

# **Review in the matter of Western District Cricket Union**

## **Effectiveness of Disciplinary Procedure**

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31 October 2022

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# 1 Executive Summary

- 1 Discipline within the WDCU focuses on “on-field” matters. This appears to be handled in a way that is open and transparent, with open reporting of sanctions issued against individuals and noting the outcome of appeals. Sufficient detail is available to make the content available for scrutiny.
- 2 As is noted in the P4S report, “off-field” misconduct matters are separate and a suitable separate detailed framework does not exist.
- 3 The disciplinary arrangements would benefit from being revised so as to ensure that disciplinary matters have increased independence and where appropriate, there is a system of intervention from the SGB, CS, if that is felt desirable for “on-field” matters, but most certainly in relation to “off-field” misconduct matters, if WDCU is to continue have responsibility for certain, or all, disciplinary matters. Intervention may be in the form of either an appeal upward, or a right to intervene / call-in the matter on the part of CS. Such arrangements are present in leading systems of this nature in other sports.
- 4 Many sports have a centralised system, if not at first instance or for certain levels of conduct issues, but typically on further appeal or with a power of intervention by the governing body. In this instance, CS’s powers are very limited. This should be corrected as not only will it offer a better “pyramid” system, allowing CS to have active oversight and support of systems, it will help WDCU to have greater focus on the activities it is primarily constituted for, the organising and participation in domestic cricket.
- 5 In addition to benefitting from improved elements of independence, clearer rules and clearer sign-posting of rules would assist.
- 6 The system needs a broader overhaul in relation to (i) establishing jurisdiction over all in the game in WDCU; (ii) to whom complaints can be brought and by whom; (iii) the basis upon which complaints can be made (the overarching rules regulating behaviours); (iv) the procedures to be followed; and (v) the sanctions applicable in the event that there is a sanction to be handed down.
- 7 These recommendations may feed into broader discussion and reasoning as how a fuller, centralised, disciplinary system can operate across all of cricket in Scotland and will be partly covered within the broader governance review being conducted.
- 8 There are two referrals that require to be separately considered and assessed further to the complaints presented and the process established by CS. No conclusion can or should be reached in connection with the same, but it is notable that since the mid-part of the last decade, when changes are understood to have been made to the WDCU disciplinary system, there have been very few “off-field” misconduct matters attended to. Equally, the two referrals requiring separate assessment do not, of themselves, necessarily illustrate the above issues. Those referrals appear at first glance to concern other and certainly additional issues.
- 9 For reasons that are more readily explained within this report, the changes required in the WDCU system are linked to improvements that can be delivered across cricket in Scotland and do not necessarily arise from individual decision-making within WDCU in respect of any single referral, incident or otherwise.

## 2 Introduction

- 1 This report is produced further to the obligation on Cricket Scotland to assess the effectiveness of the disciplinary processes of WDCU as required by “Changing the Boundaries” published by Plan4Sport.
- 2 To undertake this review and deliver this report, analysis has been conducted of:-
  - the constitutional arrangements in place in cricket in each of Cricket Scotland Ltd (CS), Cricket Scotland Council Ltd (CSCL), Western District Cricket Union (WDCU);
  - the various codes of conduct published at national and regional level;
  - the various disciplinary procedures published at national and regional level, including those by WDCU, together with WDCU’s role profile for panel members on the discipline & appeals panel;
  - comparative consideration of other regions structures;
  - comparative consideration of the ECB and ICC constitutional and regulatory frameworks;
  - WDCU’s website, which helpfully sets out all applicable policies, procedures and disciplinary reports;
  - news reports on WDCU’s website capturing activities;
  - Plan4Sport’s Changing the Boundaries report;
  - referrals passed to CS from Plan4Sport;
  - feedback from a number of sources including sportscotland, CS and from persons within WDCU who have answered questions and discussed the regulatory issues identified as relevant to this analysis and report.
- 3 This report does not forensically interrogate individual decision-making by individual committee members. Why certain decisions were made 10 years ago, 5 years ago or 2 years ago may be thought to inform the present, but this report is required and is being offered up to assist CS to build a better future for cricket within Scotland.

