chair of a public company”*.
34. As the saying goes, “if it looks like a duck, and it waddles like a duck, and it quacks like a duck, in all likelihood it is a duck”. UK Athletics look and act like a public company.
35. On 30th January 2007 Niels de Vos was announced as the new Chief Executive of UK Athletics, who took up his post in May 2007. UK Sport 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.”*

## MINISTER FOR SPORT AND UK SPORT TALK ATHLETICS

36. In his letter dated 11th September 2005 to Mrs Theresa Villiers, the Appellant's MP, The Minister for Sport, Richard Caborne wrote *"this was an independent review of athletics in the UK lead by Sir Andrew Foster, who was commissioned by UK Sport and Sport England and the review team consisted of individuals unconnected with either UK Sport or Sport England"*. This was clearly untrue because Sir Andrew Foster was a senior board member of Sport England at the time of his commission, as detailed in paragraph 16 above. Furthermore, the structure of England Athletics and the nine new regions mirrored Sport England's own structure. The new athletics structure appears to have been designed to best serve the Sports Councils rather than the sport of athletics.
37. In a further letter dated 7th June 2006 to Theresa Villiers The Minister for Sport, Richard Caborne continued to describe the Foster Review as "independent" contrary to all evidence. Incredibly the Minister went on to say: *"At the request of UK Athletics, this funding was to be linked to the modernisation and governance recommendations, which were announced in Sir Andrew's report published in May 2004"*. The implication of this statement was that UK Athletics knew the contents of Sir Andrew's report before it was written, which confirms the Sports Council's as being the controlling mind.
38. On 12th December 2006, Minister for Sport Richard Caborne MP said in parliament: *UK Sport is also actively involved in senior appointments, including the current recruitment of the new CEO and chair for UK Athletics. In addition it has a member of staff with responsibility for monitoring progress in the sport and intervening where appropriate"*.

This statement is consistent with the fact that UK Athletics were incapable financially and administratively in making such senior appointments independently, and further evidence that the CEO and Chairman of UK Athletics both appointed in 2007, take their instructions from UK Sport.



## **COMPELLING PUBLIC INTEREST IN DISCLOSURE**

39. Paragraph's 12 and 13 of the Response document submitted by the Commissioner, states:

12. In order for the common law duty of confidence to [be] overridden, there must an extremely compelling public interest in disclosure.
13. Further, the question to be considered under section 41 FOIA is not whether, on the balance of probabilities, a public interest defence to an actionable breach of confidence exists but rather whether, on the balance of probabilities, that public interest defence to an action for breach of confidence would succeed; it must be sufficiently certain to render the breach of confidence non-actionable This also is a relatively high threshold.

It is ridiculous to believe that UK Athletics would pursue a legal action against UK Sport for breach of confidence. The relationship between UK Athletics and UK Sport is such a sham, that the only purpose for such a legal action would be to create the illusion of separateness between the parties. UK Athletics are a body without substance. Without the support of UK Sport, UK Athletics would cease to be. The idea of UK Sport funding an action against themselves is laughable.

## **UK ATHLETICS ARE UNFIT FOR PURPOSE**

40. The act of running a competitive race, or jumping for height, or throwing for distance is pointless unless the rules of competition are clearly stated, and all competitors are treated equally. The original governing body for athletics, the AAA's, had no interest in developing athletes for competition. For the governing body to have any involvement in the development, or sponsoring of athletes creates a huge conflict of interest. Administrators who have the power to select athletes for international championships, fund athletes expenses and medical services must treat all athletes equally. Athletics thrives when different athletes with different training methods come together in fair competition. The joint responsibilities bestowed onto UK Athletics by UK Sport for developing athletes as well as running domestic competition, damages the bedrock of fairness which underpins all aspects of the sport of Athletics.

41. On the UK Athletics website they describe their role as:

- a) Having responsibility for implementing the rules of competition
- b) Anti-doping
- c) Developing Athletes from grass roots to podium [Olympic success], and educating coaches
- d) Running a competition structure to meet the needs of athletes at all levels
- e) Nurturing athletes of all ages and preparing them for the world stage

42. Emily Pidgeon and Simon Lawson both European Championship medal winners in the Under 20 age group, are examples of athletes who despite being outstanding in the UK, were denied opportunities by UK Athletics because of matters relating to their independence of mind. These athletes with the support of their parents and coach (Simon Lawson who studies medicine was self coached), showed the same single mindedness that separates great athletes from the crowd. Coe, Ovett and Cram would have responded in a similar fashion had UK Athletics been around making similar demands on their time. Athletics is an individual sport, and ambitious athletes need servants not masters. These two young athletes were treated disgracefully by egotistical control freaks at UK Athletics who were following UK Sport guidelines.

