



RECRUITMENT EXERCISES YOUR RIGHTS

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DISCLAIMER

Any English dreams were shattered in the blink of an eye. Steve Smith was smiling again. There were no cricketing miracles here despite much feverish, English speculation in the bars of Adelaide late on Tuesday night. Australia won the second Test, which was a grand advert for Test cricket, by 120 runs. On the final day it was a gentle walk in the park for the Australians, the agonies of the fourth day suddenly a distant memory as they bowled England out for 233. Two Tests up with three to play seldom loses in Ashes cricket. It happened as recently as 1937 but then the Australians, after a poor start, did have Don Bradman, Stan McCabe and Bill O'Reilly. And the tourists promised to pitch the ball up. So did Josh Hazlewood on Wednesday – to good effect. Hazlewood hustled in from the Cathedral End and within 10 minutes of the start on an old-fashioned Adelaide day – a cloudless sky and the temperature rising – and both overnight batsmen were sent packing without adding to their score. Chris Woakes fell to the second ball he received; he was given out caught behind but reviewed with plenty of encouragement from his captain. Third umpire Marais Erasmus, who has been a busy man throughout this Test, took his time; he engaged with his old pals, HotSpot and Snicko, took note of Snicko, and Woakes – looking slightly bemused – was ultimately on his way. In Hazlewood's next over there was no need to summon Erasmus. This time Joe Root was on strike; the ball kept low and took the bottom of his bat yet it still carried to Tim Paine. Once Root saw that it had reached the keeper's gloves, he set off for the dressing room and must have known then that England's fate was sealed. With a left-hander, Moeen Ali, now at the crease, Smith was quick to call upon Nathan Lyon and that straightforward move was soon rewarded. Lyon offered no easy runs so that Moeen eventually opted for the sweep shot, and the ball only made contact with his front pad. Up went Aleem Dar's finger and yet again Erasmus had to desert his afternoon tea. Two reds and an orange meant that Moeen was out but England had the consolation, an infinitesimal one in the circumstances, of keeping their review under the new regulations. There has been some debate about whether Moeen or Jonny Bairstow should bat at six in this England set-up. The case for Bairstow moving higher continues to gain weight for obvious tactical reasons triggered by Nathan Lyon. In this series Lyon has taken 10 wickets, nine of them have been left-handers and he has dismissed Moeen in every one of his four innings. So, the logic is that it is better for Bairstow, a right-hander and a good player of off-spin, to try to do a bit of damage to Lyon's figures before Moeen comes in. Such a change would not be earth-shattering but it might help a little bit – and England need all the help they can get at the moment. Craig Overton hung around with Bairstow until the advent of the second new ball. Mitchell Starc's first delivery with the magenta meanderer was perfect, full in length and swinging back into the right-hander. Overton has been around long enough to recognise that he was plumb lbw. So Bairstow, who had looked in good touch, was stranded again, another reason to have him higher up the order. Starc polished off Stuart Broad with another out-swing – there is no point in bowling short at anybody with a new ball in your hand – and then Bairstow, seeking to improvise, was the last man to go and Starc's fifth wicket of the innings. So England head off to Perth, where they have not won since 1978, 2-0 down. Australia will follow them a few days later in buoyant mood. They have no worries about their bowling attack. All four have been near the top of their games and the excellence of that quartet may disguise the odd concern about one or two of their batsmen. Peter Handscomb might be the most relieved man if Australia opt for an unchanged team in Perth. England have more concerns. Leaving aside the heavy historical precedents, they lack runs and an effective spinner and they could do with more pace in their attack on surfaces that offer little lateral movement. There are no obvious solutions to these problems. The solitary consolation, which was not always evident four years ago, is that they still seem to be busting a gut out there. [Joe Root](#) described his England team as being "massively" still in their series with Australia and in better shape than the team that was whitewashed four years ago despite going 2-0 down in their Ashes defence, and with history now heavily against them. Hopes of a record run chase in the second Test were [dashed early on the final day](#) when, resuming 178 runs shy, they lost their final six wickets for 57. Josh Hazlewood claimed the wickets of Chris Woakes and Root in his first 11 balls and Mitchell Starc finished with five. A rampant Australia now head to their Ashes stronghold of Perth – England have won there just once, against a Packer-depleted side in 1978 – but Root, though frustrated by his side's sluggish start to the Test with ball and then bat, tried to remain upbeat. "I thought we showed a lot of character which is what you want to see in big series," said the England captain. "It is now about finding a way to do it over five days. The way that we went about the second innings proved to everyone really we are still massively in this series." On comparisons with the 2013-14 side, humbled 5-0 under Alastair Cook, Root replied: "I think we are playing better cricket. I don't think we are as unevenly matched as we were. We have been in control for periods. I don't think necessarily that was the case last time around." Root, caught behind off Hazlewood without adding to his overnight 67, admitted to be concerned about a lack of converted half-centuries personally – just 13 of his 47 have been turned into hundreds – but England's issues clearly run deeper than his own Achilles heel. Though Root was unrepentant over his decision to bowl first on day one, his attack's inability to get their lengths right first time around saw Steve Smith's side post 442 for eight declared. It left the Test an uphill struggle that even a third innings fightback led by Jimmy Anderson's maiden five-wicket haul in Australia could not overcome. The batting is most worrying, with no centuries so far, Jonny Bairstow looking too low at No7 and Nathan Lyon feasting on England's left-handers. They have made up 10 of the off-spinner's 11 wickets, including Moeen Ali in all four innings to date. Root said: "We have to make sure we have decent game-plans and counter [Lyon] in practice to make sure we are ready for it when it comes round to the Test matches. It is about making sure you are clear about how you go about playing him individually. Do that then we will be in a very good place." Trevor Bayliss, the head coach, insisted Australia still have frailties, pointing to centuries by Smith in Brisbane and Shaun Marsh here being the chief difference. And yet the home side have past performers yet to fire, while Mark Stoneman, James Vince and Dawid Malan are still to taste three-figures at Test level at all. On what that trio in particular must now do, Bayliss replied: "They have scored 30s, 40s, 50s. If you have made a fifty, which they have, you've just got to do it again. It's about going through that ceiling and doing it twice." In contrast to Lyon, Moeen's form with the ball – two wickets at 98 apiece – is vexing for Root and Bayliss. Though the bulk of England's XI can rest during the two-day match in Perth from Saturday, the all-rounder, left done by side and finger issues, is down to play while Cook, after a slow start, may well opt to join him. Mark Wood, the Durham quick, is expected to play also along with England's Test reserves and some of the Lions squad. But an encouraging debut of four wickets and an unbeaten 41 from Craig Overton has left Bayliss minded to keep an unchanged side for the third Test that starts on 14 December as the WACA hosts its final Ashes match. Bayliss added: "Somewhere along the line we will win a game and it will mean so much to them. It will make them believe they are good enough. When that happens we will be able to go on and get many more wins in those situations."