- 4 In my judgment, the approach adopted is an appropriate way to progress and is justified both by (a) the immediately apparent structural issues reported by Plan4Sport and which are apparent within a cursory review of the WDCU and CS regulatory framework; and (b) that it would be wrong and unhelpful to cut across the investigation of referrals which is being separately carried out in conjunction with Sporting Equals, further to a process agreed by CS.
- 5 That is not to say that the referrals and other anecdotes have been ignored; they have not. But they have been treated with caution and no presumption has been made as to the validity of what has been reported.
- 6 Rather, this focuses mostly on the published regulatory framework, as that framework is what is available to complainers and accused, when an incident arises. It is that framework which needs to be used by panel members (decision-makers as to issues referred to them). It is also that framework which has borne the scrutiny of Plan4Sport and prompted this review.
- 7 An overview of my experience in sports discipline matters is contained at the appendix. In my experience, many sports that share similarities (e.g. team sports; individual sports) have benefitted from learning from other sports experiences in disciplinary matters. Almost all sports have benefitted from considering the jurisprudence of sports dispute bodies such as Sports Resolutions and the Court of Arbitration for Sport. Of course neither of these bodies have direct relevance and no “comparative” exercise is conducted in this exercise, with other sports or the work of those institutions, in any detail. But the principles learned from broader experience and study are drawn from, to be of assistance in this review.
- 8 An effective disciplinary policy and procedure must be capable of being readily understood by all in the sport. Someone who reads the published rules and regulations relating to a disciplinary system should be able to understand what is and is not prohibited and what will happen if a complaint is to be made, or is made against them.
- 9 Within the regulatory framework, the rules that govern conduct and prohibit conduct, need to be clear and be capable of being readily understood. Where allegations of non-adherence arise, it must be clear how the behaviours of the individual(s) or entity(s) in question can be investigated, pursued and corrected according to those rules.
- 10 Finally, sanctions should be clearly available and embedded in the regulatory framework. This will help to ensure that there is a contractual basis to act and issue sanctions. This will help to ensure that any action is not only fairly and lawfully handled from a procedural matter, but that the outcome is not susceptible to successful challenge in the courts; does not leave a sense of injustice; or cannot be readily understood by those subject to the system or who wished the system would do more.
- 11 A good regulatory system in which a disciplinary system sits should evidence seamless interaction between a district association’s policies and procedures and that of the governing body.
- 12 Thus an effective disciplinary system must have two component parts.
  - (a) The regulatory framework – the rules, the structure and the concept must be sound on paper and in place to be used to educate, direct and deter. This framework should thus have the rules governing conduct and then the rules regarding procedure (for investigation and where appropriate hearings).
  - (b) The practical application of that regulatory framework - that structure, rules and concept must be applied properly.

- 13 If “A” is not correct, “B” has no scope to consistently succeed and deliver in an effective manner.
- 14 “A” is not subject to discretion, human error or disagreement. “A” should be clear and present. “A” should be known or be available to be known by all who the rules purport to apply to.
- 15 “B” is more open to interpretation and debate in individual cases; there may be any number of reasonable decisions reached from the same set of rules and any given set of facts and circumstances. Different committees could reach plausible different outcomes from the same set of facts and circumstances, with both being “reasonable”.
- 16 The better “A” is, the better chance that “B” is satisfactory.
- 17 Typically “A” is also where policy should be captured, ideally of the SGB, in the form of preferred approach and preferred output (e.g. sanctions).
- 18 Many sports deal with “on-field” issues in a particular way, with “off-field” issues dealt with differently. Sometimes “off-field” issues are referred to as “misconduct”. For our purposes, it may be useful to use this terminology, albeit it should be noted that “on-field” matters may concern both what happens during the match in question and whether during active play or in connection with the match and where the officials have initial jurisdiction. Thus “on-field” means to say about and during the match in question. Off-field misconduct is far broader.