## FALLING STANDARDS IN ELITE PERFORMANCE

43. After 10 years of public funding (estimates range from £100 million to £150 million) the following comparison's can be made over the last thirty years. Points are calculated on a 3,2,1 basis for Gold, Silver, Bronze:

1980 Olympics: - 4 Gold - 2 Silver - 4 Bronze (20 Pnts)  
1984 Olympics: - 3 Gold - 7 Silver - 6 Bronze (29 Pnts)  
1988 Olympics: - 0 Gold - 6 Silver - 2 Bronze (14 Pnts)  
1992 Olympics: - 2 Gold - 0 Silver - 4 Bronze (10 Pnts)  
1996 Olympics: - 0 Gold - 4 Silver - 2 Bronze (10 Pnts)  
1998 - UK Sport Public Funding Started  
2000 Olympics: - 2 Gold - 2 Silver - 2 Bronze (12 Pnts)  
2004 Olympics: - 3 Gold - 0 Silver - 1 Bronze (10 Pnts)  
2008 Olympics: - 1 Gold - 2 Silver - 1 Bronze ( 8 Pnts)

It is UK Sport/Government who have insisted on measuring success based on Olympic Medals. After 8 years of huge public funding from UK Sport, and complete control of the sport by UK Athletics, Great Britain's athletics team delivered the worst performance in thirty years in terms of Olympic Medal success.

## THE ORIGINAL REQUEST FOR INFORMATION

44. A request dated 5th February 2008 was made by the Appellant for a copy of the Annual Review that UK Athletics were required to submit to UK Sport in accordance with the 2005/2009 funding agreement between the parties.
45. UK Sport responded on 25th March 2008 stating "*The requirement in the funding agreement for an annual review has been superseded by a new approach to monitoring and evaluation across all the funded Olympic and Paralympic sports. Mission 2012 was launched in May 2007 as a new tool to effectively evaluate the progress of sports towards success in 2012*".

46. The Appellant submitted an additional freedom of information request dated 26th March 2008 asking:

- a) How was this change to the terms of the funding agreement formally or informally notified to UK Athletics. (Letter, Facsimile, Email, Verbal Communication etc.).
- b) On what date was this change notified to UK Athletics.
- c) What is the name and job title of the person at UK Athletics, who UK Sport communicated this change to.
- d) What is the name and job title of the person at UK Sport who communicated this change to UK Athletics.

47. UK Sport replied on 17th April 2008 saying:

"I think it would help if I clarify the use of the term superseded in my letter of 25th March. The Funding Agreement 2005-2009 with UK Athletics, which you received last year in answer to a previous FOI request has not changed. There has been no variation in the Funding Agreement with UK Athletics in respect of the Annual Review. There has not been a single format or fixed template in place for sports on how a review is to be carried out. There is still a requirement for an annual review, supported by quarterly reviews."

48. The exchange of correspondence detailed in paragraphs 44 to 47 above led to the Freedom of Information request dated 6th May 2008 which is the subject of this appeal.

## **UK SPORT'S MISSION 2012**

49. The replies from UK Sport to the requests for information have appeared to deliberately obscure or confuse the reporting periods. The request for information on 6th May 2008 was "please provide a copy of all reviews, quarterly or annually received from UK Athletics since 2006/2007 Quarter Two".

50. It is believed by the Appellant that UK Sport/UK Athletics operates to the following calendar years

1st Apr 2006 to 30th Jun 2006	- Quarter 1 2006/2007
1st Jul 2006 to 30th Sep 2006	- Quarter 2 2006/2007
1st Oct 2006 to 31st Dec 2006	- Quarter 3 2006/2007 <b>Information requested</b>
1st Jan 2007 to 31st Mar 2007	- Quarter 4 2006/2007 <b>Information requested</b>
1st Apr 2007 to 30th Jun 2007	- Quarter 1 2007/2008 <b>Information requested</b>
1st Jul 2007 to 30th Sep 2007	- Quarter 2 2007/2008 <b>Information requested</b>
1st Oct 2007 to 31st Dec 2007	- Quarter 3 2007/2008 <b>Information identified</b>
1st Jan 2008 to 31st Mar 2008	- Quarter 4 2007/2008 <b>Information identified</b>

51. Contrary to the claim made in paragraph 18 of the Response document, the letter from UK Sport dated 4th June 2008 does not identify the information request as being restricted to the last quarter of 2007, and the first quarter of 2008.

