

## Top 10 Tips For Launching An ‘Independent Review’ In Sport



Monday, 16 May 2022 By [John Mehrzad QC](#)

When the ever-growing lists of sports organisations being subject ‘Independent Reviews’ following allegations of ethical violations, financial misconduct, discrimination, mental and physical abuse of athletes, [John Mehrzad QC](#), a leading sports lawyer and Head of Sports Group at Littleton Chambers set-out his top ten tips for sports organisation conducting an independent review.

John draws on his extensive experience as member and chairperson of several independent panels that carried out the reviews into sporting governing bodies/ He has also written, lectured and spoken widely about best practice for sporting reviews.

By way of handful of examples only, since 2016 there have been independent sporting reviews [British Cycling](#), the [British Equestrian Federation](#), [UK Athletics](#) and the [Professional Footballer’s Association](#) and historic sex abuse allegation in [football](#) and [tennis](#) and [gymnastics](#).

By way of overview, it is worth stressing that an independent review is not an internal investigation. A review’s purpose is to consider contributions, in oral or paper form, and documents to build a factual picture in order to best inform the review panellists of issues that need be addressed by way of suggested recommendations in a final review report. A review is, therefore, primarily a forward-looking process. An internal investigation, on the other hand, is usually an initial step as part of a disciplinary or whistleblowing procedure, which may lead to disciplinary action.

## **1. Who Should Conduct A Review?**

First, panel members must be objectively independent and impartial from the commissioning panel and any interested parties.<sup>[1]</sup> Whilst the law<sup>[2]</sup> gives deference to those subject to professional integrity and ethical obligations, any connection with the sport or individuals within it will be subjectively viewed as giving rise to a potential conflict of interest. In terms of public perception that is unhelpful – even if it well-recognised that the world of sports law is a small one in which people know each other.

Secondly, there may be the need for specialist members to be appointed to the panel, for example where allegations are made concerning vulnerable persons within a safeguarding context or complex allegation of financial impropriety are made.

## **2. Who Should Appoint The Review Panel?**

It is good practice for the point of contact on behalf of the commissioning governing or athlete representative body and the panel to be via an independent Board director with delegated authority to give instructions to the panel. Any suggestion that the Board itself is marking its own homework is likely to be questioned, hence the independent director point of contact.

As sports operate within their own regulatory regime, it is expedient to involve the regulator in agreeing to jointly commission the review, including its terms of reference. The mischief that avoids is the regulator is unlikely then to carry out its own separate review or, alternatively, take umbrage from the fact that an issue which has negatively impacted on the sport is being reviewed without its input or agreement.

## **3. How Do You Define The Scope Of Review?**

This is often the thorniest issue to grapple with at the outset. Often allegations will have been made or an issue raised but the detail is not yet known. It can be superficially attractive to agree narrow terms of reference, but then the panel's hands are tied with it having no power to consider matters outside its remit.

My preferred course is to identify a broad issue or question that the panel is to consider, with the panel and commissioning body having the power collectively, to be exercised in good faith, to amend the scope of review if there is a material change of circumstance during the course of the review.

## **4. Set A Realistic Timeframe**

Save in the most straight-forward of situations (which I am yet to come across in practice), independent reviews last months, not weeks, and occasionally even longer. Nevertheless, commissioning bodies often start off from the premise that a review can be completed with a report submitted within weeks. It may be the case that the panel has availability to block out its professional diaries to adhere to such a limited timeframe but, within the world of sport, it is almost always practically impossible to do so for

athletes and coaches who are engaged in tailored training regimes, often overseas, with daily regimes in which rest and refuelling are scheduled tightly.

Best practice should give a broad timeframe for completion, such as by the end of a season, with regular updates given to the commissioning body (and, as needed, the public) about whether timeframes need to be re-assessed in the meantime.