### 3 Western District Cricket Union

19 WDCU captures its purpose as WDCU:-

*“organises and promotes cricket to half the population of Scotland, from Dumfries & Galloway in the south-west up the west coast, and across the central belt to the Forth Valley. We co-ordinate with the West District Junior Cricket Union, local authorities and Cricket Scotland to encourage youth development and provide a structured developmental pathway with the aim of allowing the game to flourish and grow at all levels. From the Premier Division to the Greenwood Trophy, the Union provides competitions for all its member clubs, from 50-over Saturday cricket to competitive T20 competitions.*

20 Article 2 of the WDCU constitution captures its objects as thus:-

*“The objects of the Union will be to promote the furtherance and improvement of the game of cricket within the West District of Scotland (hereinafter referred to as "the West District") being such area as is designated from time to time by Cricket Scotland Limited (hereinafter referred to as "CS") and, in pursuance of that objective as the Executive Committee may from time to time determine:-*

*To institute and run a league championship or championships in the West District;*

*To institute and run such other cricket competition or competitions in the West District;*

*To organise and run all forms of junior cricket and junior competitions in the West District;*

*To organise representative cricket teams and their match arrangements at all age levels in the West District;*

*To provide cricket coaching facilities and to organise coaching and the education of coaches in the West District;*



*To provide training facilities for, and to assist with the organisation of, cricket administrators and officials in the West District;*

*To own, lease, hire, rent, acquire, purchase, sell and dispose of such property of all and every type (excluding heritable property);*

*To affiliate other cricket organisations and to liaise with and affiliate to any other organisations having an interest in the promotion of the game of cricket;*

*To provide such assistance as appropriate to CS and Cricket Scotland Holdings Ltd ("CSHL");*

*To raise finance for the foregoing purposes in any manner or way including the charging of Membership subscriptions, levies, obtaining funds by sponsorship whether from Members or outside organisations or persons, obtaining grant aid, and, subject as aftermentioned, borrowing such funds; and*

*To ensure the pursuance of all the foregoing objectives under the auspices of CS."*

- 21 WDCU comprises clubs in full membership and associate membership (article 3). Members can only be expelled at a special general meeting or AGM (article 3.5).
- 22 WDCU is led by an Executive Committee, with a Chair, Secretary, Honorary Treasurer, Vice-Chair and one further Executive Committee member.
- 23 There is an administrator.
- 24 A Cricket Management Committee exists with a Chair and Vice-Chair leading a 7-strong group; the Vice Chair of the Cricket Management Committee is to sit on the Executive Committee (per article 8.1). The Chairman of the CMC is the Vice Chairman of the Executive Committee (article 8.1.1). The CMC and Executive Committee are thus interwoven.
- 25 There are other WDCU committees comprising:-
  - (a) A district selection committee
  - (b) Disciplinary & appeals committee (supported by a Panel Register)
  - (c) A sponsorship committee



- 26 Each of the Executive Committee and Cricket Management Committee are elected committees. It is understood that all members of the elected committees have recently changed.
- 27 The Disciplinary & Appeals Committee is a sub-committee created by article 8.1.4; this sits alongside the Cricket Management Committee created as a sub-committee by article 8.1.1.
- 28 All members of the Disciplinary & Appeals Committee are appointed by the Executive Committee, who then appoint a Panel with the necessary skills and experience to hear cases.
- 29 The Disciplinary & Appeals Committee exist to deal with cases of alleged breaches of the WDCU / CS Code of Conduct and appeals from decisions of any other sub-committee. 8.1.4 talks of the Disciplinary & Appeals Committee dealing with *“cricketing misconduct or other breach of applicable rules coming under the jurisdiction of [WDCU]”*.
- 30 Where there is no jurisdiction in a sub-committee to determine a matter, then the Executive Committee is to deal with the matter (per article 10.1). The WDCU constitution also talks of “matters governed by article 15 of this Constitution” but there is no such article published online. It may be a saving provision catching anything that is not otherwise captured; it may be that the reference to article 15 is a hangover from prior versions. Those who spoke to were unclear as to why this was included.
- 31 Appeals under article 10, from decisions of the Executive Committee, are to the Disciplinary & Appeals Committee. This is curious, given that the Disciplinary & Appeals Committee is appointed by the Executive Committee. This gives rise to a series of problems with perception, independence and demonstrable structural integrity.

### **WDCU disciplinary & appeals panel member role profile**

- 32 There is a helpful role profile available for panel members. This document is useful and well set out; the reader understands the qualities required for panel members.
- 33 The role profile does also indicate the limited scope of the disciplinary & appeals panel.