52. Whatever the calendar year that UK Sport are working to, they appear to have gone a full year without receiving any information update from UK Athletics about how the significant funding is being utilised and to what benefit.
53. It is proposed that the reason UK Sport were so comfortable not to be provided with information from UK Athletics was because they are two organisations joined at the hip, and that UK Sport are actively engaged in the day to day activities of UK Athletics. The only alternative explanation for such disinterest in UK Athletics' failure to issue reports is mind-boggling incompetence on the part of UK Sport.
54. Mission 2012 did not form any part of the original information request. Mission 2012 appears to be a Public Relations concept allowing a sport to be placed into one of three categories depicted as simplistic traffic lights where green represents a positive situation, red represents a negative situation and amber represents a neutral situation.
55. One would imagine that stories from the back pages of the national newspapers reporting on athletes in competition would be the best mechanism for placing a sport into one of the 3 traffic light categories. Despite the simplicity of the Mission 2012 system, UK Athletics Chief Executive, Niels de Vos still felt the need to write a letter to UK Sport dated 30th April 2010 saying *"Can I make it absolutely clear that confidentiality was a prerequisite of UKA's agreement to engaging with the M2012 process"*.
56. The funding agreement for the period 2005 to 2009 entered into by UK Athletics clearly addressed the reporting conditions that they were expected to comply with. These conditions included phrases listed below which leave no doubt about what was expected of UK Athletics:
- 11 a) UK Athletics will *"co-operate fully with UK Sport to evaluate the operation"*
  - 11 b) UK Athletics *"will be expected to respond promptly to any questions raised by UK Sport"*
  - 11 c) *"UK Sport will be given the right of attendance in an observer capacity at meetings of [UK Athletics]"*
  - 11 d) *"UK Sport is required to report annually on the effectiveness of the use of its funding"*
  - 12 a) UK Athletics *"will submit to UK Sport an Annual Review that will report on developments within its sport and will give detailed information regarding its progress"*
  - 12 b) *"UK Sport will conduct an annual Performance review of its investment"*
  - 12 c) *"UK Sport will conduct an annual financial review at the end of each funding year for the World Class Performance Award, which will include a detailed review of the income and expenditure and actual expenditure against budgeted expenditure."*
  - 12 d) *"UK Sport will also use the annual review to assess whether: (i) UK Athletics is in breach of any term or condition of this Award and/or is failing to satisfactorily deliver the Plan; (ii) there is some other material default or deficiency by UK Athletics in implementing the Plan; (iii) UK Athletics is not adhering to, or working towards implementing"*

57. In view of the funding agreement terms detailed in paragraph 56 above, entered into by UK Athletics in 2005, it is incredible to believe that UK Sport would tolerate a letter such as that written on 30th April 2010 from Niels de Vos claiming that *“confidentiality was a prerequisite of UKA’s agreement to engaging with the M2012 process”*. It is for this reason that the Appellant believes UK Sport to be the instigator of the requirement for confidentiality, and the relationship between the two organisations as being a sham.
58. Notwithstanding sections 11 and 12 of the 2005-2009 funding agreement between UK Sport and UK Athletics which indicate that transparency was intended as being part of the fabric of the terms of the document, UK Sport claimed that the objective of Mission 2012 was to be additionally transparent with public money.
59. Mission 2012 was launched by UK Sport on 8th May 2007, and the following statements are taken from the press release:
- a) John Steele, UK Sport’s Chief Executive said of M2012: *“It will also provide UK Sport with a transparent means to demonstrate that public investment in elite sport is being spent effectively.”*
  - b) John Steele went on to say: *“we need a way to shine a light on progress that is both objective and transparent, whilst facing up to the harsh reality of international competition.”*
  - c) John Steele went on to say: *“Mission 2012 will be a means for UK Sport to continue to account for the substantial public investment now in place.”*
  - d) John Steele went on to say: *“There is no hiding place – nor should there be.”*