DEADLINES, PRESENCE OF A REVIEWABLE
DECISION, DETERMINATIONS AS TO
LEGALITY AND REMEDY ARE COMPLEX

LEGAL ADVICE IS CRUCIAL

RECRUITMENT

YOUR RIGHTS

ADMINISTRATIVE LAW IN ONE SLIDE

Binary issues in decision making

- Procedural Flaws – has the rule been correctly applied
- Ultra vires actions (decision maker without authority)

Exercise of discretion in decision making

- Discretion must be exercised lawfully
- It doesn't have to be exercised correctly

Procedural Issues:

Where to find out about procedure

- ST/AI/2010/3 – Staff Selection System – applies to staff recruited for one year or more at G-5, TC-4, S-3 and above and professional and FS staff
- Instruction Manual for the Hiring Manager / Recruiter
- ST/AI/2016/1 – Staff Selection and Managed Mobility System – applies to staff whose posts have transitioned into the managed mobility system

TYPES OF PROCEDURAL ARGUMENT

- A particular step envisioned in the rules is not followed or followed incorrectly
- Minimum requirements have not been properly applied
- Someone other than the person specified in the rule has taken a particular decision
- A basis for comparison absent from the VA has been used to assess candidates

HOW DISCRETION SHOULD BE EXERCISED

Exercise of discretion cannot be:

- Arbitrary
- Capricious
- Motivated by bias or malice

It must take into account relevant factors

It should not take into account irrelevant factors

ARGUMENTS THAT GENERALLY DON'T WORK

- The judge cannot “step into the shoes of the decision maker”
- If your argument relies heavily on a comparison of your candidature with that of others involved in the process you need to consider this

Where is discretion exercised in a recruitment exercise

- Decision whether to recruit from roster or do full recruitment
- Determination of whether previous work is relevant professional experience
- Paper review between short listed candidates prior to assessment
- Selection of questions for a written test
- Comparison of candidates at interview
- Selection decision

WHAT TO DO IF FACED BY A RECRUITMENT DECISION YOU THINK DOES NOT CONFORM WITH THE RULES

Decisions capable of challenge:

- Exclusion from a recruitment exercise
- Outcome of a recruitment exercise

RECOURSE MECHANISMS

- Initial challenge of a recruitment exercise is by request for management evaluation
- Deadline is 60 days from date you were informed of the decision
- Suspension of action can be sought if the decision has not been implemented
- Seek legal advice promptly

COMMON MISUNDERSTANDINGS

- An approach to the Ombudsman will not automatically toll your time limit
- Time limits are not only triggered by formal notification a conversation can be sufficient

WHY COME TO OSLA

- The system is complicated and unforgiving of procedural errors
- Where staff members are seeking informal negotiation understanding their legal rights will inform their approach
- We are free and confidential
- An approach to our office does not begin a formal process the staff member remains in control of what action will be taken
- We have specialized knowledge of the topic

CONTACTING OSLA

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