### **WDCU disciplinary & appeals policy & procedures**

- 34 This is a lengthy and structured document. In general terms, the document is useful. It sets out to explain the policy and procedures applied by the panels in operation. The focus is on complaints from and connected to the code of conduct, with a focus on match officials and clubs/players.
- 35 There are certain notable aspects. It does invite complaint from anyone within cricket about cricketing matters (3.1) and whilst 3.1(2) outlines process for “third parties” to complain, the detailed process points to the procedure being focused on match related matters.
- 36 This element, combined with reference to the code of conduct (which is primarily about matches) makes this element of the regulatory framework less than clear and not altogether straightforward.
- 37 The sanctions section then links back into the code of conduct, for good reason, but there is no separate sanctions list, or guidance, dealing with off-field misconduct.
- 38 Whilst this document does point to off-field misconduct and social media activity being covered, it is far less developed than it should be, and momentarily mentioned only.

- 39 The WDCU Administrator takes on the role of disciplinary officer, from time to time. This is a role that can be difficult to undertake in combination with other neutral roles. That is perhaps mostly due to the perception adopted by third parties subject to processes.

### **“On-field” discipline**

- 40 Earlier in April 2022, WDCU published a pre-season communication noting that in season 2021, 28 players faced 42 disciplinary charges of which 38 were upheld and resulted in sanctions being handed down.
- 41 The sanctions ranged from a reprimand to an 18 weeks ban. All cases upheld attracted demerit points, which when a threshold is met, result in additional bans.
- 42 WDCU communicated a desire to reduce this number and encouraged all clubs players and team officials to familiarise themselves with policies, procedures and sanctions.
- 43 The communication signposted the Code of Conduct, Disciplinary Procedure and repeated WDCU (and CSMOA) message that it was necessary to “respect your opponents and match officials and play in the Spirit of Cricket”.
- 44 In the WDCU forum, of 28<sup>th</sup> October 2021, discipline, behaviour and playing within the spirit of the game continued to be a “*source of great frustration*”. There was reportedly a continued lack of respect for match officials and opponents within the WDCU at this time. Although this points to an issue in the system itself, it is notable that WDCU had resolved to increase sanctions as a means of deterring such behaviour. Such a change in policy is an example of good governance in sports disciplinary matters. But it should be noted, almost all of the discussion was on players and playing interactions (e.g. on-field matters). That may be circumstance, but nonetheless, it may be useful for WDCU to consider the benefit of broader reporting and being clear as to the existence or otherwise of misconduct issues.
- 45 In the view of this review, there is no immediately apparent difficulty with how “on-field” issues are handled.
- 46 Anecdotes were provided pointing to difficulties arising where independent umpires and officials do not handle matches. When a team umpire or player umpire is assigned to matches, tensions can quickly arise and arguments take place regarding decisions, leading to a fall in behaviours and complaints. This is not a difficulty with a disciplinary process but rather, concerns separate issues of resource and the ability to have matches independently officiated.