## THE DECEITFUL SETTING OF KEY PERFORMANCE INDICATORS

60. The funding agreement between UK Sport and UK Athletics from 2005 to 2009 uses the **percentage** increase in the number of athletes reaching finals and winning medals from one Olympic cycle to another, as a measure of progress. This allows for the manipulation of statistics by reducing the team size, thereby increasing the percentage value of each athlete who reaches a final. This has led to a personal catastrophe for many athletes who have been denied the opportunity to compete at an Olympic Games. In 1988, the size of the British Athletics team taken to Seoul, South Korea was 102 athletes. In 2008 (8 years into public funding), the number taken to Beijing, China was slashed to just 58.

Athletes who won the trials and achieved the qualifying standard and would have paid for their own travel and accommodation costs, were prevented from competing for reasons of political expediency. If UK Sport and UK Athletics had been honest in setting Key Performance Indicators, they would have measured progress by actual numbers reaching finals and winning medals, not percentage increases.

61. There are numerous examples of athletes who received no funding from UK Sport/UK Athletics, but won the 2008 Olympic trials, and achieved the qualifying standard, but were prevented from competing at the Beijing Olympic Games for reasons outlined in Paragraph 60 above. Adam Bowden the former 3,000 Metres Steeplechase Champion from Watford in Hertfordshire is one such example. He gave up athletics immediately after it was decided by UK Athletics that he had no hope in defeating the Kenyan and Ethiopian athletes, and was too old to be considered as having potential. He worked his way to the top of his event, funded only by his day job and supported by his coach Tony Bush, who also did not receive public funding. Adam Bowden would have paid his own fare and accommodation to compete at the Beijing Olympics. He earned that right by winning the trials and running a time which qualified him to compete. The same could be said of Emeka Udechuku in the Discus, Richard Yates in the 400 Metre Hurdles and many others. UK Sport/UK Athletics preferred to leave many events without British representation rather than be seen on prime time television to have delivered a negative impact with vast amounts of public money.
62. On 6th February 2007, Ed Warner Chairman of UK Athletics said on BBC radio *"We have been accused, I think quite rightly, of taking bloated teams to major championships."* He went on to describe athletes who achieved the qualifying standard to compete at an Olympic Games as *"scraping over the qualifying standards"*, and referred to them as *"also rans"*. The point he was seeking to make was that these athletes *"dilute our effort"*. The reference to diluted effort has no logic when spoken by an athletics coach or administrator, because all events are recognised as individual disciplines within the sport. The phrase of diluted effort would only make sense if spoken by a representative of UK Sport who was seeking a percentage improvement in medal wins.

The founder of the Olympic movement, Pierre de Coubertin's notion of, "it was the taking part that mattered" and not merely winning, has been cast aside by the very organisations tasked with supporting elite athletics in the United Kingdom. The Athletics community in the United Kingdom would have no truck with a man who put winning above the value of taking part. For UK Sport to make a person with such views the Chairman of the governing body of athletics in the UK demonstrates a complete lack of understanding about the sport, its participants and its values.

## **THE ATHLETICS COMMUNITY HAS NO CONFIDENCE IN UK ATHLETICS**

63. UK Athletics have caused raised eyebrows many times by showing an enthusiasm for working with individuals who have been subject to questions relating to drugs cheating. In 2003, Dr Ekkart Arbeit was given accreditation by UK Athletics to work with a British Athlete. The then Chief Executive of UK Athletics David Moorcroft was quoted as saying *"Our stance at UKA is to give our athletes the best possible advantage against the best in the world"*. Dr Ekkart Arbeit was reported as being the **ARCHITECT** of East Germany's state-sponsored doping programme in the 1970s and 1980s. He was responsible for the systematic doping of hundreds of athletes, many of them teenagers who were given drugs without their knowledge.