## **5. Give The Panel The Support It Needs Whilst Managing Prudently**

In most instances, it is inefficient and disproportionate in terms of costs for the panel to carry out the administrative function of an independent review itself. It is simply impractical for the panel to manage a confidential and secure repository of documents, often running into thousands of pages, collate written contributions and deal with the logistical side of organising and managing interviews.

By and large, reviews have either called on law firms or specialist bodies, such as [Sport Resolutions](#), to carry out those administrative functions as the panel's secretariat – with the decision about which method to choose often turning on the likely volume of work and cost.

## **6. Set The Criteria For Disclosure In The Terms Of Reference**

It is best practice to place into the terms of reference at the outset an obligation on the governing body to provide documents to the panel, as so required. Difficulties can though arise where documents may be subject to legal privilege. However, in such circumstances, it can be agreed that such material is nevertheless to be provided to the panel without any wider waiver of privilege being made.<sup>[3]</sup>

## **7. Ensure Welfare Of Witnesses Is Taken Into Account**

First, it has become a mantra that independent reviews cannot compel witnesses to provide submissions or attend interviews. The repercussion is that a review can become a stale exercise or jaundiced in that it hears only from the aggrieved. That mantra is not, though, entirely right. Athletes are often subject to contractual obligations, be it as a result of employment status in certain instances or athlete agreements in others, that they comply with reasonable instructions from their employer/governing body, funder, regulator or professional bodies. Subject to their right to avoid self-incrimination, the panel may consider adding into terms of reference at the outset that the relevant sport/club instructs their athletes to contribute to the review. That said, there is a certain unreality to forcing contributions, as that will likely undermine confidence in the review process.

The best approach therefore remains for the panel to ensure safeguards (as explained further below) are put in place that strengthen the perception of the integrity of any review process and, as a result, the confidence of potential contributors that their input will be considered fairly and, as necessary, confidentially. Secondly, who carries out the witness interviews and related investigations needs to be considered carefully at the

outset. I have carried out those processes myself and also worked with independent investigators, often specialists in interviewing such as former police detectives, with weekly panel meetings to review interviews and identify topics for forthcoming ones. In all reviews, at least two panel members have been present at interview with it being recorded, subject to prior consent from the contributor, for other panel members to listen to subsequently.

## **8. Identify ALL Safeguards At The Outset**

Whilst giving the superficial impression of being a defensive topic to consider prior to agreeing to carry out a review, safeguards are one of the most important factors to put into place to ensure the integrity of a review.

First, safeguards for contributors needs to be considered. The issue of confidentiality is often of paramount importance. In many instances, contributors are given the right for the identities to remain confidential to the panel (as opposed to anonymous generally). Often there is distrust between complainants and the governing body, such that confidentiality is required to permit the review to take place meaningfully. Then there are steps to be offered to contributors in terms of support during the investigation process itself, especially when allegations are of a hard-hitting or sensitive nature. Athlete support bodies, such as the [British Athletes Commission](#), can offer independent support. In addition, counselling or other forms of occupational support should be offered to contributors where reasonably required.

Secondly, the issue of data protection must be considered. It is inevitable that, in particular in the most high-profile reviews, that Freedom of Information and/or Subject Access Data Requests will be made. The panel is likely to be able to avail itself of the carve-out that the integrity of the review would be prejudiced by responding to such requests. However, that is unlikely to be the case for the commissioning body (especially if a public body) or, possibly, the secretariat.

Thirdly, the panel will need its own safeguards. It should consider demanding a full indemnity from the commissioning body. There is no point in the panel's review being stymied by interested parties reserving legal rights without the panel having full protection in place from the outset.

Fourthly, in terms of safeguards for the contents of the report itself (and beyond steps to ensure drafts are held and reviewed securely pre-publication) where a review makes criticisms about which the relevant person or body has not yet had an opportunity to respond, that person or body must be given a reasonable opportunity to respond to that criticism prior to publication.<sup>[4]</sup> That right should be made plain in the terms of reference.