## 4 Analysis – off-field “misconduct”

- 47 The WDCU procedures focus on umpires etc reporting one team, or one team reporting another (and their constituent participants). The focus is on team, players and club. But not individuals who have membership of their club or are involved in some way in the sport.
- 48 The focus of the disciplinary system appears heavily based on the playing of the game, e.g. what happens in and around a match. There is no obvious set of rules relating to broader misconduct.
- 49 There are no rules clearly and obviously prohibiting examples of behaviours such as those complained of to P4S (this being as a generality and not with reference to matters considered by WDCU). There is, for example, no rule that exists that (i) seeks to apply to any person involved in WDCU; and (ii) which expressly prohibits discriminatory conduct. Such rules are commonplace in other team sports, dealing with misconduct in an express, rules-based, manner. One example of a broad and over-arching “code of conduct” can be found in rugby union, published by World Rugby, and which all member unions must adopt and cascade to all involved within the sport within their jurisdiction. It applies to anyone involved in the game and narrates a series of behavioural standards.
- 50 Where issues have been raised, before, it is apparent that there has been felt to be an ineffective policy and procedure applied. There has been said to be instances of complaints not being pursued formally; complainers not knowing outcomes; and in some instances, there being no possible formal intervention from CS where continued dissatisfaction persisted.
- 51 There can be no prospect of a disciplinary system keeping all persons content all of the time, but the discontent expressed is not, in my view, the sole pointer to query if there has been a past issue. The discontent appears to have some justification, where, as here, there is a lack of power to intervene, no formal route for complaints being processed, no right of appeal or ability for intervention to occur by CS, as SGB).
- 52 On-field issues in cricket, as in many sports, are largely the subject of a slick sanctioning process in which it is typically apparent what has occurred. Match officials evidence is typically very important given their standing within the sport in question. Sanctions are prescribed or within a range, set by policy determined at the highest level, out with the disciplinary decision-makers, and are handed down in a way that seeks to be consistent and transparent.
- 53 The application and monitoring of disciplinary processes of “off-field” misconduct issues are very different to on-field issues. Far greater discretion arises; far more emphasis is focussed on processes that are akin to workplace disciplinary investigations and hearings; with decisions based on the merits of the matter in question. Legal advice and legal representation is becoming more prevalent within the operation of sporting disciplinary processes in many sports, as reputational consequences and integrity considerations abound, particularly in “misconduct” matters.
- 54 There does not appear to be any suggestion within Plan4Sport’s report that the “on-field” element is not being handled appropriately, nor have instances been apparent from reading material ingathered to date (such as referrals, WDCU’s table of sanctions handed down, to name two sources).
- 55 Initially, the sign posting of misconduct is not clear nor helpful. It appears to be somewhat of a smaller, separate, element to a process focussed on “on-field” matters. The role of the

WDCU administrator, as possible disciplinary officer in some matters, is not clearly defined. It may be preferable that this role is more clearly defined and possibly someone other than the administrator take this on, if regarding misconduct matters. Such an option may be beneficial to preserve the independence of the role.

- 56 Whilst the framework offers “third parties” the ability to bring to the attention of the WDCU a complaint, there is no clear narrative within the framework what a complaint can concern, what will happen next and how the complainer can participate in the process (or know of the outcome). This all gives rise to uncertainty and difficulty in applying a process in practice.
- 57 Other sports (swimming, gymnastics, to name two examples) have the ability for any person within the sport to bring complaints to the attention of key persons, with the sport’s published rules and regulations (regulatory framework) obliging those individuals to undertake assessment of the complaint (and determine whether to investigate further, prosecute, or not). In practice there is then consistent and timely engagement with the complainer. The framework is broader and clearer.
- 58 The focus of the CS Code of Conduct is on “on-field” matters. This is understandable, in one sense, but “off-field” misconduct is very important also. Misconduct could only likely be caught (if prosecuted by the Code) under a “disrepute” provision, if taken against an individual. Strictly speaking, “disrepute” proceedings can be more laborious to result in a successful prosecution / finding, than a straight rule by which a behaviour contravenes the rule in question. Disrepute often relies on demonstrating the lowering of reputation, which can be the consequence of behaviour, but they are not and should not be viewed as a “catch-all”.
- 59 Separately, the Code of Conduct is said to be applicable to “Players and Team Officials”. This is, de facto, limited, and does not include all persons involved in the sport. This point is made by Plan4Sport but it is clearly apparent from reviewing WDCU’s regulatory framework.
- 60 Match officials are subject to a separate code of conduct and a separate disciplinary process.
- 61 It would be preferable to have, a far broader set of rules within an expanded regulatory framework in which ideally, the framework captures everyone in cricket in the WDCU. Whilst this should be an action for CS in due course, to cascade down, the absence of such rules are the responsibility of the WDCU presently. It is the WDCU who police and discipline people within their geographical area, with no evident supervisory jurisdiction applied by CS.
- 62 Although the CS Disciplinary Procedure under the Code is to be adapted as appropriate for each Association’s own governance, this is only applicable to the application of the Code and given the issues with the extent of the Code (applicable to players and officials only, focussing on on-field issues), there are obvious limitations. There are no broader misconduct provisions that we can see or that have been brought to our attention, other than a very general provision under the WDCU constitution (see below).
- 63 The WDCU disciplinary and appeals policy and procedures primarily focus on the code of conduct, which as noted, is far too narrow a focus. If there is an issue not covered by the Code of Conduct, then there is a need to use clause 10 of the WDCU constitution, but this involves a different process and there being established a sub-committee of the WDCU executive committee.
- 64 There is no clear statement within the WDCU constitution or published rules and regulations that WDCU has any particular investigative powers (that e.g. “X” within the WDCU, or WDCU itself, can commence an investigation), who will do that, or on what basis. This is a cause for concern and problematic.