64. In 1988 Ben Johnson was stripped of the 100 Metres Gold Medal won at the Seoul Olympics for a drugs offence. 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. The star witness was Charlie Francis, the coach to Ben Johnson. Under oath he is reported to have named several of his squad athletes as having used steroids, including Kevin Tyler. Today Kevin Tyler is head of coach development at UK Athletics. Kevin Tyler was never questioned regarding the Charlie Francis allegation, and has never failed a drugs test. Three of the higher profile named athletes subsequently confessed to the Dubin enquiry to taking steroids.
65. The main finding of Canada's Dubin enquiry into drugs in sport was that government funding should no longer be linked to medal counts. This example of bad practice is central to UK Sport's funding of UK Athletics which is intrinsically linked to medal counts.

## UK SPORT - DUCKING AND DIVING

66. On 18th October 2005, Sue Campbell, Chair of UK Sport gave evidence to the Department for Culture, Media and Sport select committee. She was asked to discuss her approach to the increased number of athletes that Great Britain would need to field as the host nation. In Her reply Ms Campbell said *"we have started in a slightly more businesslike way looking at the number of athletes we need, the number of medals we need, the number of athletes we need in the medals zone and the number of athletes we need underpinning that in order to drive the level of medal success we corporately want to achieve in both the Olympics and Paralympics"*.
67. The reference by the Chair of UK Sport to **"the level of medal success we corporately want to achieve"** gives a clear indication of the ownership that UK Sport feel they have of the work being carried out by UK Athletics.
68. Further into the giving of evidence Ms Campbell said *"We know that there are certain components that you need around the athlete and the first, as Craig quite rightly said, is a world class coach. We are investing now in UK Sport, very much in partnership with the governing bodies, in developing elite home grown coaches because in the past we have had to import many of our Olympic coaches. We have learned a great deal from that but we want to produce home grown world coaches as part of the legacy of the Olympic Games"*.

69. Five years later the Head Coach at UK Athletics is a Dutch man Charles Van Commenee, and the Head of Coach Education is a Canadian Kevin Tyler. This failure to deliver a “home grown” world class coach by Ms Campbell’s own admission is the responsibility of UK Sport.
70. Not only has UK Sport’s public funding failed to deliver improvement in the Sport of Athletics, it has actively dismantled that which was previously working cheaply and effectively. Following the Foster Review “modernisation” implemented on the instructions of UK Sport/Sport England, the voluntary athletics coach education system was discarded and replaced by a “professional” system which was prohibitively expensive and time consuming for new volunteers showing an interest in athletics coaching. An announcement was made by UK Athletics in February 2010 that the level 1 and level 2 athletics coaching courses would be scrapped from 31st March 2010, and no replacement courses would be in place until September 2010, missing an entire summer of recruitment. This is an example of the chaos created and perpetuated at public expense by Ms Campbell’s UK Sport investment. This is also an example of why it is in the interests of UK Sport to actively encourage and support UK Athletics in their drive for confidentiality thereby avoiding accountability for both organisations.
71. In the evidence referred to in paragraph 66 above Ms Campbell later said in connection to the legacy: *“We have got a big job to do and I think you need to keep asking what is the legacy for people beyond the Olympics, not just the facilities. You need to keep making us address that issue”*.
72. It is very much the hope of the Appellant that the Additional Parties are forced to address that issue honestly. All evidence of decline in athletics has been robustly denied by UK Athletics, who in turn have been robustly defended by UK Sport. The Sports Councils have thrown huge plumes of smoke into the air to obscure factual information and legitimate concerns. The effect has been to exasperate well meaning individuals from the athletics community seeking to shine a torch on the reasons for the failure, and exhaust others seeking to discover the truth. The athletics community has no confidence in UK Sport to deliver any legacy, other than that of coaches who believe that they have exclusive knowledge of training techniques which make them more valuable than the athletes themselves. UK Sport have delivered a legacy of deluded experts, blaming others for their own failings.



73. Following the giving of evidence specified in paragraph 66 above, an exchange of correspondence took place between the Appellant and Ms Sue Campbell, Chair of UK Sport. Ms Campbell wrote in a letter to the Appellant on 12th December 2005 *"The changes we are making to the way we fund and support sports are designed to raise the UK to higher levels of sporting success. For both People and programmes we intend to reward the best, support those improving **and force change where underperformance or failure is found**".*

Such a reference to uncompromising force, should persuade a reasonable observer that UK Athletics would be expected to bend to the will of UK Sport.