## **9. Ensure The Review Can Be Published In Full**

This is often not an issue considered initially, but it becomes the biggest issue at the end of the process. However, by then it is too late to deal with properly or leads to delays

whilst the report is redrafted to allow it to be published in a way that maintains guaranteed confidentiality. In my view, it is not only the direction of travel but there are sound practical reasons why a review report should be published in full.

First, the whole purpose of the review is to look back at what has happened, make findings and recommendations. There is no point in doing so, especially in funded sports, without the report being published in full. The contrary position simply leads to unhelpful rumour and conjecture.

Secondly, the drafting of a report is almost impossible to carry out properly without knowing the extent to which contributions can be personalised or cited. If it is known that the report will be published in full at the outset, then the report can be drafted in a way to protect confidentiality, as necessary, without the need for last-minute, unwieldy redrafts.

Thirdly, and being realistic, a high-profile review report is likely to be leaked into the public domain anyway.<sup>[5]</sup> The way to avoid any embarrassment being caused by that eventuality is to have drafted it for publication in full in any event.

## **10. Be Prepared And Willing To Engage With The Press**

First, lawyers, in particular, are often uncomfortable dealing with the Press. However, with independent sporting reviews often a matter of public interest, it is inevitable that journalists and the general public will want regular updates. That is not to say that specific information should be disclosed prior to the publication of the review report, rather with the agreement of the commissioning body, updates about timeframes, the end of evidence gathering and the move onto deliberations/drafting can easily be placed into the public domain via press releases or online postings.

Secondly, depending on the spotlight on the particular issue, the commissioning body and panel chair should seriously consider whether it is expedient to hold a press conference at which the published report can be discussed publicly, with its key findings/recommendations highlighted and reaction from the commissioning body given rather than those matters being dealt with piecemeal over time subsequently.

## **References**

[1] This principal within the context of panel members is found in [R\(Kaur\) v. \(1\) Institute of Legal Executives Appeal Tribunal \(2\) The Institute of Legal Executives \[2011\] EWCA Civ 1168 \(CA\)](#).

[2] In rare public judgments on the application of s.24 of the Arbitration Act 1996, the High Court has relatively recently affirmed the approach in [Haliburton Co v. Chubb Bermuda Insurance Ltd. \[2020\] UKSC 48](#) that the professional reputation and duties of a legally qualified person militates against a lack of independent or impartiality in niche sectors, such as sport: see [Newcastle United Football Company Ltd v. \(1\) the FA Premier League \(2\) Michael Beloff QC \(3\) Lord Neuberger \(4\) Lord Dyson \[2021\] EWHC 349](#)

(Comm) and [Manchester City Football Club Limited v. \(1\) the FA Premier League \(2\) Philip Havers QC \(2\) John Mackell QC \(3\) Daniel Alexander \[2021\] EWHC 628 \(Comm\)](#).

[3] See, for example, the Dyson Report, commissioned by the BBC, into Martin Bashir's interview with Princess Diana – article by Littleton Chambers with link to the report here [24 May 2021]: <https://littletonchambers.com/articles-webinars/independent-investigations-lessons-from-the-dyson-report/>

[4] See this helpful review of the process, known as Maxwellisation, by Blackstone Chambers [November 2016]: <https://publications.parliament.uk/pa/cm201617/cmselect/cmtreasy/maxwellisation/a-review-of-maxwellisation-24-11-16.pdf>. This process was initially adopted for public inquiries: [Maxwell v Department of Trade and Industry \[1974\] 1 WLR 583 \(CA\)](#) [summary only]. However, it had become standard for independent reviews in relation to which findings are then made public.

[5] See, for example, the dramatic fallout after the leaking of the independent review into allegations of discrimination at Yorkshire County Cricket Club – and the subsequent launch of a further independent review into YCCC's governance [2 December 2021]: <https://www.bbc.co.uk/sport/cricket/59510611>

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sports law at Littleton Chambers, London, practice focuses, on the one hand, on financial disputes between clubs, managers, players, intermediaries, associations and commercial partners – usually before FA, PL or EFL arbitrations, or before FIFA or the CAS.

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