- 65 Clause 10.2 of the WDCU Constitution re-routes back to the Code of Conduct and it is not clear that this captures personal behaviours of members of clubs, or anyone else connected to or associated with clubs.
- 66 Much of the constitutional focus concerns “members of union”. These “members” are framed as being clubs in full or associate membership of WDCU. If the constitution focuses on a code and on procedures that apply to clubs, how does the WDCU purport to have any valid jurisdiction over individuals in clubs and so within the very heart of domestic cricket? Complaints can be brought by “third parties” but can they be pursued against “third parties”? This is not clear. It should be.
- 67 Disrepute charges against clubs are possibly the obvious method, for the club in question, if they in turn do not properly control and discipline their own members / people. This is highly ineffective and prone to difficulty in practice, as absent any over-reaching power by WDCU, there is no clear ability to regulate behaviours. Doubtless these factors will have caused issues in practice.
- 68 There is no clear pivot up to CS and an overarching supervisory jurisdiction by the SGB. One example of where this appears to have caused a problem is in relation to complaints reported to Plan4Sport (██████████). Whether ██████████’s complaint was legitimate or not-legitimate, it is unsatisfactory that CS should have no clear interrogatory locus, that could lead to intervention.
- 69 Similar problems existed in another sport some years past, with the SGB and constituent member association having to re-write their disciplinary rules, to ensure the ability of the SGB to have full sight of the jurisprudence of the member body and an ability to intervene and/or determine appeals (such an arrangement being the case in football in Scotland, the most active domestic disciplinary system to cite).
- 70 An SGB and districts within membership of an SGB do not need to have direct membership links with individuals (in the SGB) to exercise jurisdiction over those individuals. People can be deemed to submit to the jurisdiction of the SGB through their membership of the club in question, which is a member of the district association. However, it is always advisable to have supervisory intervention powers.
- 71 There are examples of where this disjointed approach has caused problems. One referral to P4S concerns a situation in which a problem arose in the context of officiating. That then led to a concern as to how a person had been treated. There is no obvious route, or procedure, for the individual to bring a complaint as to how they had been treated. An effective system would offer this.
- 72 One possibility may be that WDCU more readily links not to SCL, but instead to SCCL (where, for example, WDCU have the right of a representative on the board of SCCL). This is a possible reading of the arrangements in place but it does not offer any form of route for someone disgruntled within cricket, in the area covered by WDCU, to take a complaint further forward and out with WDCU, into another entity. For the avoidance of doubt, I would not recommend that SCCL be the appropriate place to have such a right of complaint or appeal, given that SCCL is not the SGB and has no access to appropriate executive support. Any right of external intervention should be with the SGB.
- 73 As a connected matter, the benefit of having a route to the SGB from WDCU and all regional associations in relation to misconduct disciplinary matters and complaints is that this will offer up the better prospect of consistency being achieved. Policy and training can be cascaded



down; steps taken and decisions made can be checked through upward appeals; where the SGB has appropriate effective oversight.

- 74 There is no sanctions table setting out what sanctions may apply in the event of off-field misconduct. The absence of such clearly set out and defined policy is not helpful to achieving consistent deterrence, or confidence that matters will be taken seriously, if reported. In other sports, a table of sanctions is regarded as a key item of policy, to be set and/or approved at the highest level within the sport, and cascaded down. CS should consider adopting the same and enforcing the same throughout the sport. This is a point that can feature in the broader governance review.
- 75 Each of the ICC and ECB has a far clearer (and more extensive) regulatory framework in place, providing for rules as to general conduct and ethics. There is no such framework in place within cricket in Scotland and in the WDCU. There appears to be the notion within the regulatory structure that members keep their individuals in line and that good standards of behaviour are to be expected and by promoting the same, poor behaviour will be deterred. Regrettably a clearer framework is needed with individuals being subject to regional and/or national attention and sanction. If clubs are left to deal with unruly individuals, individuals can merely move clubs to avoid sanction. No evidence existed of one club's sanctioning of an individual being applicable to another club.