74. The House of Commons Committee of Public Accounts published on the 18th July 2006 a report entitled "UK Sport: Supporting elite athletes" (HC 898). On page 5, paragraph 6 of the Conclusions and recommendations, a scathing observation on either the integrity or competence of UK Sport is made:

*"For three years running, in reporting to Parliament and the public, UK Sport and the Department overstated performance against the target for medals won at major international championships. In compiling the results, UK Sport included 83 medals won in events not taken into account in setting the target, thereby turning underperformance into apparent success."*

75. At the same Public Accounts Select Committee Hearing referred to in Paragraph 74 above, Liz Nicholl, UK Sport's Director of Performance gave oral evidence on 6th February 2006. She was asked by the Committee Chairman Mr Edward Leigh MP: *"Could you tell us what action you now expect from athletics in the light of its disappointing performances in recent years?"*

76. Ms Nicholl replied: *"In terms of athletics, we have worked closely with athletics over the last 12 months. In particular, there is a new performance director now in the lead role in athletics who started last March. We required a new performance plan from athletics for the period between now and Beijing. That performance plan has been received. It has been reviewed by partners in the performance environment and accepted and is now being rolled out. There is a challenge in terms of change in athletics as well, because they are reviewing athletics in the UK. There is a new England Athletics; there is a new chief executive of England Athletics; there is a new disability manager in athletics, a whole host of changes over the last 12 months. Fifteen per cent of the medals available in the Games are in athletics; we absolutely need this sport to perform."*

As indicated in paragraph 43 above, with hindsight we now know that athletics delivered the worst medals performance in over 30 years at the 2008 Beijing Olympic Games.

77. Having started their report into UK Sport by accusing them of cheating in the way they counted medals, the Chairman of the Committee of Public Accounts felt the need to summon Liz Nicholl, the Performance Director of UK Sport to return on 6th March 2006 to “clarify” some confusion in her evidence. The Chairman described this as *“taking the unusual step of summoning witnesses back because of some confusion about answers which were given”*.
78. UK Sport’s culture of habitually exaggerating their success has transferred to UK Athletics. UK Athletics Chief Executive Niels de Vos wrote an article on 10th March 2010 in which he implied that during the 2008 Olympics and 2009 World Championships, Britain had won 16 medals. Further analysis of the article showed he had counted Mens Bronze and Silver Medals in the 4 x 100m and 4 x 400m at the 2009 Berlin World Championships as being 8 medals. One for each athlete.
79. It is for others to decide whether the true scandal is that UK Sport and UK Athletics are continually massaging medal performances, or, that the return on the investment of hundreds of millions of pounds of public money, is being measured against such pub quiz trivia.

## **PERIOD FROM MID 2007 TO MID 2008 IN AN ATHLETICS CONTEXT**

80. Paragraph 18 of the Respondent’s Response document identifies *“UK Athletics Ltd’s reports for the fourth quarter 2007 and first quarter 2008”* as being the requested information. Notwithstanding paragraph’s 50 and 51 of this document, the following paragraphs are intended to highlight some information which formed the backdrop to elite athletics during the identified period.
81. As referred to in Paragraph 55 above, Niels de Vos, the Chief Executive of UK Athletics wrote in his letter dated 30th April 2010: *“Can I make it absolutely clear that confidentiality was a prerequisite of UKA’s agreement to engaging with the M2012 process. This was discussed back in 2007 by both myself as CEO and Ed Warner (Chair) with the Chair and COO<sup>[sic]</sup> of UK Sport”*. Niels de Vos did not become CEO of UK Athletics until May 2007, and the Mission 2012 was launched on 8th May 2007. This means Niels de Vos spent his first 8 days in post insisting on confidentiality. Alternatively discussions took place after UK Sport’s CEO John Steele had already described Mission 2012 as a “transparent means to demonstrate that public investment in elite sport is being spent effectively”.

82. To put some athletics context around the priorities of the UK Athletics Chief Executive during the second half of 2007, Christine Ohuruogu who won Gold in the 400m at the Commonwealth Games in Melbourne during March 2006 was banned for 12 months after missing three out-of-competition drug tests. The ban expired one day before the start of the World Athletics Championships which took place in Osaka, Japan between 25th August 2007 and 2nd September 2007. Athletes who are serving drugs bans are excluded from all lottery and world class performance support provided by UK Athletics and UK Sport. Despite her lack of competition sharpness, UK Athletics selected Christine Ohuruogu for the World Championships a mere few days after returning from her ban, where she won the only gold medal for Great Britain in the individual 400m and bronze in the 4 x 400m relay.
83. Ms Sue Campbell the Chair of UK Sport wrote as part of her Mission 2012 statement in the December 2007 edition of **Whitehall and Westminster World**:
- "What is true is that the additional funding we have already has led to some clear improvements in the performance of our Olympic and Paralympic sports. On the evidence of 2007, we are making great strides. Over the summer, in those sports that have competed in World Championships, we won a total of 42 medals in Olympic disciplines."*
- "Better still 12 of them were gold, from seven different sports. We should salute our Champions, from the amazing achievements of our established winners - the track cyclists especially, but also sailing and rowing, and of course the gold medal won by Christine Ohuruogu in athletics."*
84. By implying that Christine Ohuruogu gold medal success is the result additional funding to UK Sport, Ms Campbell is misrepresenting the truth in a publication that one imagines is targeted at members of parliament.
85. The issues referred to in paragraph's 80 to 84 above, were current during the period of the last quarter 2007 and the first quarter 2008. The Appellant understands these were the only quarterly or annual reports received from UK Athletics between 1st October 2006 and 8th May 2008 by UK Sport.

## **AN ACTIONABLE BREACH OF CONFIDENCE**

86. The Respondent believes that the release of the progress reports would constitute "an actionable breach of confidence" by UK Athletics against the Additional Party. This suggests that Respondent has failed to understand the extent of the control that the Additional Party has over UK Athletics. To support the Respondent's belief that the release of the information would constitute an "actionable breach of confidence", they quote the *Coco v Clark* case (1968) which identifies three elements of criteria:

- 1) *Necessary quality of confidence*
- 2) *An obligation of confidence*
- 3) *Use of the information to the detriment of those communicating it*

### **Element 1: Necessary quality of confidence**

87. The Respondent suggests that because the information is not generally known, and that it is not trivial, it meets the first of the three elements. The Appellant suggests that the spirit of the Freedom of Information act is to overcome this element. To allow such reports the mask of confidentiality because the content is not generally known undermines the very value of transparency that the Information Commissioner's Office stands for.

### **Element 2: An obligation of confidence**

88. The Appellant is at a loss to understand how The Respondent can accept that an organisation like UK Athletics, who have received millions of pounds of public money, can expect confidentiality in how they have spent the funding. Please remember we are talking about the governing body for the sport of running, jumping and throwing. Member's of Parliament might justifiably feel hard done by, if UK Athletics and the Additional Party are able to avoid accountability in how they spend public money, in a way that MP's so spectacularly failed.

89. During the 1960s to 1980s Eastern Bloc countries (and others) established coach education programmes open to outsiders and published coaching manuals available in the west (eg Smolensky's excellent East German Track & Field manual). However it was what wasn't being shared that was the key to East Germany's success and the reason for much secrecy over and above the knowledge they shared. By withholding information UK Sport and UK Athletics are demonstrating a similar lack of transparency which could only be used to undermine the reputation not only of British athletics but also of British sport.

90. Great Britain would be an easy target for such accusations because one of the methods used by Eastern Bloc countries was to test athletes prior to championships and any not showing 'clean' were withdrawn as 'injured'. With the vastly increased public funding spent on medical support by UK Athletics the incidence of injuries prior to championships is ridiculously high. In all likelihood it is innocent but the door is wide open for finger pointing with all the resultant damage that that can do to the name and the image of Great Britain.

**Element 3: Use of the information to the detriment of those communicating it**

91. The third element suggests that the *Coco v Clarke* precedent that the Respondent is relying on does not apply. If the information provided by UK Athletics, shows both themselves, and the Additional Party to be incompetent, so be it. Surely that is why the freedom of information act exists. The Appellant speculates that the hidden information is a series of unfulfilled aspirations, and a hotch-potch of bad ideas and disconnected initiatives which demonstrate inexperience and incompetence. It is fully intended to highlight this information until UK Athletics are shamed out of existence.