NB. no assumption is made that the content of the referrals is true, or otherwise untrue. The complaint is relevant and taken at face value for the purposes of this assessment.

## 5 Conclusions

- A. “On-field” issues are not the focus of the issues reported or assessed within this report. On-field issues are dealt with in a structured manner.
- B. It is not clear to the reader, how behaviour is regulated for individuals, other than attempting to use the code of conduct, or a convoluted constitutional provision which leads to a different and unsatisfactory process.
- C. There is no clear set of rules regulating behaviour and clearly prohibiting misconduct; there is no clear structured process outlining what will occur in the event of a complaint. Any notion that clubs should regulate their individuals behaviour is misguided and must not underpin the ability to respond to poor behaviour; the regional association and SGB must be in a position to act, in appropriate cases.
- D. There does not appear to be any appropriate independence to misconduct matters;
  - The discipline and appeals panel is best kept clear of the cricket management committee and executive committee, with a clear division of responsibility; and
  - Absent the ability of CS to hear appeals as a supervisory jurisdiction, there is no scope for any appropriate intervention and regulating of decision-making in important matters handled at a regional level.
- E. The absence of any ability to appeal misconduct matters to a body above WDCU is not helpful. The absence of an ability of a body above WDCU to intervene in any disciplinary matter, is not helpful.
- F. What may lie behind this situation and the reasoning for this state of affairs doubtless will relate to the overall governance and structure of Cricket in Scotland. There is no cascade of rules from the SGB and this will most likely relate to the overall structure and governance of CS and the inter-play between CSL / CSCL.
- G. CS should have greater supervisory intervention & appeal hearing powers to be most effective as an SGB in matters of behaviour within the sport. Whether this should be for misconduct or all matters is a separate matter of consideration.
- H. Absent clear behavioural rules, process and power to properly deal with behaviours of club members, there are risks to the ongoing cultures and behaviours within the sport. CS should lead on cascading rules and policy on sanctions in this regard.
- I. The WDCU website and communication of messaging is clear and helpful. Whatever improvements are adopted there is clear evidence of a willingness and a platform to bring about change. WDCU panel, terms for panel members and procedures are all a broad and helpful basis on which to take forward disciplinary matters within the jurisdiction of the WDCU; these may require some adjustment in due course, but the platform exists to embed improvements.



# Appendix

## **Examples of experience in sports discipline matters – Bruce Caldwell, Harper Macleod LLP**

I have advised Scottish Rugby in respect of disciplinary matters since 2004, actively representing international players from that date, before World Rugby, Six Nations, EPRC, and other forums.

I have advised Scottish Rugby in relation to off-field misconduct proceedings including in relation to Typhoon Hagibis (Rugby World Cup 2019); and an eligibility dispute concerning an international player, appearing before World Rugby's Council (the international federations decision-making body).

I have advised on successful appeals to the Court of Arbitration for Sport including in relation to sanctions arising from doping in the Olympics, reducing sanctions applied by an international federation.

I have appeared for various governing bodies before panels of Sports Resolutions (UK).

I have drafted and advised on the construct of and ongoing application of multiple disciplinary rules and systems, including for international federations; SGBs; national governing bodies; contributed to the review by European federations; advised on the inter-play between Scottish governing body rules and British body rules.

I have delivered training to a number of SGBs in relation to effective disciplinary policies and procedures, as part of ongoing support.

I have advised multiple sportspeople including representing those persons in relation to on-field, off-field, doping, and general misconduct matters, including assisting with the defence of criminal proceedings and thereafter assisting in the handling of internal enquiries connected to the same.

I have sat as a member of Scottish Rugby's domestic discipline panel and I have been an active member of the Scottish Football Association's Judicial Panel since its inception in 2011, chairing hearings, appeals and arbitrations.

In addition, my separate employment law practice involves my advising clients and appearing before the Employment Tribunals and appellate tribunals and courts, acting in respect of disputes. I am familiar with the construct and practical application of methods of alternative dispute resolution within this sphere also.

I regularly undertake investigations in different regulated sectors. I also advise in relation to governance and regulatory reviews in different sectors for public, private and third sector organisations.

SPO/0010/604689