**EVIDENCE THAT UK ATHLETICS LACKS AUTONOMY FROM UK SPORT**

92. In paragraph 50 of the Response document, the Respondent expresses a view that the existence of a formal agreement between the parties, represents clear evidence that the Additional Party and UK Athletics are separate organisations. In contrast the Appellant takes the view that the failure of UK Sport to receive an annual review as required in Section 12a of the funding agreement for the period between 1st October 2006 and 30th September 2007, demonstrates the relationship between the organisations to be a sham.
93. Furthermore, paragraph 14 of this document identifies circumstances when the Additional Party may take control of a governing body. It is specified on pages 145 and 146 of the Governments Game Plan policy document that UK Sport needs to work with governing bodies in receipt of WCPP funding (as UK Athletics are), so that they reach a position where they “earn autonomy”. It also says that once this happens UK Sport will need to apply funding agreements “far more rigorously”.
94. The evidence contained in paragraphs 17, 19, 29, 30, 33, 35, 38, 43, 66, 73 and 76 of this document all demonstrate that UK Athletics have special needs, and UK Sport have the expertise and the responsibility to resolve the issues of under performance. The lack of rigor in applying the funding agreement terms indicates that UK Athletics were and are in receipt of “centralised support”.

95. UK Athletics, a company without shareholders or members, and funded by UK Sport are separate organisations in the same way that a business might create a holding company to separate its assets from the risks of business. For the spirit of the Freedom of Information Act to be upheld, UK Athletics must be recognised as a delivery arm of UK Sport and accordingly accountable in the same way.

## **AN ATTEMPT TO RECOGNISE UK ATHLETICS AS A PUBLIC BODY**

96. On 14th December 2005, the Appellant wrote to the Department for Constitutional Affairs under section 5 of the Freedom of Information Act requesting that both UK Athletics and the newly created England Athletics be treated as public bodies for the purposes of the act. Angela Venters of the Information Rights Division of the Department for Constitutional Affairs replied on 20th January 2006 saying *"No orders have yet been made under section 5 and there is no formal mechanism for applying to have a body covered using section 5. We will inform you again when there are any developments in this area"*. This exchange of correspondence is included in this document to demonstrate that the Appellant attempted to engage with the spirit of the FOIA by seeking to make UK Athletics and England Athletics directly accountable to the Athletics community.

## **THE REPLY ON BEHALF OF THE ADDITIONAL PARTY - UK SPORT**

97. Paragraph 25 of the Additional Party Reply document dated 5th November 2010 states:
- “The Additional Party has spent time and ever precious resources dealing with these requests. The Additional Party takes such matters extremely seriously but has found the Appellant’s pursuit of these serious and false allegations to be unreasonable. The Commissioner is invited to consider Rule 10 (1) (b) in making an order for costs against the Appellant”.
98. When making a FOI request of the Additional Party on 29th November 2006, the Appellant wrote: *“My understanding is that a payment might be due from myself to cover the costs of providing this information”*. No request for payment was forthcoming.
99. When making a FOI request of the Additional Party on 27th April 2007, the Appellant wrote: *“If you require a payment in respect of the gathering of this information, please advise me of the costs involved”*. No request for payment was forthcoming.
100. When making a FOI request of the Additional Party on 5th February 2008, the Appellant wrote: *“My understanding is that a payment might be due from myself to cover the costs of providing this information”*. No request for payment was forthcoming.

101. The Appellant gives his time freely to the sport of athletics in many capacities including the processing of computer results, website administration, team managing, officiating and coaching, and is grateful for all of these opportunities. However the Appellant has no confidence in the values or competence of the individuals who have been put in place at public expense by the Additional Party to govern the sport of athletics in the UK. The Appellant has taken it upon himself to join with other like minded athletics enthusiasts to identify where the millions of pounds of public money is being spent and to what benefit.
102. All FOI requests by the Appellant to the Additional Party have been reasonable and courteous.
103. **The Appellant would request that the Additional Party identifies a single false allegation that has been made, or identify any accusation of wrongdoing that has not been substantiated.**
104. If the Tribunal chooses to make an order for costs against the Appellant, it is requested that the funds be directed towards individual athletes within inner London for the purchase of running shoes and running spikes. Such an award might serve as a good example to the Additional Party of the proper use of the words “transparency with public money”.
105. It is intended to reproduce this document in the form of a web page with links to the sources of the information contained herein:  
<http://www.british-athletics.co.uk/foster>

**Mr.C.Zacharides (Zac)**  
**The Appellant**

**Dated: 11th November 2010**

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